

(2018) 07 CAL CK 0132

In the Calcutta High Court

Case No : CRR 730, 731, 732, 733, 734, 735, 736, 737, 738, 1253, 1428, 1233, 1470 of 2018

Mukul Roy

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 406, 420, 467, 468, 471, 472
Code of Criminal Procedure, 1973 — Section 197, 197(1), 154, 154(1), 154(3), 156(3), 482
Indian Contract Act, 1872 — Section 23, 24
Prevention of Corruption Act, 1988 — Section 19
Calcutta High Court Criminal (Subordinate Courts) Rules 1985 — Rule 183
Constitution of India, 1950 — Article 21, 226, 227

Citation : (2018) 07 CAL CK 0132

Hon'ble Judges : SHIVAKANT PRASAD, J

Bench : Single Bench

Advocate : Paramjit Singh Patwalia, Sudipto Moitra, Sumeet Chowdhury, Saurav Chatterjee, Subhashis Dasgupta, Koel Dasgupta, Aniruddha Bhattacharyya, Kishore Dutta, Saswata Gopal Mukherjee, Sandip Chakraborty, Ayan Basu, Siladitya Sanyal, Dibyendu Chatterjee

Final Decision : Disposed Off

Judgement

SHIVAKANT PRASAD, J.

The petitioner has approached this Court for quashing of proceedings being G.R. Case No. 1331 of 2018; G.R. Case No. 1332 of 2018; G.R. Case

No. 1333 of 2018; G.R. Case No. 1334 of 2018; G.R. Case No. 1335 of 2018; G.R. Case No. 1336 of 2018; G.R. Case No. 1337 of 2018; G.R. Case

No. 1338 of 2018 and G.R. Case No. 1370 of 2018 arising out of Bizpore Police Station Case No. 161 of 2018; No. 162 of 2018; No. 163 of 2018;

No. 164 of 2018; No. 165 of 2018; No. 166 of 2018; No. 167 of 2018; No. 168 of

2018 and No. 169 of 2018 all dated 12.3.2018 under Sections 420/406 of the Indian Penal Code respectively and direction dated 09.3.2018 passed by the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas in M.P. Case No. 456 of 2018; No. 457 of 2018; No. 458 of 2018; No. 459 of 2018; No. 461 of 2018; No. 460 of 2018; No. 462 of 2018; No. 470 of 2018 and No. 469 of 2018 respectively pending in the Court of learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas thereby directing the Inspector-in-charge, Bizpore Police Station to treat the applications under Section 156(3) of the Code of Criminal Procedure as the FIRs and start investigation.

Re: CRR 1253 of 2018; CRR 1233 of 2018 and CRR 1470 of 2018 Whereas in the aforesaid three revisional cases the petitioner has also approached

this Court for quashing of proceedings being G.R. Case No. 8471 of 2017 arising out of Jagatdal Police Station Case No. 1561 of 2017 dated

25.12.2017 under Sections 420/406 of the Indian Penal Code; G.R. Case No. 2643 of 2018 arising out of Naihati Police Station Case No. 335 of 2018

dated 15.5.2018 under Sections 420/406/468/471/34 of the Indian Penal Code and G.R. Case No. 3204 of 2018 arising out of Noapara Police Station

Case No. 192 of 2018 dated 03.6.2018 under Sections 420/406/467/468/471/472/120B/34 of the Indian Penal Code pending before the learned

Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas.

All the above mentioned cases have been heard as the issue involved in all the cases are common, the same may be disposed of by a common

judgment. At the outset, Mr. Paramjit Singh Patwalia learned senior counsel for the petitioner at the outset submitted that the learned Magistrate has

acted in a mechanical and laconic manner and the same is apparent from the fact that the Learned Magistrate merely filled up the blanks in a

previously typed out order sheet which is wholly illegal in view of Rule 183 of Calcutta High Court Criminal (Subordinate Courts) Rules 1985.

Secondly, it has been argued that the purported allegations in First Information Report relate to the year 2012 whereas the application under Section

156(3) of the Code of Criminal Procedure was filed as late as on 09.3.2018 without any explanation as to inordinate delay in filing application under

Section 156(3) of the Code. Thus, it demonstrates the frivolity and malafide in

the initiation of the impugned proceeding by the opposite party no. 2 against the petitioner.

Thirdly, Mr. Patwalia invited my attention to the fact that the petitioner was the Minister of Railways in the Union Cabinet on and from April, 2012.

However, no prior sanction under Section 197 Cr.P.C. was obtained for prosecution as required under Section 156(3) of the Code before registering

the First Information Report against the petitioner. Fourthly, it is submitted for the sake of argument that even if the allegation in the First Information

Report is believed to be true, it is not the case of the Opposite Party No. 2 that he handed over any money to the petitioner. Therefore, roping the

petitioner as an accused clearly appears to be an abuse of the process of criminal law to harass and humiliate the petitioner.

The petitioner further submitted that even if the allegation in the First Information Report is believed to be true, it would appear that the Opposite Party

No. 2 parted with money to discreetly and illegally obtain a job in the Railways. Such transaction even if is believed to be true cannot be a lawful

transaction and hence is otherwise not enforceable in a Court of Law in view of sections 23/24 of the Indian Contract Act. Therefore, initiation and

/or continuation of the impugned criminal proceedings on such allegations are not maintainable.

Mr. Patwalia fortified his argument with submission that the impugned criminal proceedings are manifestly attended with mala fides and has been

maliciously instituted by the Opposite Party No. 2 with an ulterior motive of wrecking vengeance on the petitioner and with a view to spite him due to

political grudge and to harass him. It is contended that after severing his association with TMC in November 2017, the petitioner is being falsely

implicated in a series of criminal cases lodged in various places in the State of West Bengal and a vilification campaign has commenced against him in

order to unleash political vendetta and the impugned frivolous criminal cases have been initiated to abuse the process of criminal law.

It is also submitted that the petitioner neither knows the Opposite Party No.2 personally nor had any occasion to meet him at any point of time and it

appears that the Opposite Party No. 2 has been used as a bait to unleash political vendetta against the petitioner by abusing and misusing the process

of the Court inasmuch as the Opposite Party No. 2 in his application under

Section 156(3) of the Code has failed to name any witness who can vouchsafe the allegations against the petitioner. Learned Senior Counsel for the petitioner submitted that the ingredients of offences under Section 406 of the Indian Penal Code are quite different from the ingredients of offence under section 420 of the Indian Penal Code and no one can be penalized for commission of both the offences together.

It is settled principle of law that in ""criminal breach of trust"", the accused comes into possession of the property or acquires dominion over the property honestly and bona fide, but he develops dishonest intention subsequent to the taking possession of, or subsequent to having acquired the dominion over the property and having developed such dishonest intention, he dishonestly misappropriates the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully causes any other person so to do.

Thus, in ""criminal breach of trust"", the intention of the accused cannot be dishonest or mala fide at the time when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over the property, the accused develops dishonest intention and actuated by such mens rea, he converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully causes any other person so to do. Contrary to ""criminal breach of trust"", the intention of the accused, in a case of ""cheating"" is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

It is submitted that the impugned order dated 9.3.2018 passed by the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas

has in effect given an opportunity to the Investigating Agency to harass and humiliate the petitioner by using its coercive powers and also to fill up the lacunae by importing frivolous witnesses to support the otherwise hollow and baseless allegations levelled in the application under Section 156(3) of the Code of Criminal Procedure. In view of the averment in the First Information Report that the Opposite Party No. 2 did not hand over any money to the petitioner, there cannot be any question of entrustment, which is the sine-qua-non for making out an offence of criminal breach of trust. As such no case under section 406 of the Indian Penal Code is made out. A bare reading of the First Information Report would show that there is no averment therein that the petitioner participated in any illegal act so as to fraudulently and dishonestly induce the Opposite Party No. 2 to part with money.

Therefore, no case of cheating punishable under Section 420 of the Indian Penal Code can be said to have been made out.

Mr. Patwalia has relied on decision of the Honâ??ble Supreme Court in Priyanka Srivastava vs. State of U.P. (2015) 6 SCC 287 to argue that in

cases where there is abnormal delay in initiating criminal proceedings, there ought to be sufficient explanation for such delay. He has also argued that

in such cases and in cases of allegation of corruption, the Learned Magistrate ought to order a preliminary enquiry instead of registering an FIR. He

has further argued that application under Section 156(3) of Cr.P.C. should evidence that prior applications under Section 154(1) & 154(3) Cr.P.C.

have been filed. The application under Section 156(3) of Cr.P.C. should also be supported by an affidavit and the Learned Magistrate should verify

the veracity of the allegations made in the application.

Reliance is also placed on decision of the Honâ??ble Supreme Court in Anil Kumar Vs. M.K. Aiyappa (2013) 10 SCC 705 to argue that a

Magistrate cannot refer the matter under Section 156(3) of Cr.P.C. against a public servant without a valid sanction order u/s 19(1) of the PC Act and

that the application of mind by the Magistrate so as to order investigation u/s 156(3) Cr.P.C. should be reflected in the order and in the event such

offence has been alleged to have been committed by a public servant in discharge of official duty, cognizance of offence or ordering investigation u/s

156(3) Cr.P.C. is barred by Section 197 of Cr.P.C. unless prior sanction has been obtained from the appropriate authority. The Honâ??ble Supreme

Court has further held that such provision is mandatory in nature. Attention of this Court has been drawn to para 11 of the judgment which is as

follows:

11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* [(2008) 5 SCC

668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where

jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a

case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The

application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and

heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the

complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed

expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our

view, has stated no reasons for ordering investigation.

He has argued that in the present case there is no sanction order u/s 19(1) of the PC Act and the impugned order u/s 156(3) Cr.P.C. is hit by Section

197 of Cr.P.C. Mr. Kishore Dutta learned Advocate General of West Bengal and Mr. Saswata Gopal Mukherjee, learned Public Prosecutor

appearing for the State Opposite Party has sought to distinguish the judgment by arguing that the sanction under Section 19 of the PC Act or Section

197 Cr.P.C. is not necessary in the present case as the acts alleged to have been committed by the petitioner cannot be said to have been committed

in discharge of his official duty. In rebuttal, Mr. Patwalia relied on the decision of Honâ??ble Supreme Court in *State of Madhya Pradesh Vs.*

Sheetla Sahai and Others (2009) 3 SCC (Cri) 901 to argue that sanction u/s 197 of Cr.P.C. is also necessary for persons who were public servants

inviting my attention of this Court to para 56 of the judgment which is reads as follows:

â??56. Strong reliance has been placed by Mr. Tulsi on a judgment of this Court

in Centre for Public Interest Litigation and Another v. Union of India and Another [(2005) 8 SCC 202]. In that case, it was held:

9. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution.

This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of

his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a

reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant

from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily

dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the

discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged

to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so

much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it.

The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the

protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine

whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure

test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made

him answerable for a charge of dereliction of his official duty. If the answer to

this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

10. Use of the expression ""official duty"" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

Relying on the decision, he has further argued that inasmuch as the act complained of against the petitioner would have made him answerable for a charge of dereliction of his official duty, such alleged act, if at all committed, was committed by the petitioner while acting in discharge of his official

duty. As such sanction u/s 197 Cr.P.C. was necessary prior to taking cognizance of offence or ordering investigation u/s 156(3) Cr.P.C. Mr. Patwalia

has also relied on decision of the Honâ??ble Supreme Court in Manju Surana Vs. Sunil Arora (2018) 5 SCC 557 to argue that even at the stage of

passing order u/s 156(3) Cr.P.C., the Magistrate needs to apply his mind and form an opinion to direct investigation by the police against any accused.

He has argued that mere mention of a person as an accused is not sufficient ground to include his name for the purpose of investigation, more so

when the allegation against the petitioner has been made in respect of his role as Railway Minister. Relying on the judgment, he further argued that the

Magistrate ought to have taken note of the fact that the complaint disclosed no nexus between the accused and the act complained of. Attention of

this Court has been drawn to para 44 of the judgment cited above which is reproduced for profitable appraisal of facts and law as underâ??

â??44. Merely because the appellant has roped in respondent No.1 in the

complaint is not sufficient ground to allow his name to be included as such.

The complaint is categorical "the role of Secretary, PHED and the Principal Secretary has been questioned. That is the mindset with which the

complainant knocked the doors of the criminal courts. There was no allegation in respect of any role played by the Secretary/Principal Secretary to

the Chief Minister. It cannot be said to be a mere mis-description of name, which can be corrected. It cannot be the stand of the appellant that

willynilly somehow, respondent No.1 must remain arrayed as an accused in those proceedings, even though the proceedings before the Magistrate are

at the stage of only whether there should be a direction for investigation or not. It is not that every officer in the Government has to be arrayed in

respect of any role performed or not. The mere presence in one meeting of respondent No.1 and that too when he was not a signatory and really had

no role to play in that capacity, as apparent from the minutes, cannot be now used to justify his name being included as an accused. This is clearly an

afterthought. It is not for the appellant to question as to which officer should or should not be present."

Mr. Patwalia also cited the constitution bench decision of the Hon'ble Supreme Court in State of Haryana vs. Bhajan Lal (1992) 2 SCC (Cri) 426

to enumerate the categories of cases where the High Court can exercise its power under Section 482 of Cr.P.C. to prevent abuse of process of law

or secure ends of justice. He states that the Supreme Court has held that where a criminal proceeding is manifestly attended with mala fide or has

been maliciously instituted with ulterior motive for wrecking vengeance on the accused or to spite him due to private grudge, the High Court can

exercise its inherent powers to quash such criminal proceedings by adverting to para 102 of the judgment which is as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein

such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.â??

Accordingly, he argued with force that in the present case, the criminal proceedings have been filed against the petitioner in the year 2018 in respect

of alleged acts committed in the year 2012 and that initiation of such proceedings coincide with his change of political party concluding that criminal

cases have been filed as part of a political vendetta against the petitioner which are mala fide and falsely initiated to oppress and harass the petitioner

and that this Court ought to look into the background of the case for exercising its power under Section 482 of Cr.P.C. He contended that if the

process of Court is sought to be abused by any person with oblique motive, such attempt has to be nipped in the bud and the criminal proceedings

cannot be allowed to go on if the case falls in one of the categories enumerated in Bhajan Lal's case. Relying on the judgement of the

Hon'ble Supreme Court in Vineet Kumar vs. State of U.P. (2017) 13 SCC 369, learned counsel for the petitioner has argued that judicial

proceedings cannot be allowed to be converted into an instrument of oppression or harassment if there are materials to indicate that the criminal

proceeding is manifestly attended with mala fide, the High Court ought to exercise its power under Section 482 Cr.P.C. and quash proceedings in

terms of ratio laid down in the Constitution Bench decision in case of State of Haryana and others v. Bhajan Lal and others (1992) SCC (Cri) 426

wherein at paragraph 102 parameters and inflexible guidelines have been illustrated by giving categories of case by way of illustration for exercise of

extra ordinary power under Article 226 or inherent powers under Section 482 of the Code to prevent abuse of the process of any court or otherwise to

secure the ends of justice. One of such illustration is where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Hon'ble Supreme Court in case of Karnatake v. M. Devendrappa (2002) 3 SCC 89 had the occasion to consider the ambit of Section 482

Cr.P.C. and held thus:

“8.....Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising

discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of

a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an

accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the

categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or

otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal*.²⁷

In this decision to Hon^{ble} Supreme Court vindicated the ratio as laid down in *Bhajan Lal* case with regard to inherent power of the High Court

under Section 482 Code of Criminal Procedure is with the purpose and object of advancement of justice. Per contra, Mr. Dutta learned counsel for

the State Opposite Parties relied on the decision of the Hon^{ble} Supreme Court in *HDFC Securities Ltd. Vs. State of Maharashtra* (2017) 1 SCC

640 to argue that exercise of power under Section 482 of Cr.P.C. or Article 227 of the Constitution of India should be done sparingly and that in the

present case, such exercise of power will be premature and adverted attention of this Court to para 27 of the judgment which is as follows:

“27. It appears to us that the Appellants approached the High Court even before the stage of issuance of process. In particular, the Appellants

challenged the order dated 04.01.2011 passed by the learned Magistrate Under Section 156(3) of Code of Criminal Procedure. The learned Counsel

appearing on behalf of the Appellants after summarizing their arguments in the matter have emphasized also in the context of the fundamental rights

of the Appellants under the Constitution, that the order impugned has caused grave inequities to the Appellants. In the circumstances, it was submitted

that the order is illegal and is an abuse of the process of law. However, it appears to us that this order Under Section 156(3) of Code of Criminal

Procedure requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of

the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate.

Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions

Under Article 227 of the Constitution of India or Under Section 482 of Code of Criminal Procedure, at this stage are nothing but premature. Further, in

our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 of Code of Criminal Procedure

should be sparingly used. ”

The petitioner has sought to distinguish the judgement in *HDFC Securities Ltd. Vs. State of Maharashtra*, by stating that the Honâ??ble Supreme

Court did not hold that power under Section 482 of Cr.P.C. or Article 227 of the Constitution of India cannot be exercised at the stage of registration

of an FIR, but only held that the High Court had correctly assessed the facts and law in such case and held in the facts of such case, the order under

Section 156(3) of Cr.P.C. requiring investigation by police could not be said to have caused an injury of irreparable nature which, at such stage,

required quashing of investigation. He has also argued that the facts of such case are entirely different from the one in hand.

Mr. Dutta further argued that in the present case, no sanction under Section 197 Cr.P.C. was required as the offences committed by the Petitioner

cannot be said to have been committed in discharge of his official duties. Relying on the judgment of the Honâ??ble Supreme Court in *Rajib Ranjan*

Vs. Vijaykumar (2015) 1 SCC 513, he has argued that even while discharge of official duties, if a public servant enters into a criminal conspiracy or

indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of official duty and hence Section 197

Cr.P.C. is not attracted in view of the observations made in the following paras of the cited judgment:

â??15. The sanction, however, is necessary if the offence alleged against public servant is committed by him â??while acting or purporting to act in

the discharge of his official dutiesâ?. In order to find out as to whether the alleged offence is committed while acting or purporting to act in the

discharge of his official duty, following yardstick is provided by this Court in *Dr. Budhikota Subbarao* (supra) in the following words:

â??6. â?| If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with

discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.â??

16. This principle was explained in some more detail in the case of *Raghunath Anant Govilkar v. State of Maharashtra*, which was decided by this

Court on 08.02.2008 in SLP (Crl.) No. 5453 of 2007, in the following manner:

â??11. â??7 â?| â??66. â?| On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two

cases, namely, *Shreekantiah Ramayya Munipalli v. State of Bombay* and *Amrik Singh v. State of Pepsu* was as follows:

8. It is not every offence committed, by a public servant that requires sanction for prosecution Under Section 197(1) of Criminal Procedure Code;

nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned

with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public

servants. As far as the offence of criminal conspiracy punishable Under Sections 120B read with Section 409 of the Indian Penal Code is concerned

and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code

of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal

conspiracy or to indulge in criminal misconduct. Want of sanction Under Section 197 of the Code of Criminal Procedure is, therefore, no bar.

17. Likewise, in *Shambhoo Nath Misra v. State of U.P. and others*, (1997) 5 SCC 326, the Court dealt with the subject in the following manner:

5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc.

can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and

misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the

record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the

course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the

High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.

18. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a

criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties

and, therefore, provisions of Section 197 of the Code will not be attracted. The petitioner, while not disputing the legal proposition laid down by the Hon'ble Supreme Court in *Rajib Ranjan Vs. Vijaykumar* (supra) has argued that the acts complained of against the petitioner were in respect of alleged acts committed by him in discharge of official duty and in the facts of the case of *Rajib Ranjan*, the Hon'ble Supreme Court was pleased to quash the criminal proceedings against the public servants. Next, Mr. Dutta referred to the decision in case of *Dineshbhai Chandubhai Patel vs The State of Gujarat* (2018) 3 Supreme Court Cases 104 to argue that the High Court, in exercise of its inherent powers, cannot act like an investigating agency nor can exercise the powers like an appellate Court. He argues that the High Court, at this stage, cannot appreciate the evidence and if the FIR discloses prima facie case, High Court ought to stay its hand and allow the investigating machinery to investigate and draws my attention to the following paragraphs reproduced as under:

29. The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof. 30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

33. The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.â??

By relying on the above proposition Mr. Dutta has vehemently argued that in the present case the First Information Report disclose a cognizable offence on bare reading of the same and makes out a prima facie case against the petitioner and investigation ought to be conducted in the matter.

There is no dispute to the legal proposition laid down by the Honâ??ble Supreme Court in Dineshbhai case (supra) but the facts of aforesaid case is entirely different and not apposite to the facts and circumstances of the instant case as no prima facie case made out as regards involvement of the petitioner in the crime allegedly committed.

Mr. Dutta relying on the decision in case of Raghunath Anant Govilkar Vs. State of Maharashtra (2009) 1 Supreme Court Cases (Cri) 130, has submitted that sanction for prosecution as required under Section 197(1) of the Code of Criminal Procedure in respect to retired Government servant is applicable if the offence was relatable to official duty but the alleged offence committed by the petitioner does not fall within the ambit of Section 197 Cr.P.C. hence, question of sanction does not arise. Attention of this Court has been drawn to para 7 of the judgment which is as follows:

â??7. â??5. The pivotal issue i.e. applicability of Section 197 Cr.P.C. needs careful consideration. In Bakhshish Singh Brar v. Gurmej Kaur (1987 (4) SCC 663), this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows: â??6.

...It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding cut as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section (sic197) states that no cognizance can

be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.â??

8. The protection given under Section 197 Cr.P.C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or adequate protection to public servants to ensure that they are not prosecuted for anything done by them, in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 Cr.P.C. can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official capacity. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of the section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure

test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 Cr.P.C. does not get immediately attracted on institution of the complaint case.â??

Mr. Dutta also referred to a decision in case of Lalita Kumari Vs. Government of Uttar Pradesh and others (2014) 2 SCC 1, and submitted that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence and reasonableness and credibility of the information is not a condition precedent for registration of the case. He therefore contends that such investigation cannot be gone into by the police or the Magistrate before an FIR is registered. Attention of this Court has been drawn to following paragraphs of the judgment:

â?? The use of the word â??shallâ? in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence. A perusal of the above-referred judgments clarify that the reasonableness or creditability of the information is not a condition precedent for the registration of a case.â??

In rebuttal Mr. Patwalia assisted by Mr. Mitra learned counsel for the petitioner on the other hand have drawn my attention to the following paragraphs of Lalita Kumari (supra) to argue that the petitions of complaint in all aforesaid cases do not disclose any cognizable offence committed by the petitioner and a preliminary inquiry should have been commenced before registration of the FIR, more so when the allegation was that of corruption and there has been abnormal delay in filing of criminal proceedings:

â??115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offence, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of timeâ?!.â? â?? 117. In the context of offences relating to

corruption, this Court in P. Sirajuddin (supra) expressed the need for a preliminary inquiry before proceeding against public servants.â??

â??119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.â??

I am in respectful consideration of the decision cited above and reliance placed by learned counsel for both the parties I am in agreement with Mr.

Dutta that the registration of an FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and

no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity

for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. As to what type and in which

cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are (a) Matrimonial disputes/ family disputes; (b) Commercial offences; (c) Medical

negligence cases; (d) Corruption cases and (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three

months delay in reporting the matter without satisfactorily explaining the

reasons for delay etc. as held in the cited decision. Now, I am called upon to give bare reading of the First Information Report in the aforesaid cases. It emerges on bare perusal of the contents of the First Information Report that the opposite party No. 2 in the respective cases did not hand over any money to the present petitioner, so as to construe an offence of criminal breach of trust under section 406 of the Indian Penal Code as there is no entrustment of the same to the petitioner.

It also reflects from the First Information Report that there is no allegation in clear term made out against the petitioner regarding his participation in any illegal act so as to fraudulently and dishonestly induce the opposite party no. 2 of respective cases aforesaid to part with money. As such, no case of cheating under Section 420 of the Penal Code can be construed to have been made out. CRR 1253 of 2018; CRR 1233 of 2018 and CRR 1470 of 2018 :

In all these three revisional applications the petitioner has prayed for quashing of the proceeding pending in the Court of learned Additional Chief

Judicial Magistrate, Barrackpore, North 24-Parganas. It appears that during the pendency of the rest of the revisional cases mentioned above FIRs

have been registered on 15.5.2018 and 03.6.2018 respectively in CRR 1233 of 2018 and CRR 1470 of 2018 and the FIR in CRR 1253 of 2018 was

registered on 25.12.2017. So when an interim order of was passed on 07.5.2018, the two FIR as aforesaid have been registered against the accused

persons including the petitioner with the similar allegation of perpetrating crime of offence under Section 406 and 420 of Indian Penal Code in order to

use the same as a bait to unleash the political vendetta against the petitioner by abusing the process of criminal law. It is settled law that a preliminary

inquiry prior to registration of FIR should be conducted where there is allegation of corruption and where there has been abnormal delay in initiating

prosecution over three months in reporting the same without satisfactory explanation for the delay of six years from the date of alleged occurrence.

Mr. Sudipta Moitra learned counsel for the petitioner has pressed in service a photocopy of Railway Budget 2012-2013 being the Speech of Dinesh

Trivedi, Minister of Railways delivered on March 14, 2012 and further pointed out that on March 12, 2012 this petitioner was not Railway Minister.

Mr. Moitra pointed out that the petitioner Mukul Roy assumed the charge of the

office of the Minister of Railways only on 28th March, 2012 as per the Government of India, Cabinet Secretariat Notification dated 28th March, 2012 and with effect from 22nd September, 2012, the petitioner relinquished the charge of the office of the Minister of Railways. Having said that, Mr. Moitra submitted that it was well in the knowledge of the public that the petitioner was not holding the Ministry of the Railways as on the date of the incident alleged. Thus, he argued that the petitioner has been falsely implicated in a series of criminal cases lodged in various places in the State of West Bengal after he severed his association with TMC in November, 2017 to commence against him a vilification campaign to unleash the political vendetta and to wreak vengeance.

On behalf of the petitioner decision in case of Kishan Singh (dead) through LRS. V. Gurpal Singh and others reported in (2010) 8 Supreme Court

Cases 775 has been referred where the question involved for consideration was whether criminal proceedings can be quashed by the High Court

relying upon a finding of Civil Court on an issue involved in criminal proceedings in respect of the same subject matter and the observation made in

paragraph 21 and 22 of the Honâ??ssble Apex Court has been brought to the notice of this Court which reads thusâ?

â??21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In

case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make

the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide:

Sahib Singh Vs. State of Haryana, AIR 1997 SC 3247].

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an

explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had

given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who

failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of

wreaking vengeance on the other party. Chagrined and frustrated litigants should

not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.â??

On perusal of the formal FIR in all sets of cases, it appears that the FIRs have been filed with inordinate delay of six years without any plausible explanation for the same. To fortify his argument Mr. Moitra relied on *Neelu Chopra & Anr. v. Bharti* reported in (2010) 1 C CrLR (SC) 256

Wherein it has been held paragraph 9 thusâ??

â??9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What

is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each

and every accused in committing of that offence.â??

In rebuttal Mr. Dutta has relied on the *Lalita Kumari* case (supra) contending that information relating to cognizable offence have to be registered

mandatorily by the police and there is no scope for the officer-in-charge of the police station to verify the truthfulness or falsehood of the information

received and invited my notice to the observation in paragraphs 86 and 93 of the cited judgment in support of his submission which are reproduced

hereunder for profitable understanding â??

â??86. Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the â??procedure established

by lawâ?? and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is

protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.

93. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion

and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is

recorded so that there cannot be any embellishment etc., later.â??

True, officer-in-charge is duty bound to register the FIR in case of a cognizable offence. Yet, the observation in paragraph 8 in case of Rajinder Singh

Katoch v. Chandigarh Administration & Ors. reported in 2008 Cri.L.J. 356 is equally to be taken note of as per the reliance placed by Mr. Moitra.

â??8. Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of

Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the

Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given

case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities had made

investigations into the matter. In fact, the Superintendent of Police himself has, pursuant to the directions issued by the High Court, investigated into

the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbour. It was found that the complaint made

by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house.â??

Mr. Moitra refers to decision in Arulvelu & Anr. v. State & Anr. reported in 2010 Cri.L.J. 433 wherein in paragraph 16 it has been observed thusâ?

â??16. The High Court observed that the FIR cannot be an encyclopedia to contain all the details of history of the case. This approach of the High

Court does not seem to be correct. The FIR should at least mention a broad story of the prosecution and not mentioning of material and vital facts

may affect the credibility of the FIR.â??

Mr. Moitra also refers to a decision in State of UP through CBI SPE, Lucknow v. R.K. Srivastava and another reported in 1989 Supreme Court

Cases (Cr) 713 wherein it has been held, agreeing with the High Court decision that if the FIR does not contain any definite accusation, it amounts to

an abuse of process of the court and, as such, is liable to be quashed. In case of Doliben Kantilal Patel v. State of Gujarat & Anr. reported in AIR

2013 Supreme Court 2640 the Honâ??ble Apex Court held thusâ?

â??Before registration of the FIR, an officer should be satisfied. In other words, if the facts are such which require some inquiry for the satisfaction

about the charges or allegations made in the FIR or he may have entertained a reasonable belief or doubt, then he may make some inquiry. To put it

clear, by virtue of the expression "reason to suspect the commission of an offence", we are of the view that commission of cognizable offence,

based on the facts mentioned has to be considered with the attending circumstances, if available. In other words, if there is a background/materials or information, it is the duty of the officer to take note of the same and proceed according to law. It is further made clear that if the facts are such which

require some inquiry for the satisfaction about the charges or allegations made in the FIR then such a limited inquiry is permissible."

In conclusion Mr. Moitra once again refers to case of Lalita Kumari on the observation of the Hon'ble Supreme Court in paragraph 114 which reads thus:

"114. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As

already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of

registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of

the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as

purported by various counsel. And also relied on the decision in case of Bhajan Lal (supra) drawing the attention of the Court to paragraphs 31 and

32 to conclude that

"31. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression

information" without qualifying the same as in Section 41(1) (a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible

information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1) (a) and (g) of the Code may

be for the reason that the police officer should not refuse to record an information relating to the Commission of a cognizable offence and to register a

case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words,

â??reasonablenessâ?? or â??credibilityâ?? of the said information is not a condition precedent for registration of a case. A comparison of the

present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information

without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of

India read that 'every complaint or information' preferred to an officer in charge of a police station shall be reduced into writing. The word

â??complaintâ?? which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word â??informationâ?? was used in

the Codes of 1882 and 1955 which word is now used in Sections 154, 155, 157 and 190 (c) of the present Code of 1973 (Act II of 1974). An overall

reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is that there must be an

information and that information must disclose a cognizable offence.

32. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station

satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the

prescribed form, that is to say, to register a case on the basis of such information.â??

I am fully in agreement with the contentions advanced by learned counsel for the petitioner on being persuaded by the principles of law laid in the case

of Priyanka Srivastava (supra) with finding that there is no explanation for inordinate delay of 6 years in initiating proceedings and the Magistrate

chose to order registering FIRs in the above proceedings. The Learned Magistrate ought to remain vigilant with regard to the allegations made and

apply his judicial mind to the same. Merely passing direction to register FIRs in a mechanical manner without appreciating the facts of the case

reflects the erroneous approach of the Learned

Additional Chief Judicial Magistrate, Barrackpore inasmuch as in the present set of cases, the Learned Magistrate has failed to appreciate or verify

the truth of the facts and has mechanically passed the order on a pre-printed order sheet which appears to be cyclostyled. The applications under

Section 156(3) of Cr.P.C. in the aforesaid cases are though supported by an

affidavits but such affidavits do not mention the petitioner's age

which is one of the requirement of statement on oath in the form of an affidavit the said petitions do not reflect filing of prior applications under

Sections 154(1) and 154(3) Cr.P.C. before filing applications under Section 156(3) of the Code of Criminal Procedure being the sine qua non for

attracting action to be taken before the Court of learned Chief Judicial Magistrate or learned Additional Chief Judicial Magistrate concerned.

In this context, it would be profitable to reproduce the concise guidelines given by the Hon'ble Supreme Court in the case of Priyanka Srivastava

(supra) whereby a copy of the order passed by the Hon'ble Apex Court was directed to be sent to the Hon'ble Chief Justices of all the High

Courts through the Registry for circulation of the same amongst the learned Sessions Judges who, in turn, were directed to circulate among the

learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) Cr.P.C.

Having gone through the order sheets in all the cases under reference, where direction has been given to the Officer-in-charge for investigation by

invoking power under Section 156(3) of the Code, the Learned Additional Chief Judicial Magistrate, Barrackpore does not appear to have applied his

judicial mind and issued direction for police investigation by registration of FIRs against the petitioner in a routine and mechanical manner. Therefore, I

direct that Learned Registrar General shall take immediate steps for issuance of suitable guidelines to all the Chief Judicial Magistrates, Chief

Metropolitan Magistrates, Additional Chief Judicial Magistrates, Additional Chief

Metropolitan Magistrates, Judicial Magistrates through the District Sessions Judges and Metropolitan Magistrates, Calcutta of all the Districts of the

State of West Bengal, which guidelines are laid down for application of judicial mind by the Learned Judicial Magistrate while invoking power under

Section 156(3) of the Code, as under:

1. The learned Magistrate would be well advised to verify the truth and the veracity of the allegations, regard being had to the nature of allegations of the case.

2. There has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3) of the Code of Criminal Procedure.

3. Both the aspects should be clearly spelt out in the application and necessary

documents to that effect shall be filed which are the sine qua non for application under Section 156(3) of the Code.

4. An application under Section 156(3) of the Code should be supported by an affidavit so that the person making the application should be conscious

and also endeavour to see that no false affidavit is made.

5. A number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases

and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed.

6. Learned Magistrate would also be aware of the abnormal delay in lodging of the FIR in initiating criminal prosecution.

In the context above, I am of the considered opinion that though a First Information Report need not be an encyclopaedia of facts, but at the same

time it must disclose the basic facts constituting the cognizable offences alleged. Therefore, the Learned Additional Chief Judicial Magistrate,

Barrackpore, North 24 Parganas while passing the impugned order dated 9.3.2018 under section 156(3) of the Code ought to have applied his judicial

mind to consider whether any case requiring an investigation under Sections 406 and 420 IPC had been made out.

Giving an anxious consideration to the facts and circumstances of the case, bearing in mind the rival contentions as advanced by the learned counsel

of the parties and applying the principles of law as discussed in the foregoing paragraphs, this Court comes to the conclusion that the petitioner has

been maliciously prosecuted with the false allegation of a cognizable offence at this distant point of time, for the FIRs being lodged belatedly after six

years, may be to wreak vengeance by foisting false cases against him.

Ergo, the proceedings being G.R. Case No. 1331 of 2018; G.R. Case No. 1332 of 2018; G.R. Case No. 1333 of 2018; G.R. Case No. 1334 of 2018;

G.R. Case No. 1335 of 2018; G.R. Case No. 1336 of 2018; G.R. Case No. 1337 of 2018; G.R. Case No. 1338 of 2018 and G.R. Case No. 1370 of

2018 arising out of Bizpore Police Station Case No. 161 of 2018; No. 162 of 2018; No. 163 of 2018; No. 164 of 2018; No. 165 of 2018; No. 166 of

2018; No. 167 of 2018; No. 168 of 2018 and No. 169 of 2018 all dated 12.3.2018 under Sections 420/406 of the Indian Penal Code respectively and

direction dated 09.3.2018 passed by the learned Additional Chief Judicial

Magistrate, Barrackpore, North 24- Parganas in M.P. Case No. 456 of 2018;
No. 457 of 2018; No. 458 of 2018; No. 459 of 2018; No. 461 of 2018; No. 460 of 2018; No. 462 of 2018; No. 470 of 2018 and No. 469 of 2018
respectively pending in the Court of learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas thereby directing the Inspector-in-charge, Bizpore Police Station to treat the applications under Section 156(3) of the Code of Criminal Procedure as the FIRs and start investigation and proceedings being G.R. Case No. 8471 of 2017 arising out of Jagatdal Police Station Case No. 1561 of 2017 dated 25.12.2017 under Sections 420/406 of the Indian Penal Code; G.R. Case No. 2643 of 2018 arising out of Naihati Police Station Case No. 335 of 2018 dated 15.5.2018 under Sections 420/406/468/471/34 of the Indian Penal Code and G.R. Case No. 3204 of 2018 arising out of Noapara Police Station Case No. 192 of 2018 dated 03.6.2018 under Sections 420/406/467/468/471/472/120B/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas are hereby quashed qua the petitioner, however, the investigation may proceed as against the rest of the named accused persons but obviously, the inordinate delay in lodgment of the FIRs have to be ultimately viewed through askance and may be the moot issue for decision.

Accordingly, CRR 730 of 2018 with CRR 731 of 2018 with CRR 732 of 2018 with CRR 733 of 2018 with CRR 734 of 2018 with CRR 735 of 2018 with CRR 736 of 2018 with CRR 737 of 2018 with CRR 738 of 2018 with CRR 1253 of 2018 with CRAN 1428 of 2018 with CRR 1233 of 2018 with CRR 1470 of 2018 are hereby allowed and disposed of and thus, CRAN 1428 of 2018 arising out of CRR 1253 of 2018 stands disposed of. LCRs be sent to the Court of learned Additional Chief Judicial Magistrate, Barrackpore along with a copy of this judgment forthwith. Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)

Later__

20.7.2018

After the judgment is delivered, the learned counsel Mr. Saswata Gopal Mukherjee, Public Prosecutor, High Court, Calcutta submits for stay of

operation of the order. The objection has been raised on behalf of the petitioner. Having regard to the findings made in the body of the judgment, the prayer for the stay of operation of the judgment is turned down and not continenced to.