

Kanishk Sinha vs The State Of West Bengal on 27 February, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2025 INSC 278

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2025
(@ SPECIAL LEAVE PETITION (CRIMINAL) NOS.8609-8614 OF 2024)

KANISHK SINHA & ANOTHER

...APPELLANTS

Versus

THE STATE OF WEST BENGAL
& ANOTHER

...RESPONDENTS

JUDGMENT

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The appellants before this Court are husband and wife (appellant no.1 & 2, respectively), who are aggrieved by an order dated 27.06.2024 passed by the learned Single Judge of the Calcutta High Court by which the criminal revisions of the present appellants were dismissed. The appellants are accused in two different cases, the first registered as a First Information Report ('FIR') at police station Bhowanipur, Kolkata as FIR No.179 of 2010 dated 27.04.2010 under Sections 120B, 420, 467, 468, 469, 471 of the Indian Penal Code, 1860 ('IPC'), read with Section 66A (a)(b)(c) of the Information Technology Act, 2000 ('IT Act'). In the instant case, the complainant was Keyur Majumder. The second FIR which was initially moved as a complaint before the Ld. Magistrate, and the Ld. Magistrate in exercise of powers under Section 190 read with 156(3) of the Criminal Procedure Code, 1973 ('CrPC') directed registration of an FIR. The complainant in this case was Supriti Bandopadhyay, and the second FIR was registered as FIR No.298 of 2011 dated 08.06.2011 at police station Bhowanipur, Kolkata under Sections 466, 469, 471 read with 120B(ii) of IPC.

3. The nature of allegations in these two cases is similar against the appellants, relating to forgery,

fraud, deception, cheating, damage caused to reputation, unlawful extraction of money, threat, misrepresentation and criminal conspiracy etc. In fact, six revisions were filed by the appellants before the Calcutta High Court regarding the filing of charge sheet, as well as against certain interim orders passed by the Lower Court. But that is not very relevant. What is relevant is the only point which has been raised by the appellants in their revisions before the High Court, which was that not only are these FIRs motivated and false, and thus liable to be quashed, but also that the second FIR has been registered on the complaint which was filed before the Magistrate under Section 156(3) of CrPC, and it was not accompanied by an affidavit and therefore, the law as laid down by this Court in *Priyanka Srivastava vs. State of Uttar Pradesh* (2015) 6 SCC 287 has been violated as all such complaints should now be accompanied by an affidavit according to *Priyanka Srivastava* (supra). The learned Single Judge of the High Court was of the view that the directions of this Court in the above case could only operate prospectively and will not have any retrospective application, and will thus not be applicable to the complaint lodged against the appellants in the year 2010-2011.

The appellant no.1, all the same, who argued in person before the High Court, emphasised before this Court and would argue that all the judgments of this Court are retrospective in nature and therefore it cannot be said that this would not be retrospective particularly when it has not been specifically stated in the judgment of *Priyanka Srivastava* (supra) that it will operate prospectively.

Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.

4. In *Priyanka Srivastava* (supra) this Court was seized with an issue where frivolous complaints were being filed before the Magistrate only to harass people and therefore, in order to check this trend, it was directed that all applications before the Court where Section 156(3) CrPC applications are made must be supported by an affidavit duly sworn by the applicant who seeks to invoke the jurisdiction of the Magistrate. Such a step could only be prospective in nature, and this is clearly reflected from the very language used by the Learned Judges in *Priyanka Srivastava* (supra), where it has been said 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.” (Emphasis provided)

5. This Court in the above case then also issued directions that a copy of the judgment be sent to all the Chief Justices of the High Courts, who in turn will circulate the said copy to all the Magistrates, so that they remain “more vigilant and diligent while exercising the power under Section 156(3) CrPC”. It is necessary to mark the words in the above quoted para 30 that “...a stage has come in this country...”, and thus, the above directions could only be prospective. This would signify that what the Court intended was that from now onward it would be necessary that an application would be accompanied by an affidavit.

6. We are of the opinion that the High Court was right in holding that the direction that a complaint will be accompanied by an affidavit, will be prospective in nature. We thus find no merit in these appeals and hence, the appeals stand dismissed.

7. We have been informed that the charge sheet has been filed in both the cases. In case charges have not been framed by the Court, then the appellants would be at liberty to move an application for their discharge, which shall be considered in accordance with law.

8. Interim order(s), if any, stand(s) vacated.

9. Pending application(s), if any, stand(s) disposed of.

.....J. [SUDHANSHU DHULIA]J. [AHSANUDDIN
AMANULLAH] New Delhi February 27, 2025.