**THE HONOURABLE SRI JUSTICE D.RAMESH**

**CRIMINAL PETITION No.4438 of 2016**

**O R D E R:**

This Criminal Petition is filed assailing the proceedings in C.C.No.89 of 2013 on the file of the V Additional Judicial First Class Magistrate, Tirupathi and to quash the same invoking the power of the High Court under Section 482 of the Code of Criminal Procedure, 1973 [for short Cr.P.C.].

2. Heard Sri N.Ramesh Kumar, learned counsel appearing for the petitioners 1 and 2, Sri N.Pavan Kumar/3rd petitioner, appearing party-in person and Sri T. Sricharan, learned counsel for the 2nd respondent as well as the learned Assistant Public Prosecutor appearing for the 1st respondent-State.

3. The 2nd respondent, who is *defacto complainant* herein, has filed a complaint under section 190 and 200 Cr.P.C. before the Court of IV Additional Chief Metropolitan Magistrate at Hyderabad on 29.06. 2012. On receipt of the said complaint, on the same day, the IV Additional Chief Metropolitan Magistrate at Hyderabad referred the complaint to Nallakunta Police Station, which came to be registered as FIR No.165 of 2012 and after completion of investigation police filed charge sheet. The same was numbered as C.C.No.89 of 2013 on the file of IV Additional Chief Metropolitan Magistrate, Hyderabad. The allegations leveled against the petitioners are under sections 342, 347, 420, 448, 192,193, 506 IPC read with 34 of IPC. Initially said proceedings were challenged in Criminal Petition Nos.13665 of 2013 and 13666 of 2013 before

the composite High Court of Judicature at Hyderabad and the same was dismissed by the High Court on 06.03.2014.

4. Previously, the 2nd petitioner herein also filed a private complaint against *the defacto complainant/2nd respondent* herein and her husband for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [for short N.I. Act], which was taken on file as STC No.441 of 2012 on the file of II Additional Judicial First Class Magistrate, Tirupathi, Chittoor District; later it was renumbered as STC No.83 of 2013 on the file of V Additional Judicial First Class Magistrate, Tirupathi. Subsequently, the 2nd respondent herein has filed Transfer Criminal Petition No.280 of 2013 under Section 407 of Cr.P.C. before the composite High Court of Judicature at Hyderabad seeking to withdraw the STC No.83 of 2013 on the file of V Additional Judicial First Class Magistrate, Tirupathi and transfer the same to the Court of IV Additional Chief Metropolitan Magistrate, Hyderabad at Nampally, to be tried along with CC.No.89 of 2013. However said petition was disposed of and held that –

> "Having regard to the age and health conditions of the accused in CC.No.89 of 2013, as the trial in STC No.83 of 2013 has already commenced and with a view to avoid conflicting judgments, this court is of the view that ends of justice would be met if CC No.89 of 2013 on the file of IV Additional Chief Metropolitan Magistrate Hyderabad at Nampally, is transferred to the Court of V Additional Judicial First Class Magistrate at Tirupathi, to be tried along with STC No.83 of 2013. However, the presence of the accused in both the cases, which are to be tried in the Court of V Additional Judicial First Class Magistrate, Tirupathi, is dispensed with except on the dates when their presence is specifically required by the Court."

5. The case of the petitioners herein is that the defacto complainant/2nd respondent's husband was working as Chief Manager of Indian Bank, Tirupathi; the petitioners 1 to 3 have joint savings account and fixed deposits with Indian Bank, Tirupathi and several transactions were done with huge amounts. Accordingly, the 2nd respondent got acquaintance with the petitioners 1 and 2. Subsequently, the 2nd respondent herein and her husband approached the 2nd petitioner and borrowed money from the petitioners on 08.03.2010 and 13.06.2010; in total an amount of Rs.50,00,000/- was lent to the 2nd respondent and her husband, in consideration of which, they have executed a demand promissory note dated 13.06.2010, jointly and severally in favour of the 2nd petitioner; also on 14.06.2010 they have deposited title deeds of their immovable properties as security and executed a memorandum of deposit of title deeds on 20.06.2010. On 20.07.2011 the 2nd respondent herein and her husband jointly issued post dated cheques i.e. cheque No.096643 dated 08.09.2011 for an amount of Rs.25,00,000/- and Cheque No.096644, dated 20.07.2011 for a sum of Rs.100/- for account confirmation along with a covering letter. For verification, cheque No.096644 was deposited on 22.07.2011 and it was realized on 05.08.2011. But the cheque No.096643 issued for Rs.25,00,000/- was deposited for realization on 15.02.2012, which was returned as insufficient funds. Accordingly, the 2nd petitioner herein issued legal notice on 12.03.2012 under section 138 of N.I. Act, and the same was returned as unclaimed on 23.04.2012. Therefore, the 2nd petitioner has filed a complaint under section 138 of N.I. Act, on the file of II Additional Judicial First Class

Magistrate, Tirupathi and the same was transferred to the file of the Court of V Additional Judicial First Class Magistrate, Tirupathi, which is re- numbered as STC Noo.83 of 2013; Subsequently now it is pending as C.C.No.124 of 2019 on the file V Additional Judicial Magistrate of First Class, Tirupathi.

6. While pending the said complaint against the 2nd respondent herein and her husband, she has filed the present complaint against the petitioners on 29.06.2012, which was forwarded under section 156(3) of Cr.P.C. to the police concerned, for investigation. Based on the said proceedings, the Police Nallakunta investigated the matter and filed charge sheet against the accused 1 to 4, which was numbered as C.C.No.89 of 2013, wherein the petitioners herein are arrayed as accused No.1 to 3.

7. As per the averments of the said charge sheet, the defacto complainant/2nd respondent herein is a house wife and her husband working as A.G.M. in Indian Bank; she has invested her savings and also the salaries of her husband in the properties at various places; accordingly in the month of March' 2010 she has planned to invest money in properties, hence, approached the accused No.1 to lend an amount of Rs.18.00 lakhs; accordingly the accused No.1 has arranged the loan of Rs.18.10 lakhs to the complainant in the name of his wife i.e., accused No.2. Further it is alleged that accused No.1 has brought some stamp papers with ante-dates and forced the complainant to sign on the three non-judicial blank stamp papers for Rs.100/-, obtained 03 promissory notes and 03 blank cheques from the 2nd respondent; one cheque was filled with the figures of Rs.25,00,000/- lakhs; thus, the

accused are alleged to have obtained forcibly said instruments, along with a covering letter and obtained her signatures on the three cheques forcibly, even the original land documents.

8. Further it is alleged that the 2nd respondent is said to have purchased agricultural land of Ac.34-00 of agricultural land in Raipur Village, Nellore District. She paid huge amounts as prime amount and interest to Accused No.1 in the month of July. The 2nd respondent said to have gone to the house of Accused No.1 at Tirupathi to pay part payment of the loan, on that Accused No.1 and 3 insisted her to give cheque for Rs.25,00,000/-, as he was not willing to take repayment in parts on the pretext that the sureties furnished by the 2nd respondent are not sufficient. The 2nd respondent allegedly to have issued post dated cheques on 08.09.2011 along with covering letter on 28.11.2011. Subsequently, Accused 1 and 3 are allegedly to have trespassed into the house of the 2nd respondent at Hyderabad and abused her in filthy language, forced her to repay the loan amount immediately; when the 2nd respondent informed them that she will repay the amounts as soon as possible, and assured them by showing the documents of properties purchased by her, then Accused 1 and 3 forcibly took away the three property documents purchased by her at Hyderabad and also threatened her with dire consequences. It is also alleged that later accused No.4 sent a legal notice in the month of December 2011 through an advocate by misusing the stamp papers taken as surety from the 2nd respondent herein, creating a fake documents as if on 30.05.2010 she has offered for the sale of 1/3rd of the undivided share for total sale consideration of Rs.25 Lakhs, for which Accused No.4 has

agreed and paid the full consideration; an agreement to that effect was reduced into writing. According to the said agreement, the 2nd respondent has to make registration whenever accused No.4 insisted to do so. In the month of March 2012, Accused 1 and 3 alleged to have sent a notice intimating the cheque issued by the 2nd respondent herein were returned and with regard to the filing of suit for specific performance in the Court at Markapuram. Basing on the above allegations, the 2nd respondent filed the private complaint which was referred to police

9. Now the present petition is filed by the petitioners to quash the said proceedings invoking inherent jurisdiction of the High Court under section 482 of Cr.P.C., mainly on the ground that the allegations made in the complaint are improbable and impossible for the petitioners, more particularly the 3rd petitioner. It is alleged in the complaint that accused have committed the alleged crime on 17.06.2012, whereas the 3rd petitioner departed from India to U.S. on 25.04.2012 and returned only on 06.01.2013.

10. To substantiate the said ground, learned party-in person/Accused no.3, has relied on the allegations made in the complaint at para No.5 which reads as :-

> "5) *The complainant further submits that she is not aware of any dealings with the accused No.4 and more so, even with accused No.2 but the accused No.1 has acted clandestinely and meticulously planned to trouble to the complainant by way of invention, fabrication with factious litigation through accused No.4. In fact, the complainant never defaulted in payment of interest at any point of time, but it is the accused No.1, who has taken law into his hands and conspired with other accused including accused No.2 and issued a false legal notice under Section 138 of NI Act against the complainant without being any truth in the said case. The A1 and A3 criminally trespassed into the*

*house of the complainant at Nallakunta on 17.06.2012 at 10.00 a.m. and threatened the complainant to kill.*"

11. Above said complaint has been filed on 29.06.2012; wherein the 2nd respondent has stated that the Accused No. 1 and 3, on 28.11.2011 at about 10.00 a.m., criminally trespassed into her situated at D.No.2-2-1130/26/A/C/5 (E) 27, Prasanth Nagar, New Nallakunta in the absence of her husband, and wrongfully detained the complainant and her father, threatened them with dire consequences if the amounts are not paid. Further alleged in the complaint that they issued a warning to eliminate all the family members, if the cheques and documents are not signed; also they have obtained signatures on some stamp papers and ante dated cheques thereby forced the complainant to sign on the blank non-judicial stamp papers of Rs.100/-; also they have collected three blank cheques of the complainant and a covering letter, one of the cheques was filled with the figure of Rs.25 lakhs. Along with the said allegations, she also raised that accused No.1 and 3 criminally trespassed into the house of the complainant at Nalakunta on 17.06.2012 at 10.00 a.m. and threatened the complainant to kill.

12. Further the party in person/3rd petitioner has specifically contended that on the date of incident as alleged in the complaint, the petitioner, who is accused No.3, is not at all in India. To support his contention he has placed reliance of the letter issued by the Government of India, Ministry of Home Affairs, Foreigners Division dated 14.01.2015. The content of the letter reads as follows:-

"*Please refer to your e-mail dated 13.01.2015 and this Ministry's letter No.25016/19/2014-Imm dated 13.01.2015 on the subject mentioned above. As per records available in this office it is to inform that Shri*

*Pavan K. Namineni holding Indian Passport No.A4573591 departed from India on 25.04.2012 and next arrival in India is on 06.01.2013.*"

13. According to the above information, furnished by the Government of India stating that the 3rd petitioner herein departed from India on 25.04.2012 and next arrival in India is on 06.01.2013. At any speech of imagination, the participation of the petitioner/A3 on 17.06.2012 at defacto complainant's house is impossible and improbable. According to the said information, the allegations made in the complaint is totally impossible and improbable, which clearly covers the guidelines issued by the Honourable Apex Court in **State of Haryana V. Bhajan Lal**[1] case.

14. The party in person/3rd petitioner further contended that the allegations made in the complaint that accused No.1 and 3 have criminally trespassed into the house of the complainant on 28.11.2011 and forcibly they have taken 3 cheques, one cheque with figure of Rs.25 lakhs, is totally false and frivolous. In fact, the *defacto complainant* has given two cheques on 20.07.2011 itself, one cheque i.e. 096644 for Rs.25 lakhs, another cheque i.e. 096643 for Rs.100/- along with covering letter dated 20.07.2011. Though in the complaint, she has alleged that accused No.1 and 3 have forcibly obtained blank cheques and also covering letter of her signature in the absence of her husband, whereas the content of the said letter reads as follows:-

*"Herewith I am enclosing two cheques Nos:-*

1. *For repayment of loan, a post dated cheque no.096643 for a sum of Rs.25,00,000/- (twenty Five Lakhs only) dated 8th Sep 2011.*
2. *For verification of account a cheque No.096644 for Rs.100/- (one hundred only) dated today, 20th July 2011.*
3. *The above one being provided on our free volition.*

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[1] 1992 Supp(1) SCC 335

*Yours faithfully*

*Sd/-* *Sd/-*
*(G.SUDHA RANI)* *(G.V.Srinivasa Rao)"*

15. Surprisingly in the said covering letter, two signatures are affixed, both husband of the *defacto complainant* as well as her signatures. In the complaint, specifically it is mentioned that the accused No.1 and 3 trespassed into the house of the 2nd respondent, in the absence of her husband. A perusal of the covering letter dated 20.07.2011, clearly discloses that both the husband and wife have signed and the cheque numbers were also mentioned. Thus, if the contents of the letter takes into consideration, the contention of Accused No.3 that the cheque for Rs.100/- was deposited on 22.07.2011 and the same was realized on 05.08.2011, which was confirmed by the Saptagri Grameena Bank covering letter dated 26.10.2012. Hence, these two dates are much earlier to the alleged date of incident i.e., on 28.11.2011 in the complaint.

16. Party in person further contended that on perusal of the reply given by the Bank under RTI clearly discloses that the alleged complaint made by the 2nd respondent is false and frivolous, which cannot be maintainable in view of the guidelines issued by the Honournable Apex court. Even on perusal of the complaint both the incidents referred in the complaint are false. To support his contention he relied on the decision of the Hon'ble Supreme Court in **State of Haryana V.Bhajan Lal[2],** wherein it is held that –

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

[2] 1992 Supp(1) SCC 335

*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 non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrare 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 malafide 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."*

17. Relying on the above citation, learned party-in person has stressed the guide lines No.5 and 7 in the above judgment, wherein the Hon'ble apex court clearly states that the allegations made in the FIR and 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 and if the criminal proceedings is manifestly attended with malafide and/or maliciously institute with ulterior motive, said proceedings can be quashed either under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India, by invoking the inherent power of the High Court.

18. The party in person/3rd petitioner further submitted that the *defacto complainant* has filed the present complaint under section 200 Cr.P.C. only to frustrate the criminal proceedings initiated by the petitioners invoking section 138 of N.I. Act. To substantiate his contention, the party in person mainly relied on few dates i.e., 15.02.2012 - the date of the deposit of the cheque, issued by the *defacto complainant*/2nd respondent and the date 12.03.2012, statutory legal notice issued by the 2nd petitioner, which was received by the husband of the *defacto complainant* on 15.03.2012. However, said notice issued to the 2nd respondent/*defacto complainant* was returned as unclaimed. It clearly discloses the knowledge of the filing of complaint against the *defacto complainant* as well as her husband, only to frustrate the legal proceedings initiated by the petitioners, the present complaint has

been filed by the *defacto complainant/*2nd respondent, with false and frivolous allegations.

19. In fact Section 161 Cr.P.C. statement of LW.2/G.V.Srinivasa Rao, husband of defacto complainant/2nd respondent herein, has admitted that they themselves handed over the cheques to the petitioners on 08.06.2011. Copies of the statements of witnesses are filed along with the petition and the relevant portion of the statement of LW.2 reads as follows:-

> "*In the month of July I accompanied my wife and went to Shyam Sundar Naidu and met him at Tirupathi to pay the part payment of the loan. But he insisted us to give a cheque for Rs.25 Lacs as he was not willing to take the repayment in parts. Showing the reason that the sureties furnished by her are not sufficient. On that my wife issued post dated cheques on 08-06-2011 and a cheque with covering letter duly assured my wife that he will not place the cheques for realization on our promise to pay the remaining loan amount.*"

20. He further submitted that even according to the complaint, dated 29.06.2012, the first incident took place on 28.11.2011 but the complaint is made on 29.06.2012, there is delay of nearly 8 months, and nowhere in the complaint mentioned about the delay occurred for making such complaint. Even according to their own admission, they are not illiterates, they are educated, she is wife of the Bank Manager and also a Director of so many firms. In fact, initially no complaint was made against the petitioners, after receipt of the statutory notice under Negotiable Instruments Act 1881 only, to cover up their latches, cooked up a story stating as if the incident has taken place on 28.11.2011 and to cover up the delay, the 2nd date i.e., 17.06.2012 was mentioned in the complaint.

21. At this juncture, learned counsel relied on the judgment passed by the Honourble Supreme Court in **Ravinder Kumar and Another Vs. State of Punjab**[3] , wherein it is held that -

> " 13. *The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.*
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> *14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or seductiveness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.*

[3] (2001) 7 Supreme Court Cases 690

22. Even for the first instance, they have not stated anything about the delay, which is squarely covered by the observations of the Hon'ble Supreme Court in **Kishan Singh (D) through L.Rs. V.Gurpal Singh and Ors.[4],** wherein it is held that –

> *"23. The case before us relates to a question of the genuineness of the agreement to sell dated 4.1.1988. The said agreement was between Kishori Lal and respondents and according to the terms of the said agreement, the sale deed was to be executed by 10.6.1989. As the sale deed was not executed within the said time, suit for specific performance was filed by the other party in 1989 which was decreed in 1996. So far as the present appellants are concerned, agreement to sell dated 22.10.1988 was executed in favour of their father and the sale deed was to be executed by 15.6.1989. No action was taken till 1996 for non-execution of the sale deed. The appellants' father approached the court after 7 years by filing Suit No.81/1996 for specific performance. However, by that time, the suit filed by the present respondents stood decreed. The appellants' father filed another Suit No.1075/96 for setting aside the judgment and decree passed in favour of the respondents 1 to 4. The said suit was dismissed by the Additional District Judge (Senior Division), Khanna on 10.6.2002. Subsequently, the appellants preferred RFA No. 2488/02 on 15.7.2002 against the aforesaid order, and the said appeal is still pending before the Punjab & Haryana High Court.*
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> *24. It is to be noted that the appellants' father Kishan Singh lodged FIR No.144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections 420/323/467/468/471/120-B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No.1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law. "*

23. Further it is also held in **Lalita Kumari Vs. Government of Uttar Pradesh and Others[5]**

> *The Code contemplates two kinds of FIRs. The duly signed FIR under Section 154(1) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by*

[4] AIR 2010 SC 3624
[5] (2014) 2 SCC 1

*the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith.*

*88) The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:*

*a) It is the first step to 'access to justice' for a victim.*

*b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.*

*c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.*

*d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR.*

*89) In Thulia Kali vs. State of Tamil Nadu (1972) 3 SCC 393, this Court held as under:-*

*"12…First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused.*

*The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained…"*

24. Relying on the above judgment, the party in person contended that in view of the observations of the Honourable Apex

Court it is very essential that the delay in lodging of the first information report or complaint should be satisfactorily explained. In the instant case, the 2nd respondent/*defacto complainant* has not explained the such huge delay of nearly 08 months for filing the complaint. Even on that ground, the charge sheet has to be quashed.

25. The party in person has further contended that the court below has not applied its mind while taking cognizance under section 156 (iii) of Cr.P.C. the *defacto complainant* has filed the complaint on the file of IV Additional Chief Metropolitan Magistrate at Hyderabad on 29.06.2012, though she has mentioned that the offence occurred on 17.06.2012, without applying its mind the court below on the same day forwarded to the police concerned, under section 156(3) of Cr.P.C. for investigation and filing report, which is contrary to the ratio laid down by the Honourable Supreme Court.

26. To support his contention, the party in person/3rd petitioner, further relied on the decisions passed in **Priyanka Srivastava and Another V. State of Uttar Pradesh and others**[6], wherein the Honourable Apex Court held that-

> *Recently, in Ramdev Food Products Private Limited v. State of Gujarat[6], while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: ".... the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of*

[6] (2015) 6 Supreme Court Cases 287

*credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed."*

*.....*

*Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.*

*.....*

*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.*

*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 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.*"

27. In another decision in **Maksud Saiyed vs State Of Gujarat & Ors**[7], the Honourable Supreme Court held that -

*"15. This Court in Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others [(1998) 5 SCC 749], held as under:*

*"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

28. In view of the above observations of the Hon'ble apex court, it is very clear that while referring the matter to police under Section 156(3) of Cr.P.C., the Magistrate has to apply mind; but in

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[7] 2008 5 SCC 668

the instant case, though there is delay of nearly 8 months, without applying its mind, learned Magistrate has simply referred the matter to police for investigation. The Apex court has clearly observed that summoning or referring the matter or for prosecuting any criminal case is a serious matter and criminal law cannot be set into the motion as a matter of course. The order of the Magistrate should reflect that he has applied his mind to the facts of the case and the law applicable to and it has to examine the nature of allegations made in the complaint and the documentary evidence in support thereon. But in the instant case, without applying its mind, simply on the basis of complaint, on the same day it has been referred to the police for investigation.

29. The party in person further contended that in fact, the 2nd petitioner has filed a civil suit before the competent civil court for execution of sale deed in favour of the 2nd petitioner pursuant to the Memorandum of agreement entered by the *defacto complainant* and the 2nd petitioner, wherein written statements were also filed. While pending the civil disputes between the parties before the competent civil court for further consideration and as statutory criminal petitions against the *defacto complainant* under Sections 138 of N.I. Act, only in order to frustrate those proceedings, the present complaint has been filed. In the said circumstances, this court has inherent power to entertain the present petition under section 482 of Cr.P.C. and requests to quash the same.

30. Finally the party in person contended that the 2nd respondent *defacto complainant* has not made the present compliant with clean hands, she has suppressed so many material

facts in her complaint about the pendency of criminal proceedings against the defacto complainant by the 2nd petitioner under 138 of N.I. Act and also suit for registration of documents. Thus concealing all the material facts, she filed the present complaint only to abuse and frustrate prior court proceedings instituted against them. Hence, prayed for quash of the proceedings under Section 482 of Cr.P.C.

31. Learned counsel appearing for the petitioners 1 and 2 adopted the arguments of the party in person/3rd petitioner.

32. Per contra learned counsel appearing for the 2nd respondent has submitted that though they have mentioned about the incident that has taken place on 17.06.2012, the police investigated only on the offence occurred on 28.11.2011; in fact police filed the charge sheet by taking evidence of LWs.1 to 7; even the statement of LW.1/G.Sudha Rani is corroborated by the statement of LW2/G.V.Srinivasa Rao that the petitioners committed the offence on 28.11.2011, accordingly police investigated the same and filed charge sheet.

33. He further contended that since the allegations made are very serious in nature unless and until full trial takes place, the truth would not come out. At any rate this is a not a case for quashing under section 482 of Cr.P.C.. In fact, the *defacto complainant* is willing to settle the matter between the parties but the petitioners are not coming forward. Apart from that, this is a second quash petition, which is not ordinarily maintainable, only in exceptional circumstances the second quash petition is maintainable.

34. Replying to the said contentions, party in person submitted that there is no legal bar for filing the second criminal petition, if any new material is available, which is not refuted, basing on the same second criminal petition is maintainable.

35. To support the above said contention, the petitioners relied on the judgment of the Honble Apex Court in ***Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others***[8], wherein it is observed that –

> *"…The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier Order dated 12th December, 1968, the High Court proceeded to consider the subsequent application of respondents Nos. 1 and 2 for the of deciding whether it should exercise its inherent jurisdiction under Section 561 A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the Order of the High Court. Even on the merits, we find that the Order of the High Court was justified as no prima facie case appears to have been made out against respondents Nos. 1 and 2."*

[8] (1975) 3 SCC 706

36. He further relied on the decision in **Anil Khadkiwala Vs. State (Government of NCT of Delhi) and another[9],** wherein the Apex Court held that –

> "*11. The Company, of which the appellant was a Director, is a party respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application.*"

37. Having considered the rival submissions made by both the parties and on perusal of the record, the undisputed fact in the present case is that the 2nd petitioner issued the statutory notice under section 138 of N.I. Act, which was served to the husband of defacto complainant on 12.03.2022. But the *defacto complainant* has not claimed the notice and said fact was not refuted by the *defacto complainant*/2nd respondent. Though the present complaint is made on 29.06.2012, she has not mentioned anything about the disputes between the parties in the complaint, so also she has not explained the delay in filing the present complaint, since the alleged offence took place long before i.e., on 28.11.2011. Apart from that a perusal of the letter of the Central Government, dated 14.01.2015, relied by the party-in-person, it is clearly established that A3/party in person is not in the country at relevant point of time i.e., on 17.06.2012.

38. It is also not in dispute that the covering letter dated 20.07.2011, which was placed on record, discloses that it was signed by both, the *defacto complainant* as well as her husband.

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[9] 2019 17 SCC 294

Further the letter of the Sapthagiri Grameena Bank on 26.10.2012 clearly discloses that the cheque bearing No.096644 of Indian Bank, Hyderabad was realised on 05.08.2011 itself.

39. Taking all these documents, it clearly discloses that the *defacto* complainant only with a malafide intention to frustrate the proceedings pending between the parties before the competent court, filed the present complaint and learned Magistrate has also not applied his mind while referring the matter to the police on the same day, under Section 156(3) of Cr.P.C., without considering the fact that the complaint is made nearly after 08 months of the offence occurred, which is contrary to the observations made by the Apex Court in judgments cited supra.

40. Taking the material facts into consideration, the facts of the present case squarely fit within the purview guidelines passed by the Apex Court in **State of Haryana V.Bhajan Lal's** case and also the law laid down by the Apex court**.** Hence, the proceedings against the petitioners liable to be quashed under Section 482 of Cr.P.C., by invoking the inherent power of the High Court.

41. With the above observations, Criminal Petition is allowed and the proceedings against the petitioners in C.C.No.89 of 2013 on the file of the V Additional Judicial First Class Magistrate, Tirupathi is hereby quashed.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

**JUSTICE D.RAMESH**

Date: 30.04.2022
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