

(2018) 10 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No.16502 of 2018

Virendra Ram, Birendra Ram @APPELLANT@Hash State of Bihar

Date of Decision : 04-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154(1), 154(3), 156(3), 362, 482
Indian Penal Code, 1860 — Section 120B, 406, 409, 420, 467, 468, 471, 504
Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2018) 10 PAT CK 0009

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Md. Anis Akhtar, Sucheta Yadav

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. This application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") has been filed by the petitioner for recalling the order dated 04.12.2017 passed in Cr. Misc. No. 17247 of 2017 whereby the order dated 30.01.2017 passed by the learned Chief Judicial Magistrate, Motihari, East Champaran in Complaint Case No. 03 of 2016 and the FIR of Patahi P.S. Case No. 17 of 2017 were quashed.
3. Cr. Misc. No. 17247 of 2017 was filed by the opposite party nos. 2 to 8 for quashing of the FIR of Patahi P.S. Case No. 17 of 2017 registered under Sections 406, 409, 420, 467, 468, 471, 504 & 120-B of the Indian Penal Code and Section 3(1)(x) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989.
4. Initially, the petitioner had filed a complaint case, vide Complaint Case No. 03 of 2016 on 24.11.2016, impleading the opposite party nos. 2 to 8 as

accused. Later on, vide order dated 30.01.2017, the complaint was referred to the police in exercise of powers conferred under Section 156(3) of the

Cr.P.C for investigation pursuant to which Patahi P.S. Case No. 17 of 2017 was registered.

5. Being aggrieved by the institution of the FIR, the opposite party nos. 2 to 8 filed an application under Section 482 of the Code of Criminal Procedure

before this Court, vide Cr. Misc. No. 17247 of 2017. In the said case the petitioner suo moto appeared through his counsel.

6. After hearing the counsel for the parties, vide order dated 04.12.2017, this Court had allowed the application and set aside the order dated

30.01.2017 whereby Complaint Case No. 03 of 2017 was referred to the police for institution of the FIR as also the FIR of Patahi P.S. Case No. 17

of 2017.

7. Learned counsel for the petitioner submitted that the order passed by this Court quashing the FIR was passed on erroneous ground. He contended

that it was not brought to the notice of the Court by the opposite parties that an affidavit was filed in Complaint Case No. 03 of 2016 stating therein

that the complainant had gone to the police station to institute FIR but the same was not registered.

8. He contended that even in the petition filed by the opposite party nos. 2 to 8 under Section 482 of the Cr.P.C before this Court, they had wrongly

pleaded that no affidavit was filed along with complaint petition.

9. On the other hand, learned counsel for the State submitted that there is no error in the judgment passed by this Court, as the petitioner himself had

an occasion to contest the matter on merit and the order of which recall has been sought for was passed on contest. He contended that even

otherwise this Court cannot recall the final judgment in view of the provisions prescribed under Section 362 of the Cr. P.C.

10. I have heard learned counsel for the parties and carefully perused the record.

11. It is true that the submission was made before this Court on behalf of the opposite party nos. 2 to 8 in Cr. Misc. No. 17247 of 2017 that the

complaint in question was maliciously instituted and the institution of the FIR was clearly in violation to the law laid down by the Supreme Court in

Priyanka Shrivastava and Anr. Vs. State of U.P. [(2015) 6 SCC 287]. While passing the judgment, this Court had taken note of the guidelines issued

by the Supreme Court in Priyanka Srivastava (Supra) and after taking note of the guidelines, in para 12 and 13 of the judgment, made observations as

under:-

12. Thus, the guidelines issued by the Supreme Court in Priyanka Srivastava (Supra) can be summarized as under :-

(a) The Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without

application of mind;

(b) The Magistrate shall bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order;

(c) The power conferred under Section 156(3) of the Cr.P.C. warrants application of judicial mind as the court of law is involved and it is not the

police taking steps at the stage of Section 154 of the Cr.P.C. ;

(d) The complainant at his own whim and fancy cannot invoke authority of the Magistrate under Section 156(3) of the Cr.P.C.;

(e) A principled and really grieved citizen with clean hands must have free access to invoke the said power as 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;

(f) In appropriate case, the Magistrate shall be required to verify the truth and also to verify the veracity of the allegations as the power under Section

156(3) of the Cr.P.C. is invoked in a routine manner without taking any responsibility whatsoever only to harass certain persons, an affidavit can make

the complainant more responsible. If the affidavit is found to be false, he will be liable for prosecution in accordance with law, which would deter him

to casually invoke the authority of the Magistrate under Section 156(3) of the Cr.P.C.);

(g) Due to the rising trend of filing of frivolous complaints,, a stage has come where Section 156(3) Cr.P.C. applications are to be supported by an

affidavit duly sworn by the applicant, who seeks the invocation of the jurisdiction of the Magistrate;

(h) In 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 are being filed by pervert litigants to harass the fellow

citizens.

13. In the instant case, admittedly the complaint was filed by the opposite party no.2 without filing any affidavit to the effect that prior to filing of the complaint steps were taken for institution of the FIR under Section 154 of the Cr.P.C. The learned Magistrate mechanically referred the complaint to the police for investigation under Section 156(3) of the Cr.P.C. on mere asking of the complainant without taking into consideration as to whether the same would be conducive to justice.â??

12. Admittedly, neither the petitioner nor the informant had brought it to the notice of the Court when the case was heard that an information to the SHO of the police station was given but the police refused to register FIR. The petitioner has brought on record in the present application an affidavit said to have been filed along with the complaint petition. From perusal of the same, it would appear that in para 4 of the said affidavit, it has been stated that the complainant had intimated about the occurrence of offence to the SHO of Patahi Police Station, but because of the fact that no FIR was registered, the complaint is being filed.

13. In my opinion, even if the said affidavit would have been brought to the notice of the Court that would not have made any difference on the result of the case in Cr. Misc. No. 17247 of 2017. In Priyanka Srivastava (Supra), the Supreme Court has held that there has to be prior applications under Section 154(1) & 154(3) of the Cr.P.C while filing a petition under Section 156(3) of the Cr.P.C. What has been stated in the affidavit would simply suggest that an effort was made under Section 154 (1) of the Cr.P.C for institution of an FIR, but there is no averment in the affidavit in respect of any steps having been taken under Section 154(3) of the Cr.P.C. Thus, the affidavit annexed along with the complaint was not as per the guidelines issued by the Supreme Court in Priyanka Srivastava (Supra).

14. That apart, I find substance in the submission of the learned counsel for the State that once this Court has passed its final judgment, it cannot review or recall the judgment in view of the statutory provisions prescribed under Section 362 of the Cr.P.C, which prohibits the Court from altering or revising any judgment or final order after disposal of the case and after signing except to correct a clerical or arithmetical error. Alteration in the order of disposed of case would be nullity in the eyes of law.

15. In that view of the matter, I see no merit in this application. It is accordingly dismissed.

16. However, before parting with this case, it would be pertinent to note that Complaint Case No.3 of 2016 was filed in the court of Special Judge,

S.C. & S.T. (P.O.A.) Act and it was the Special Judge, who had passed the order dated 30.01.2017 whereby the said complaint was sent to police for

institution of FIR. It appears that while passing the judgment dated 04.12.2017 in Cr.Misc. No. 17247 of 2017, it has wrongly been recorded that the

order dated 30.01.2017 was passed by the Chief Judicial Magistrate, Motihari, East Champaran. In that view of the matter, in the order dated

04.12.2017 passed in Cr.Misc. No. 17247 of 2017 in para 2 in sixth line the word "Magistrate" be read as "Special Judge". Similarly, in para 15 in

2nd line "Chief Judicial Magistrate" be read as "Special Judge, S.C. & S.T. (P.O.A.) Act".

17. Let a copy of the order be also sent to Special Judge, S.C. & S.T. (P.O.A.) Act, Motihari, East Champaran for the perusal.