

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No. 2394 OF 2020

BETWEEN:

Prakash Raj @ PrakashRai
S/o Mr. Manjunath Rai
Aged about 54 years,
Flat no.501, SVC Treewalk Aquaria
Masjid Banda, Kondapur, K.V. Rangareddy,
Telangana - 500 064. ...Petitioner

(By Sri: Subair K M, Advocate)

AND

1. State of Karnataka
By Cubbon Park Police Station
Represented by S.P.P
High Court of Karnataka,
Bengaluru - 560 001
- 2 . Mr. Murthy D, S/o Dasappa
Aged about 40 years
R/at Flying Squad
163, Vidhana Sabha Constituency,
Shanthinagar,
Bengaluru - 560 027. ...Respondents

(By Sri: V.S. Vinayaka, HCGP for R1;
Service of notice to R1 is held sufficient)

This Criminal Petition is filed under section 482 Cr.P.C praying to quash the impugned order dated 19.3.2019 in PCR.No.3743/2019 passed by the VIII A.C.M.M., Bangalore exercising powers u/s 156(3) by directing the 1st respondent to carry investigation (Annexure-A) and etc.,

This Criminal Petition having been heard and reserved on 10.9.2020, coming on for pronouncement this day, through video conferencing the court pronounced the following:

ORDER

This is a petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), the petitioner has sought quashing of the order dated 19.3.2019 in PCR No. 3743/2019 on the file of VIII Additional Chief Metropolitan Magistrate, Bengaluru, as also the FIR registered as Crime No. 35/2019 by the first respondent police and the charge sheet filed pursuant to it.

2. Briefly stated, the events that led the petitioner to approach this court are as follows :-

On 11.3.2019, the Joint Secretary of the Association called Grama Seva Sangha, Thyagaraja Nagar, Bengaluru,

made an application to the Commissioner of Bruhath Bengaluru Mahanagara Palike (for short hereinafter referred to as 'BBMP') seeking permission to organize a peaceful protest meet at Mahatma Gandhi Circle, M.G.Road, Bengaluru, at about 4.30 PM on 12.3.2019. The Assistant Commissioner (Elections) of BBMP made an endorsement on the said application stating that permission to hold protest meet was not necessary as it was not a political programme. It appears that the said demonstration was held and thereafter, at about 19.30 hours on 12.3.2019, one D.Murthy, Assistant Engineer, BBMP, who was on the vigilance squad in connection with the election duty, made a report to the Station House Officer of Cubbon Park Police Station stating that two persons namely Praveen K, accused No.1 and Abhilash C.A, accused No.2, gathered a group of 25 to 30 people, used mike without obtaining permission from the concerned authority and caused obstruction to the pedestrians and to the traffic. He also stated that the petitioner who was intending to contest in the Lok Sabha

elections also participated in the said meeting and spoke about the elections and in regard to his participation in the protest meet, the video clippings and whatsapp messages were sent to him.

3. Since the report did not disclose a cognizable offence, the Station House Officer registered it in NCR No. 46/2019 and then placed it before the Magistrate seeking permission to register FIR. On 19.3.2019 the Magistrate passed an order to register the NCR as a private complaint (PCR) and proceed further according to section 156(3) of the Code. Thereafter, the police registered it in Crime No. 35/2019 for the offences under section 35 of the Karnataka Police Act and section 123 of the Representation of the People Act. The police held investigation and filed charge sheet against three persons including the petitioner for the offences punishable under section 290 of IPC and sections 35 and 103 of the Karnataka Police Act read with section 34 of IPC.

4. Learned counsel for the petitioner canvassed two points for quashing the FIR and also the charge sheet. His first point of argument was that when the investigating officer sought permission of the Magistrate for registration of FIR and to investigate the matter, he ordered the said NCR to be registered as a private complaint under section 200 of the Code. There was no supporting affidavit of the first informant. He referred to the judgment of the Supreme Court in the case of ***Priyanka Srivastava and Another vs State of Uttar Pradesh and Others [(2015) 6 SCC 287]*** to argue that whenever a private complaint was presented before a Magistrate, it should be accompanied by an affidavit. Filing of affidavit is now mandatory and since there was no affidavit in this case, the Magistrate should not have permitted the investigation officer to investigate. For this reason, FIR and the charge sheet are bad.

4.1. His second point of argument was that when the protest meet was held, the petitioner had not yet filed

his nomination to contest in the Lok Sabha elections. He just participated in the meeting as a citizen. He was not the organizer of the protest meet. Moreover the organizers applied for permission from the BBMP and the endorsement made by the Assistant Commissioner would clearly show that the permission was not necessary as it was a peaceful protest meet. Mere participation in the protest meet would not constitute any offence. The petitioner has been falsely implicated. A plain reading of the first information indicates that the petitioner has not committed any offence and for this reason this court has to exercise power under section 482 of the Code for quashing the FIR and the charge sheet.

5. The learned HCGP submitted that accused 1 and 2 applied to the BBMP for permission to hold a protest meet, participation of the petitioner is also very much forthcoming and he too does not dispute it. There was a gathering of big crowd which caused obstruction to the pedestrians as also to the traffic, it was nothing but a

public nuisance. It may be true that the offences for which the charge sheet has been filed are non-cognizable and for this reason when the police received the first information, the investigating officer approached the Magistrate seeking permission to investigate. Since the investigating officer sought permission to register FIR and investigate, filing of affidavit was not at all necessary. There is no procedural irregularity in conducting investigation. Investigation reveals commission of offence by all the accused and therefore they are to be tried before the Magistrate. There are no grounds to interfere under section 482 of the Code and therefore he sought for dismissing the petition.

6. I have considered the points of arguments. The first point of argument put forward by the petitioner's counsel is purely technical and therefore I would like to deal with it first. The endorsement made by the Station House Officer on the report given by the Assistant Engineer, BBMP, shows that the allegations constituted non-cognizable offences and for this reason he sought

permission of the Magistrate as required under section 155(2) of the Code. It appears that the Magistrate committed a mistake by ordering the NCR to be registered as a private complaint and therefore the learned counsel for the petitioner argued that supporting affidavit was necessary to be filed. Before adverting to the judgment of the Supreme Court in ***Priyanka Srivastava (supra)***, I may find it necessary to refer to some of the provisions of the Code applicable in a context like this.

6.1. Section 2 (c) of the Code defines "cognizable offence" as a case in relation to which the police officer can arrest an accused without warrant and "non-cognizable offence" as defined in section 2(l) is a case in which the police officer has no authority to arrest without warrant. Whenever commission of non-cognizable offence is reported to the police, according to section 155(1) of the Code, the Station House Officer shall enter or cause to enter the substance of the information in the book

prescribed by the State Government and refer the informant to the Magistrate.

6.2. Section 155(2) of the Code states that in case a police officer decides to investigate, he cannot do so without the order of the Magistrate having power to try such case or commit the case for trial. That means the police officer has to approach the Magistrate for an order. Section 156 of the Code deals with power of the police officer to investigate any cognizable offence. He need not approach the Magistrate for an order as required in relation to a non-cognizable offence. To make it more clear, for investigating a non-cognizable offence, what is required is the order of the Magistrate (permission) and in respect of cognizable offence, the police officer has got every right to investigate without any kind of order or permission by the Magistrate. Since section 155(1) states that after entering the substance of the information in a book, the Station House Officer may refer the informant to the Magistrate, it is necessary to elucidate this aspect.

And for this purpose section 190 of the Code needs to be referred to.

6.3. Section 190 of the Code deals with taking cognizance of the offences by the Magistrate. A Magistrate of the First Class and a Magistrate of the Second Class specially empowered by the Chief Judicial Magistrate can take cognizance of any offence under three circumstances, namely (a) upon receiving a complaint of facts constituting an offence or offences, i.e., under section 200 of the Code (b) upon a police report under section 173 of the Code and, lastly (c) upon information received from any person other than a police officer or upon his (Magistrate's) own knowledge about commission of an offence. Now, if the purpose of referring the informant to the Magistrate as envisaged under section 155(1) is analyzed, it can be said that it is for the purpose of enabling the informant to make a complaint to the Magistrate according to section 200 of the Code if he so desires, and in that event the Magistrate may take cognizance of the offence according to section

190(a) of the Code if a case is made out. So it is clear that a person who reports to the police of an offence which is non-cognizable has every right to make a complaint according to section 200 of the Code. At the same time it may also be stated that nothing prevents a police officer from applying to the Magistrate for an order to register FIR and proceed further according to section 155(2) of the Code. This is what is discernible if sections 155 and 190 of the Code are read.

7. In the case of **Priyanka Srivastava (supra)**, the Supreme Court has enunciated a principle that whenever an application under section 156(3) of the Code is made, it must be supported by an affidavit of the applicant who invokes the jurisdiction of the Magistrate. To understand the reason as to why the Hon'ble Supreme Court has mandated filing of an affidavit, the facts of that case are necessary to be borne in mind. A borrower from a financial institution initiated action against its officers repeatedly under section 200 of the Code. His first private

complaint was not entertained by the Magistrate, he declined to take cognizance after recording the sworn statement. The borrower preferred a revision petition to the Sessions Court which set aside the order of the Magistrate and remanded the matter to the trial court for passing order of taking cognizance. The Magistrate took cognizance thereafter and issued summons to the officers of the financial institution. Aggrieved by this order they approached the High Court by making a petition under section 482 of the Code for quashing the proceedings before the Magistrate. Their petition was allowed and the proceedings quashed. Again the borrower made an application before the Magistrate under section 156(3) of the Code against the same officers alleging commission of offences such as criminal conspiracy and forging of documents and this complaint was numbered as Complaint Case No. 344/2011. The borrower made one more application under section 156(3) of the Code against the same bank officers alleging undervaluation of the property and that application was numbered as Complaint No.

396/2011. The Magistrate directed SHO to register FIR pursuant to the said complaint. It is observed in para 11 of the judgment of **Priyanka Srivastava (supra)** that the motive behind making complaint after complaint was to make the officers agree to one time settlement which being agreed upon, he was ready to withdraw various cases filed by him. Taking note of a situation like this, the Hon'ble Supreme Court held that application under section 156(3) of the Code is to be supported by an affidavit of the applicant or the complainant. It is apt to reproduce paras 30 and 31 of the judgment : -

"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 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 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”.

(emphasis supplied)

8. The conspectus of the ratio is that affidavit is necessary to be filed with the complaint only in those cases where the police fail to take any action when a report of commission of an offence is made to them according to section 154(1) of the Code and the Superintendent of Police also fails to initiate action when his attention is drawn as required under section 154(3) of

the Code. Affidavit is insisted upon with a view to binding the complainant to the allegations that he has made in the complaint and taking action against him in case these allegations turn out to be false. To illustrate, if a person files a private complaint alleging an offence of hurt caused to him by another, he must have exhausted the remedy under section 154(1) and section 154(3) of the Code and state about it in the affidavit besides giving a brief account of the incident in which he was hurt. But there are certain offences in respect of which the aggrieved person should make a complaint only under section 200 as prescribed in sections 195, 198 and 199 of the Code; compliance of section 154(1) and 154(3) is not contemplated, and in respect of such offences, an affidavit in support of the complaint is not required. The complaint under section 138 of the Negotiable Instruments Act also falls under this category.

9. Occasion to take cognizance under section 190(c) of the Code arises under two circumstances, firstly when

any person other than a police officer makes a complaint, and secondly when the Magistrate takes cognizance upon his own knowledge about commission of offence, i.e., a situation where offence takes place in his presence. But where any person other than a police officer makes a complaint, affidavit is not necessary for, any person here refers to a public authority who is authorized or empowered under certain statutes to make a complaint. Since the public authority makes a complaint in exercise of statutory duty, affidavit cannot be insisted upon.

10. In the case on hand, the police officer approached the Magistrate according to section 155(2) of the Code for an order to proceed further in the matter. When the police officer placed the report of commission of non-cognizable offence (NCR), the Magistrate should not have directed his office to register it as a private complaint, for, such a procedure is not contemplated. Because the NCR was registered as a private complaint, the learned counsel for the petitioner argued that

supporting affidavit was necessary. This argument is unfounded. The police officer proceeded further in the matter having obtained an order under section 155(2) of the Code. What is made out by learned counsel is a procedural irregularity, which cannot be a ground for invoking jurisdiction under section 482 of the Code; even the learned counsel failed to point out the substantial injustice caused to the petitioner on account of the procedural error.

11. As regards the second point of argument of the petitioner's counsel, it is to be stated that the petitioner does not dispute his participation in the protest meet, and in regard to the allegations made against him, the prosecution has to provide evidence. Bare denial of the charge sheet cannot be a ground for interference under section 482 of the Code. The petition is devoid of merits, it is dismissed.

**Sd/-
JUDGE**

ckl