

# Babu Venkatesh vs The State Of Karnataka on 18 February, 2022

**Author: B.R. Gavai**

**Bench: Krishna Murari, B.R. Gavai**

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 252 OF 2022  
[Arising out of SLP (Crl.) No. 2183 of 2021]

BABU VENKATESH AND  
OTHERS

...APPELLANT (S)

VERSUS

STATE OF KARNATAKA  
AND ANOTHER

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 253 OF 2022  
[Arising out of SLP (Crl.) No. 2182 of 2021]

CRIMINAL APPEAL NO. 254 OF 2022  
[Arising out of SLP (Crl.) No. 2162 of 2021]

CRIMINAL APPEAL NO. 255 OF 2022  
[Arising out of SLP (Crl.) No. 2217 of 2021]

JUDGMENT

**B.R. GAVAI, J.**

1. Leave granted.

2. The present appeals challenge the four judgments and orders dated 22nd January 2021, passed by the High Court of Karnataka at Bengaluru, thereby dismissing the criminal petitions filed by the present appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.).

3. The facts in brief giving rise to the present appeals, taken from the appeal arising out of Special Leave Petition (Crl.) No. 2183 of 2021, are as under:

4. The appellant Nos. 2 and 3 on one hand and respondent No. 2 on the other hand, entered into various Agreements for Sale with respect to properties situated at Bangalore. According to the appellants, the amounts as mentioned in the agreements, were paid by them as consideration by three cheques, one of them drawn from the account of appellant No. 1, another one from account of M/s. S.S.R.V Trans Solutions and other one from the account of M/s. Shobha Tours and Travels, which are operated by appellant No. 1. All these three cheques were bearer cheques. It is the case of appellants that, all the cheques were encashed by the respondent No. 2.

5. It is the case of the appellants that, after receipt of the payments, the respondent No. 2 was avoiding to get the Sale Deed registered. As such, the appellant Nos. 2 and 3 on 24th November, 2017 had filed four different suits being O.S. No. 8020/2017, 8018/2017, 1616/2017 and 1614/2017, before the Courts of Principal Senior Civil Judge and Principal City Civil Judge at Bangalore, for specific performance of contract. The respondent No. 2, who is the defendant No. 1 in O.S. No. 8020/2017, filed his written statement on 09th April 2018.

6. The respondent No. 2, thereafter filed a complaint dated 10th September 2019, with Tilak Nagar Police Station, Jayanagar, Bengaluru, against the appellants, thereby making allegations of cheating. Thereafter, following a gap of almost one year, the respondent No. 2 filed Private Complaint being P.C.R. No. 12445/2019 on 18 th September 2019, before the Court of II Additional Chief Metropolitan Magistrate, Bangalore.

7. On the same day, the respondent No. 2, along with his wife who is the respondent No. 3 in the rest of the appeals arising out of Special Leave Petition (Crl.) Nos. 2182/2021, 2162/2021, and 2217/2021, filed three other Private Complaints being P.C.R. Nos. 12441/2019, 12443/2019 and 12444/2019 before the same court.

8. The allegations in the complaints are basically that the appellant No. 1, who is the son of appellant Nos. 2 and 3, had obtained blank stamp papers from the respondents and created Agreements for Sale by misusing the said blank stamp papers. As such, it is case of the respondents that, the appellants committed forgery and cheated them, and as such they are liable for punishment for offences punishable under Sections 420, 464, 465, 468 and 120B of the Indian Penal Code (hereinafter referred to as the IPC).

9. The II Additional Chief Metropolitan Magistrate, at Bangalore on 6th December 2019, passed the order as under:

“The Complainant has filed the present private complaint under section 200 of for the alleged offences punishable under section 420,465,468,464 and 120B of IPC. In the complaint, the complainant has made serious allegations against the accused persons. Therefore, it appears this court that, it is just and proper to refer the matter to the jurisdiction police for investigate and submit report. Accordingly, the matter is referred to PSI of Jayanagar Police Station under section 156 (3) of CrP.C., for investigation and submit report by 26.02.2020.”

10. On the basis of the same, a First Information Report (hereinafter referred to as FIR) No. 258/2019 came to be registered at Jayanagar Police Station Bengaluru City on 18th December 2019, for the offences punishable under Sections 120B, 420, 471, 468, 465, of the IPC. Three similar FIRs came to be registered against the appellants on different dates in December 2019.

11. The appellants thereafter filed petitions under Section 482 of the Cr.P.C. before the High Court of Karnataka at Bengaluru, being Criminal Petition Nos. 6719/2020, 6733/2020, 6729/2020 and 6737/2020. The main contention of the appellants in the criminal petitions was that, the order under Section 156 (3) of the Cr.P.C. was passed in a mechanical manner by the II Additional Chief Metropolitan Magistrate, at Bangalore.

12. It was submitted that, the Magistrate was required to apply his mind before passing an order under Section 156 (3) of the Cr.P.C. It was further submitted that, unless an application under Section 156 (3) of the Cr.P.C. was supported by an affidavit duly sworn by the complainant, the learned Magistrate could not have passed an order under the said provision.

13. It was further submitted that, the dispute was purely civil in nature and the criminal complaint was filed by the respondents only to harass the appellants. The Single Judge of the High Court vide four identical impugned orders dated 22nd January 2021, dismissed the petitions on the ground that, serious allegations of cheating and forgery were shown in the complaint and as such no case was made out for quashing the FIRs.

14. We have heard Shri Abdul Azeem Kalebudde, learned counsel appearing on behalf of the appellants and Shri Shubhranshu Padhi, learned counsel appearing on behalf of the State. In spite of being duly served, none appeared for respondent No. 2.

15. It is not in dispute that, apart from O.S. No. 8020/2017, the appellant Nos. 2 and 3 have filed suits being O.S. No. 1614/2017, O.S. No. 1616/2017 and O.S. No. 8018/2017, seeking specific performance of contract with regard to the Agreements for Sale between the appellant Nos. 2 and 3 on one hand and respondent No. 2 on the other hand. The said suits were filed on 24 th November 2017.

16. It is also not in dispute that, written statements have been filed by the respondent No. 2 in all the said suits, between the period from 9th April 2018 to 1st August 2018. It is the defense of the respondent No. 2 that, the appellant No. 1 who is the son of appellant No. 2 and 3, is a money lender and he lends money at a high rate of interest. It is the further defense of respondent No. 2 that, when the respondents approached the appellant No. 1 for financial help, he used to take respondents' signatures on the blank paper and also collected cheques signed by the respondent No. 2 as security for said loan.

17. It is the further contention of respondent No. 2 that he had discharged the debt of the appellant No. 1 by paying an amount of Rs. 56,50,000/-(Rupees Fifty-Six Lakh and Fifty Thousand only) by way of RTGS to the account of appellant No. 1. The execution of Agreements for Sale was specifically denied by the respondent No. 2.

18. After filing of the written statement on 09 th April 2018 in O.S. No. 8020/2017, respondent No. 2 on 10 th September 2019 filed a complaint before police station Jayanagar, stating therein that, the appellant No. 1 had created forged documents with regard to the properties belonging to the respondent No. 2 and his wife. He has stated in the said complaint that he has not signed the documents and that the appellants were taking advantage of the blank cheques and blank stamp papers. Thereafter on 18 th September 2019, respondent No. 2 filed a Private Complaint being P.C.R. 12445/2019. He along with his wife filed three other Private Complaints being P.C.R. Nos. 12441/2019, 12443/2019 and 12444/2019 before the Court of II Additional Chief Metropolitan Magistrate, Bangalore, out of which the present proceedings arise.

19. It could thus be clearly seen that, the said complaint dated 10th September 2019, was filed almost after a period of two years from the date of institution of suits by the appellant Nos. 2 and 3, and almost after a period of one and a half year from the date on which written statement was filed by respondent No. 2.

20. It will be relevant to refer to the following observations of this court in the case of State of Haryana and Others v. Bhajan Lal and Others,<sup>1</sup> which read thus.

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

1 1992 Supp (1) SCC 335 (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 Magistrate 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 mala fide 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

21. It could thus be seen that, though this court has cautioned that, power to quash criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it has specified certain category of cases wherein such power can be exercised for quashing proceedings.

22. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by the respondent No. 2 by filing written statement, he has chosen to file complaint under Section 156 (3) of the Cr.P.C. after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in the case of State of Haryana v. Bhajan Lal (supra).

23. Further we find that, the present appeals deserve to be allowed on another ground.

24. After analyzing the law as to how the power under Section 156 (3) of Cr.P.C. has to be exercised, this court in the case of Priyanka Srivastava and Another v. State of Uttar Pradesh and Others<sup>2</sup> has observed thus:

“30. In our considered opinion, a stage has come in this country where Section 156(3) 2 (2015) 6 SCC 287 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* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

25. This court has clearly held that, a stage has come where applications under Section 156 (3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156 (3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

27. This court has further held that, prior to the filing of a petition under Section 156 (3) of the Cr.P.C., there have to be applications under Section 154 (1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

28. In the present case, we find that the learned Magistrate while passing the order under Section 156 (3) of the Cr.P.C., has totally failed to consider the law laid down by this court.

29. From the perusal of the complaint it can be seen that, the complainant/respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) of the Cr.P.C. The High Court has also failed to take into consideration the

legal position as has been enunciated by this court in the case of Priyanka Srivastava v. State of U.P. (supra), and has dismissed the petitions by merely observing that serious allegations are made in the complaint.

30. We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law.

31. We therefore, allow these appeals and set aside the judgments and orders of the High Court dated 22nd January 2021, passed in Criminal Petition Nos. 6719/2020, 6729/2020, 6733/2020 and 6737/2020. Consequently, the FIR Nos. 255/2019, 256/2019 filed on 16 th December, 2019, FIR No. 257/2019 filed on 17 th December, 2019 and FIR No. 258/2019 filed on 18th December, 2019 registered with Jayanagar Police Station, Bengaluru City are quashed and set aside. Pending application(s), if any, shall stand disposed of.

.....J. [B.R. GAVAI] .....J. [ KRISHNA MURARI] NEW DELHI;

FEBRUARY 18, 2022