

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 4314 of 2023

(An application U/s. 482 of the Code of Criminal Procedure)

J. Srinivas Kumar & Others

.... *Petitioners*
Mr. M.K. Mohanty, Advocate

-versus-

State of Odisha & another

.... *Opposite Parties*
Mr. B.K. Ragada, AGA
Ms. P. Naidu, Advocate (for O.P No.2)

P R E S E N T:

HONOURABLE SHRI JUSTICE CHITTARANJAN DASH

Date of Judgment: 09.01.2024

1. Heard learned counsel for the Petitioners and the State.
2. By means of the present application, the Petitioner seeks the indulgence of this Court to quash the proceeding in G.R. Case No. 697 of 2011 on the files of learned S.D.J.M., Berhampur along with the order dated 10.07.2014 passed by the learned S.D.J.M., Berhampur in G.R. Case No. 697 of 2011.
3. The background facts of the case are that the Opp. Party No. 2 filed complaint case bearing ICC No. 83 of 2011 against present petitioners in the Court of SDJM, Berhampur in which it has been alleged that she married to the Petitioner No.1 herein who is the son of one J. Sareswar Rao and J. Krishna Beni of Visakhapatnam on

30.09.2009 at Visakhapatnam as per Hindu Vedic Rights and customs in presence of family members. At the time of marriage the Opp. Party No.2's father had given an amount of Rs. 5,00,000/- towards dowry and besides that 15 Tola gold and more than one Kg. Silver Ornaments and other household articles. After one month of marriage the mother-in-law and sister-in-law inflicted torture on the Opp. Party No.2 demanding more dowries. After the marriage, for first time the Opp. Party No.1 came to the house of her parents at Berhampur on 01.12.2009 and the in-laws asked Opp. Party No.2 to bring additional amount of Rs.15,00,000/- towards dowry. The mother-in law, two Sister-in-laws and Husband of 2nd Sister-in-law persuaded the father of Opp. Party No.2 for giving an amount of Rs.15,00,000/- towards additional dowry for purchasing a house adjoining to the house of the present petitioner in the name of Opp. Party No.2. However, the demand for the sum of Rs.15,00,000/-, could not be fulfilled by the father of Opp. Party No.2. The Opp. Party No.2 went to Visakhapatnam on 23.01.2010 and thereafter they once again started inflicting torture both physically and mentally. During her stay in Visakhapatnam on 09.03.2010 it was found that the Opp. Party No.2 became pregnant. As her husband compelled for abortion and the Opp. Party No.2 did not agree for the same, her husband physically assaulted her and attempted to kill her by strangulation. The said fact was intimated by Opp. Party No.2 to her father. In any case for the ill treatment of the in-laws, the Opp. Party wife lodged a complaint before the Mahila P.S. Berhampur on 12.04.2011 but the said case was not registered for which she filed the complaint petition in the court of

learned SDJM, Berhampur which was registered as ICC No. 83 of 2011.

4. It is submitted by learned counsel for the Petitioner that the complaint Petition is only appended with a verification and is not supported by any affidavit, whereas the learned S.D.J.M., Berhampur directed the OIC of Gosaninuagaon P.S. to investigate the matter U/s. 156(3) Cr.P.C and on the basis of the said direction the concerned P.S registered the FIR vide Gosaninuagaon P.S Case No. 59(13) of 2011 which corresponds to the G.R. Case No. 697 of 2011 on the files of the S.D.J.M., Berhampur. It is further submitted by learned counsel for the Petitioner that in the meanwhile the charge sheet was submitted and cognizance has been taken. It is also submitted by learned counsel for the Petitioner that the Criminal Proceeding in G.R. Case No.697 of 2011 as well as the order of cognizance under Annexure-3 is not in conformity with law and as such is liable to be quashed.

5. The Apex Court in the matter of *Priyanka Srivastava & another Vrs. State of Uttar Pradesh & others reported in (2015) 6 Supreme Court cases 287* held as follows:-

XXX

XXX

XXX

A stage has come in this country where 156(3) CrPC applications must be supported by an affidavit duly sworn by the applicant who seeks invocation of the jurisdiction of the Magistrate under the said provision. This affidavit can make the applicant more responsible. There is compulsion 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. The warrant for giving a direction that an application under Section 156(3) CrPC 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. 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) Cr.P.C

6. The learned counsel relied on the decisions in the matter of ***Anil Kumar Agarwal @ Mandothia Vrs. State of Odisha and another reported in 2023 (1) OLR-389***, wherein this Court has held as follows-

3. Mr. Mohit Agarwal, learned counsel appearing for the Petitioner places reliance on the decision in *Priyanka Srivastava v. State of Uttar Pradesh (2015) 6 SCC 287* to urge that the complaint, even if it were to be treated as an application under Section 156(3) Cr.P.C, had to be supported by an affidavit. As explained by the Supreme

Court, this was a safeguard against abuse of the power thereunder.

4. Despite notice having been served, none appears on behalf of Opposite Party No.2.

5. Indeed, it is seen that there was no denial of the averments in the petition that the complaint filed by Opposite Party No.2 was not supported by an affidavit. In fact, there was no prayer for treating it as an application under Section 156(3) Cr.P.C. Therefore, the order dated 31st October, 2016 of the S.D.J.M., Angul referring the complaint under Section 156(3) Cr.P.C. to the PS Angul for registration of the FIR was itself beyond jurisdiction.

6. Assuming that such a complaint could be treated as an application under Section 156(3) Cr.P.C. then as explained by the Supreme Court in *Priyanka Srivastava* (supra), it had to be supported by an affidavit which obviously was not. The legal positions as explained by the Supreme Court in the aforementioned case are 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) 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 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 v. State of U.P.* (2014) 2 SCC 1 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

7. Indeed, in the present case, in absence of an affidavit in support of a complaint, the learned S.D.J.M., Angul ought not to have entertained it at all much less passed an order under Section 156(3) Cr.P.C. requiring the P.S. Angul to register it as an FIR. Consequently, the aforementioned order dated 31st October, 2016 of the learned S.D.J.M., Angul in 1CC No. 187 of 2016 and the consequential Angul P.S. Case No.625 of 2016 dated 3rd December, 2016 are hereby quashed.

7. Having regard to the aforesaid discussion by the Apex Court as well as the coordinate Bench of this Court, it is no more *res integra* that the complaint filed by the Complainant ought to have appended with an affidavit so as to ensure that the averments made therein are genuine. Further, the truthfulness and genuinity of the allegations as well as the veracity of the allegations made in the complaint can be assured and would no way prove abortive not only in the context of the case but would not be prejudicial to the interest of the accused. In the instant case, the complaint is simply appended with a verification and is not supported by affidavit and whereas the cognizance has been taken by the learned court below without being alive of the same that has already been set at rest as of now and as such cannot be sustained in the eye of law. The further proceeding in G.R. Case No. 697 of 2011 corresponding to Gosaninuagaon P.S Case No. 59(13) of 2011 on the files of the S.D.J.M., Berhampur stands quashed.

8. The CRLMC is accordingly disposed of.

सत्यमेव जयते

ORISSA

(Chittaranjan Dash)
Judge

Bijay