



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL PETITION NO.200120 OF 2024

(482(Cr.PC)/528(BNSS))

BETWEEN:

1. PARVATI W/O SHARANAPPA,
AGE: 84 YEARS, OCC: HOUSEHOLD WORK,
R/O: H.NO.98, AARBOOL ONI,
SHAHAPUR,
DIST: YADGIRI-585223
2. MALLIKARJUN ARBOL S/O SHARANAPPA,
AGE: 64 YEARS, OCC: AGRICULTURE,
R/O: H.NO.16-45, ANEGUNDI ONI,
SHAHAPUR,
DIST: YADGIRI-585223.

...PETITIONERS

(BY SRI. SANJAY A. PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH POLICE, SHAHAPUR POLICE STATION,
TQ: SHAHAPUR,
DIST: YADGIRI-585223.
REPRESENTED BY
ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585107.





2. RAYAPPA S/O AYYAPPA JANGALI,
AGE. 63 YEARS, OCC: HOUSE HELP-HIRED,
R/O: RAKAMGERA,
SHAHAPUR,
DIST: YADGIRI-585223.

...RESPONDENTS

(BY SMT. ANITA M. REDDY, HCGP, FOR R1

BY SRI. MAHADEV S. PATIL, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO A) QUASH THE IMPUGNED ORDER OF REFERENCE DATED 09.03.2023 PASSED BY THE PRL CIVIL JUDGE AND JMFC COURT, SHAHAPUR IN PCR.NO.52/2023 ON ITS FILE AND CONSEQUENTIALLY QUASH REGISTRATION OF FIR IN CRIME NO.268/2023 BY SHAHAPUR POLICE STATION DISTRICT YADGIR, FOR OFFENCES PUNISHABLE UNDER SECTIONS 420, 504 AND 506 READ WITH SECTION 34 OF IPC, PENDING ON THE FILE OF CIVIL JUDGE AND JMFC (JR. DN) COURT, SHAHAPUR.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ



ORAL ORDER

The order passed by the learned Magistrate referring the private complaint filed by respondent No.2 to the police for investigation under Section 156 (3) of Cr.P.C. and subsequent registration of FIR is questioned in this petition, on the ground that the dictum of the Hon'ble Apex Court, in the case of ***Priyanka Srivastava and another vs. State of Uttar Pradesh and others***, reported in ***(2015) 6 SCC 287***, has not been followed.

02. In the complaint it is alleged that two cheques which were issued by the complainant towards security, were misused by the petitioners by filing a false case against them alleging offence punishable under Section 138 of N.I. Act etc., The complaint alleging offences punishable under Sections 420, 504 and 506 read with Section 34 of IPC, was referred to police for investigation under Section 156 (3) of Cr.P.C. by the learned Magistrate vide order dated 09.03.2023, consequent to which FIR in Crime No.268/2023 was registered at Shahapur Police Station.



03. The Hon'ble Apex Court in the above referred decision at Paras No.29 to 31 has 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 fellow 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) 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. 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 Sections 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 are being filed. That apart the learned Magistrate would also be aware of the delay in lodging of the FIR.”

04. In the case on hand, the impugned order passed by the learned Magistrate shows that a submission was made by the learned counsel for complainant stating that police have not registered the case and in spite of submitting a complaint to the higher authorities, no case was registered. The learned Magistrate has then proceeded to refer the matter for investigation under Section 156 (3) of Cr.P.C.



05. Learned counsel for respondent No.2 has contended that the postal receipt for having sent the complaint to higher authorities was in fact submitted along with the complaint, however, he admitted that there was no sworn affidavit filed by the complainant in support of the complaint, as held in the case of ***Priyanka Srivastava's*** case.

06. While referring to ***Priyanka Srivastava's*** case, the Hon'ble Apex Court in another decision reported in ***(2022) 5 SCC 639*** in the case of ***Babu Venkatesh and others vs. State of Karnataka and another***, has reiterated the position of law, emphasizing the necessity to file an affidavit, so that the persons making application should be conscious and not make false affidavit, as if the affidavit is found to be false, the person would liable for prosecution in accordance with law.



07. In the light of the above decisions, the impugned order dated 09.03.2023 passed by the Court of Prl. Civil Judge and JMFC, Shahapur in PCR.No.52/2023 and subsequent registration of FIR in Crime No.268/2023 at Shahapur Police Station, are set-aside.

08. The complainant is at liberty to file a fresh complaint in accordance with law.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

KJJ
List No.: 1 Sl No.: 15