

(2023) 01 CHH CK 0092
In the Chhattisgarh High Court
Case No : Writ Petition (Cr.) No.177 Of 2017

Parshant Vashishta

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 30-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 36, 154(1), 154(3), 156(1), 156(3), 190, 200, 482
Indian Penal Code, 1860 — Section 354, 354A
Protection of Children from Sexual Offences Act, 2012 — Section 11(1), 12, 23(1), 23(2)
Information Technology Act, 2000 — Section 67

Citation : (2023) 01 CHH CK 0092

Hon'ble Judges : Sanjay K. Agrawal, J; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Rajeev Shrivastava, Sourabh Sahu, Ruchi Nagar, T.K. Jha

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. The short point involved in the instant writ petition is, whether the learned Additional Sessions Judge (FTC), Durg, is justified in invoking power and jurisdiction under Section 156(3) of the CrPC in directing registration of first information report (FIR) and consequent investigation against the petitioners and to submit final report / closure report after finding compliance with the provisions contained in sub-sections (1) & (3) of Section 154 of the CrPC?

2. The aforesaid question arises in the following backdrop: -

3. Petitioner No.1 is the Principal of Delhi Public School, Risali Sector, Bhilai, whereas, other petitioners are Teachers / Lab Assistant working in the said school. It is the case of the petitioners that a complaint was received from the students of the school against the father of respondent No.3 namely Dr. Ramesh

Prasad Dwivedi, Teacher (presently suspended) working in the school, alleging award of corporal punishment to the students whom he detained. On receipt of the said complaint, the matter was enquired by a committee and after due enquiry, though preliminary, the fact of award of corporal punishment was found proved and ultimately, in the interest of the students, the matter was referred to Police Station Newai, District Durg where Dr. Ramesh Prasad Dwivedi – father of respondent No.3 was charge-sheeted for offences punishable under Sections 354 & 354A of the IPC and Sections 11(1) & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act') in which petitioners No.1 to 3 stood as witnesses. But during the course of trial, respondent No.3 filed an application under Section 156(3) of the CrPC alleging that the petitioners have committed the offence punishable under Section 23(1) & (2) of the POCSO Act and Section 67 of the Information Technology Act, 2000 (for short, 'the IT Act'), as they have subjected the victim / students to videography disclosing the identity of the victim(s) which is barred under Sections 23 (1) & (2) of the POCSO Act and Section 67 of the IT Act. It was also submitted in the application that the matter was reported to the press and complaint was also made to Police Station Newai, Durg and to the Inspector General of Police, Durg by memo dated 4-12-2016 and to the Superintendent of Police on 6-12-2016, but no action has been taken leading to the filing of application before the Court. The learned Additional Sessions Judge (FTC) by order dated 20-3-2017 considered the application and granted the same by directing registration of FIR against the petitioners and consequent investigation and to file final report / closure report before the Court. Feeling aggrieved against that order, this instant writ petition has been filed stating that there is no compliance of Section 154(1) & (3) of the CrPC and that without applying its judicial mind in a most casual and cavalier manner, the order directing registration of FIR has been passed which runs contrary to law. As such, the impugned order is liable to be set aside.

4. Return has been filed on behalf of respondents No.1 & 2 / State stating inter alia that since the petitioners have committed the offences punishable under Section 23(1) & (2) of the POCSO Act and Section 67 of the IT Act, the writ petition deserves to be dismissed as only registration of FIR and enquiry has been directed against the petitioners.

5. Detailed return has also been filed on behalf of respondent No.3.

6. Mr. Rajeev Shrivastava, learned Senior Counsel appearing on behalf of the petitioners, would submit that the learned Additional Sessions Judge (FTC), without ensuring the compliance of the provisions contained in Section 154(1) & (3) of the CrPC, has directed for registration of FIR by a most unreasoned and non-speaking order and there is total non-compliance of the provision contained in Section 154(3) of the CrPC. Therefore, in view of the judgment rendered by the Supreme Court in the matter of Priyanka Srivastava and another v. State of Uttar Pradesh and others (2015) 6 SCC 287, application under Section 156(3) of the CrPC was not at all maintainable and on that ground, the impugned order

deserves to be set aside by granting this writ petition.

7. Mr. T.K. Jha, learned counsel appearing for respondent No.3, would support the impugned order and submit that since the complaint made to the Station House Officer – respondent No.2 did not yield any result, therefore, compliance of Section 154(3) of the CrPC by reporting the matter to the Superintendent of Police, has made which is strictly in accordance with law and it has been clearly averred in the application filed under Section 156(3) of the CrPC, as such, the writ petition deserves to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. Section 156(3) of the CrPC provides that “any Magistrate empowered under Section 190 may order such an investigation as abovementioned”. The words “as abovementioned” refer to Section 156(1), which contemplates investigation by the officer in charge of the police station. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report under Section 173(8). The Magistrate can order reopening of the investigation even after the police submits the final report. (See *Sakiri Vasu v. State of Uttar Pradesh and others* (2008) 2 SCC 409.)

10. The Supreme Court in *Sakiri Vasu* (supra) has held that “if a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. It was also held, why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

11. It is well settled that in order to make a duly constituted application for invoking the jurisdiction of the learned Special Judge under Section 156(3) of the CrPC, compliance of sub-sections (1) & (3) of Section 154 of the CrPC would be absolutely necessary and it is sine qua non for making the application maintainable under Section 156(1) of the CrPC.

12. Sub-section (1) of Section 154 of the CrPC provides as under:-

“154. Information in cognizable cases .-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and

the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer;

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

From a focused perusal of Section 154(1) of the CrPC, it is quite vivid that every information relating to commission of cognizable offence, if given orally to in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information given in writing or reduced in writing as above-said shall be signed by person giving it and substance thereof shall be entered into book kept by such officer.

13. Section (3) of Section 154 of the CrPC provides as under:-

"(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

14. Sub-section (3) of Section 154 of the CrPC provides the procedure to be followed by informant. A careful perusal of sub-section (3) of Section 154 would show that on refusal on the part of an officer in charge of a police station to

record the information referred to Section 154(1) of the CrPC, the person aggrieved may send the substance of such information in writing by post, to the Superintendent of Police concerned, who if satisfied that such information discloses commission of cognizable offence either investigate himself or direct an officer sub-ordinate to him to investigate in the manner provided by the CrPC. What is required is refusal on the part of the Station House Officer to record the information referred to in sub-section (1) which will enable the person aggrieved to send the substance of such information, in writing and by post, to the Superintendent of Police. Unless there is express or implied refusal on the part of the SHO to register FIR in case of cognizable offence, the person aggrieved may not be justified in filing application under Section 156(3) of the CrPC, as the object is that if the SHO refuses to record the information referred to in sub-section (1) of Section 154 of the CrPC, then he may approach the higher authority which is the Superintendent of Police of the district by way of an independent / separate application under Section 156(3) of the CrPC, who in case of refusal to record the information disclosing commission of cognizable offence, shall investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by the CrPC and such officer shall have all the powers of Station House Officer, as such, the refusal on the part of the SHO to register FIR in cognizable offence is mandatory for making an application under Section 156(3) of the CrPC.

15. Their Lordships of the Supreme Court in *Priyanka Srivastava* (supra) laid down duty and approach of Magistrate while exercising power under Section 156(3) of the CrPC and highlighted preconditions to be satisfied to maintain the application under Section 156(3). It has also been held that power under Section 156(3) warrants application of judicial mind and there has to be prior application under Section 154(1) and 154(3) of the CrPC. It has been held as under: -

"29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing

orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as 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* (supra) are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

16. The principle of law laid down by their Lordships of the Supreme Court in *Priyanka Srivastava* (supra) has been followed with approval in the matter of *Vikram Johar v. State of Uttar Pradesh* AIR 2019 SC 2109 in which their Lordships have noticed the potentiality of misuse of Section 156(3) of the CrPC to harass those, who are entrusted with various statutory functions and emphasized the need that application under Section 156(3) has to be supported by an affidavit so that the person making allegation should take responsibility of what they have said in the complaint.

17. Recently, in the matter of *Babu Venkatesh and others v. State of Karnataka and another* (2022) 5 SCC 639, their Lordships of the Supreme Court again while upholding the decision in *Priyanka Srivastava* (supra) analyzed the law as to how the power under Section 156(3) of the CrPC has to be exercised and laid down the prerequisites for exercise of power of Magistrate under Section 156(3) and the manner in which it has to be exercised. Paragraphs 24 to 28 of the report state as under: -

“24. This Court has clearly held that, a stage has come where applications under Section 156(3) CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3) of the

CrPC are filed in a routine manner without taking any responsibility only to harass certain persons.

26. This Court has further held that, prior to the filing of a petition under Section 156(3) of the CrPC, there have to be applications under Sections 154(1) and 154(3) of the CrPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3) of the CrPC. Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

27. In the present case, we find that the learned Magistrate while passing the order under Section 156(3) of the CrPC, has totally failed to consider the law laid down by this court.

28. From the perusal of the complaint it can be seen that, the complainant Respondent 2 himself has made averments with regard to the filing of the original suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156(3) CrPC. The High Court has also failed to take into consideration the legal position as has been enunciated by this Court in *Priyanka Srivastava v. State of U.P.*¹, and has dismissed the petitions by merely observing that serious allegations are made in the complaint.”

18. Reverting to the facts of the case in light of the aforesaid principles of law laid down by the Supreme Court in *Priyanka Srivastava* (supra) followed in *Vikram Johar* (supra) and further followed in *Babu Venkatesh* (supra), it is quite vivid that respondent No.3 made a complaint under Section 154(1) of the CrPC before the Station House Officer, Police Station Nevai, District Durg on 4-12-2016. However, on being scanned the original record, no application under Section 154(3) of the CrPC is said to have been made by respondent No.3 except the endorsement of the said application under Section 154(1) on 6-12-2016 to S.P. Durg which in our considered opinion cannot be said to be the compliance of Section 154(3) of the CrPC. Their Lordships of the Supreme Court in *Priyanka Srivastava* (supra) followed in *Vikram Johar* (supra) and further followed in *Babu Venkatesh* (supra) have clearly held that applications under Section 154(1) & (3) are required to be made separately and both aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed, but in the instant case, though the application under Section 154(1) has been filed, but no application under Section 154(3) is said to have been filed clearly stating that on refusal by the Station House Officer such application is being made. Refusal is sine qua non for making application maintainable under Section 154(3) of the CrPC. Respondent No.3 got the application under Section 154(1) of the CrPC endorsed to the Office of the Superintendent of Police two days after making application on 4-12-2016 which cannot be said to be the sufficient compliance of Section 154(3) of the CrPC. Registration of FIR involves serious and devastating

consequences on life and liberty of a person against whom the FIR is directed to be made, therefore, strict compliance of Section 154(3) of the CrPC is required to be made which is sine qua non for maintaining an application under Section 156(3) of the CrPC and merely endorsing a copy of application under Section 154(1) of the CrPC to the Superintendent of Police cannot be said to be the strict compliance of Section 154(3) of the CrPC, there has to be a separate and independent application under Section 154(3) of the CrPC after refusal by the SHO to register FIR. Thus, there is total non-compliance of Section 154(3) of the CrPC, as no documents have been filed by the complainant in support of the averments made in paragraph 8 of the application under Section 156(3) of the CrPC.

19. As a fallout and consequence of the aforesaid discussion, the impugned order passed by the learned Additional Sessions Judge invoking power under Section 156(3) of the CrPC is totally without jurisdiction and without authority of law apart from being in teeth of the judgment rendered by the Supreme Court in Priyanka Srivastava (supra) followed in Vikram Johar (supra) and further followed in Babu Venkatesh (supra). As such, the impugned order dated 20-3-2017 passed by the Additional Sessions Judge (FTC), Durg is hereby quashed.

20. The petition is allowed to the extent indicated herein-above. No order as to cost(s).