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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION No.62671 OF 2016 (GM-RES)

BETWEEN:

Sri. C.T. Ravi (M.L.A.)
S/o. C.E. Timmegowda,
Aged about 48 years,
R/o Basavana Halli Main Road,
Chikkamagaluru - 577 101.

...Petitioner

(By Sri. Ashok Haranahalli, Senior Advocate
for Sri. Chinmay J. Mirji, Advocate)

AND:

1. The State of Karnataka,
Rep. by Superintendent of Police,
Anti-Corruption Bureau,
Bengaluru - 560 001.

2. Sri. A.C. Kumar,
S/o. Sri. Channe Gowda,
Aged about 33 years,
Bhagya Nilaya, 3rd Cross,
Laxmisha Nagara Ext.
Chikkamagaluru - 577 101.

...Respondents

(By Sri. Jeevan J. Neeralgi, Spl.P.P. for R.1,
Sri. J.D. Kashinath, Advocate for R.2)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the entire proceedings against him in P.C.R. No.33/2012 filed by the R-2 and further the investigation by the Superintendent of Police, Anti-Corruption Bureau, Bangalore for the offences punishable under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 vide Annexure-'A' and such other reliefs.

This Writ Petition coming on for *Orders* this day, the Court through video conference made the following:

ORDER

Heard Sri. Ashok Haranahalli, learned Senior Counsel for petitioner and Sri. Jeevan J. Neeralgi, Spl.P.P. for respondent No.1 and Sri. J.D. Kashinath, learned counsel for respondent No.2.

Though this matter is listed for hearing on I.A., with the consent of learned counsel appearing for the parties, the matter is taken up for final disposal.

2. The only issue involved in the instant case is with regard to the regularity of the procedure followed by the learned Special Judge in referring the complaint for investigation under Section 156(3) of Cr.P.C.

3. Respondent No.2 presented a private complaint under Section 200 of Cr.P.C. The prayer made in the petition is to refer the matter for investigation to the Hon'ble Lokayuktha Police under Section 156(3) of Cr.P.C., in the interest of justice.

4. The learned Special Judge, Special Court under Prevention of Corruption Act, Bengaluru (CCH-78) on considering the allegations made in the complaint by its order dated 06.10.2016 referred the complaint to the Superintendent of Police, Anti-Corruption Bureau, Bengaluru, for investigation and for filing the report before the Court on or before 05.01.2017. This order is impugned in this petition on the ground that the procedure followed by the learned Special Judge is contrary to the law laid down by the Hon'ble Supreme Court in ***PRIYANKA SRIVASTAVA AND ANOTHER vs. STATE OF UTTAR PRADESH AND OTHERS*** reported in **(2015) 6 SCC 287**. In the aforesaid decision, the Hon'ble Supreme

Court after reviewing various authorities on the subject in para 27 thereof has held thus:-

"27. 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 the 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."

Further, in paras 30 and 31, it is held as under:-

"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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.” (underlining supplied)

Referring to the above excerpts, learned Senior Counsel would submit that in the absence of any averments made in the complaint to the effect that respondent No.2/Complainant has exhausted the remedy under Sections 154(1) and 154(3) and there being no affidavit as mandated, the learned Special Judge has committed an error in referring the complaint for investigation under Section 156(3) of Cr.P.C.

5. This submission is opposed by the learned Standing counsel for respondent No.1 contending that the complaint was filed in the year 2012 much earlier to the law laid down by the Hon'ble Supreme Court in the year 2015 and as such, the principles laid down in the said

decision cannot be applied to the facts of the case. Further, he submitted that non filing of the affidavit may amount to a curable irregularity and the same does not amount to an illegality vitiating the impugned order and thus, sought to dismiss the petition.

6. Learned counsel for respondent No.2 adopted the submissions of the learned Standing counsel for respondent No.1 and further submitted that the law laid down in *Priyanka Srivastava's* case has been considered by this Court in the case of *MALLINATH MAHARAJ @ MALLAYYA Vs. THE STATE OF KARNATAKA & ANOTHER* in *Crl.P.No.200231/2017* dated 27.02.2017 and it is held that:

"The law on this point is that so far there was no need for the complainant to file affidavit along with complaint. Now to make it compulsory so as to give deterrent effect to those who casually invoke the jurisdiction of the Court under Section 156(3) and to make him liable for prosecution, filing of such affidavit has been made compulsory by the Apex Court. If

*that has to be made compulsory, then, matters requires to be referred to Law Commission to make a suitable amendments to the said provision of law. In that light, Registry is directed to send the copy of the judgment of Apex Court **reported in (2015)6 SCC 287** in the case of **Priyanka Srivastava & another Vs. State of Uttar Pradesh & others** along with this judgment for taking suitable steps to suggest the amendment to the Legislature."*

7. I have considered the submission and perused the records.

8. Undisputedly, the proceedings are initiated by respondent No.2 by making a compliant under Section 200 of Cr.P.C. The prayer made in the complaint is to refer the compliant for investigation under Section 156(3) of Cr.P.C. When a specific prayer is made by the complainant to refer the complaint for investigation under Section 156(3) of Cr.P.C., in my view, the law laid down by the Hon'ble Supreme Court in paragraphs 30 and 31 of the judgment referred supra comes into force. As could be seen from the

above portion of the judgment, the Hon'ble Supreme Court has mandated that when an application is filed under Section 156(3) of Cr.P.C, the same shall be supported by an affidavit, so that the learned Magistrate could verify the truth of the allegations made in the complaint and also to obviate false and irresponsible complaints being filed invoking the jurisdiction of the criminal courts. This direction is binding on all the courts under Article 141 of the Constitution of India.

9. The decision relied on by the learned counsel for respondent No.2 does not hold that the directions issued by the Hon'ble Supreme Court are not required to be complied by the criminal courts. On the other hand, considering the mandatory nature of the direction, the co-ordinate Bench of this Court has directed the Registry to send copy of the said judgment along with the copy of the order to the Law Commission for bringing about necessary amendment in the Code. Until the said amendment is brought about, the directions given by the Hon'ble

Supreme Court are required to be followed as the law of the land. The directions issued by the Hon'ble Supreme Court in the above case make it abundantly clear that when a prayer is made by the complainant to refer his complaint for investigation under Section 156(3) of Cr.P.C., the pre-conditions laid down in *Priyanka Srivastava's* case are necessarily to be followed and any breach thereof would render the order passed by the criminal courts vulnerable for challenge.

10. No doubt the instant complaint was filed in the year 2012, but the order of reference was made only in the year 2016 subsequent to the law laid down by the Hon'ble Supreme Court in *Priyanka Srivastava's* case. In that view of the matter, the impugned order of reference made by the learned Special Judge cannot be sustained. However, as rightly pointed out by the learned Standing Counsel for respondent No.1, the above defect is only a curable irregularity which does not vitiate the proceedings initiated against the petitioner. Therefore, an opportunity

is required to the complainant to cure the said defects and bring his compliant in conformity with the requirements of the law laid down by the Hon'ble Supreme Court in *Priyanka Srivastava's* case. For the said reasons, the petition is ***partly allowed***.

The impugned order dated 06.10.2016 passed in PCR No.33/2012 by the LXXVII Addl. City Civil & Sessions Judge & Special Judge, Bengaluru, is set aside.

Matter is remanded to the Special Judge to afford an opportunity to the complainant/respondent No.2 herein to file his affidavit in terms of the directions issued by the Hon'ble Supreme Court. It is also open to the complainant/respondent No.2 to file the complaint, if need be, before the Anti-Corruption Bureau, as the allegations pertain to the offences under Prevention of Corruption Act. However, it is made clear the instant complaint having been filed much prior to the decision in *Priyanka Srivastava's* case, prior applications under Sections 154(1) and 154(3) are not possible to be filed and therefore,

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compliance of the said part of the direction is waived.

Ordered accordingly.

**Sd/-
JUDGE**

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