THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NOs.10080 OF 2023 & 10085 OF 2023

COMMON ORDER :

Criminal Petition No.10080 of 2023 is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') seeking to quash the Order dated 08.12.2023 passed in CFR No.1114 of 2021 on the file of the Judicial Magistrate of First Class, Pulivendula.

2. Criminal Petition No.10085 of 2023 is filed under Section 482 CrPC seeking to quash the proceedings in crime No.642 of 2023 of Pulivendula (U/G) police station, Kadapa district, dated 15.12.2023, registered for the offences punishable under Sections 352, 323, 330, 342, 348, 506, 195A, 166A (b) and 109 of the Indian Penal Code, 1860 (for short, 'IPC').

3. The petitioners in Criminal Petition No.10080 of 2023 are A.2 and A.3, and the petitioner in Criminal Petition No.10085 of 2023 is A.1, in the aforesaid crime No.642 of 2023.

4. Since these two Criminal Petitions are connected, they are being taken up together for disposal by way of this common order.

5. 2nd respondent/defacto complainant lodged a private complaint in CFR No.1114 of 2021 as against the petitioners herein before the learned Judicial Magistrate of First Class, Pulivendula. The allegations, in brief, of the said private complaint lodged by 2nd respondent are as follows.

(a) 2nd respondent/defacto complainant is working as an Assistant Librarian in Kadapa Arts College. He was also working as a Private P.A. to Y.S.Vivekananda Reddy for the last 30 years. He used to go to the house of Y.S.Vivekananda Reddy at 5.30 AM and discuss with him about his lands, and knows the family matters of the latter.

While Y.S.Vivekananda Reddy was a Minister, he employed one M.Mabasha as his Private P.A. and married one Smt. Shameem, who is cousin of said M.Mabasha, about 9 or 10 years prior to the lodging of

the private complaint, and begot one son through her. Disputes arose among family members of Y.S. Vivekananda Reddy i.e. A.2 (his daughter), A.3 (his son-in-law) and one N.Siva Prakash Reddy, with regard to his relationship with the said Smt.Shameem.

On 15.03.2019, 2nd respondent/defacto complainant as usual went to house of Y.S.Vivekananda Reddy at 5.30 AM, by which time, the latter did not wake up, and when he informed the said fact to Smt.Soubhagyamma, wife of the latter, she replied that the latter would have slept late in the night and asked him to wait for some time. After some time, maid servant Lakshmi and his son Prakash came. When they tried to wake up, said Y.S.Vivekananda Reddy did not wake up. After some time, Watchman Ranganna came running and stated that Y.S.Vivekananda Reddy fell down. On that, he and said Prakash went to bed room and saw blood, and found Y.S.Vivekananda Reddy with blood stains in bath room and they found him dead. Immediately, he informed to A.2 over phone about the

same. He found mobile phone of the deceased in small sofa and took the same. He and said Prakash found a letter written by the deceased, in the wheel chair. After some time, one Yerra Gangi Reddy came and stated that its all about vomiting, and when he said that he would give a police complaint, the said Gangi Reddy said not necessary. On that, he telephoned to A.2 and informed about the same, for which A.2 replied that he would take care. Thereafter, the said Gangi Reddy cleaned the bed room by removing blood with the help of Lakshumma, P.Raja Sekhar and Tanker Basha, and brought the dead body of deceased from bath room to bed room. Afterwards, the dead body was taken to hospital. Thereafter, he went to police station and gave a complaint. At about 1.00 PM, A.2 and A.3 came to the house. Then, he handed over them the letter and mobile of the deceased.

(b) It is further alleged in the private complaint that after 13 days, police remanded 2nd respondent/ defacto complainant, Yerra Gangi Reddy and Prakash by

arraying them as accused. He was released on bail after three months. While he was in Central Prison, Kadapa, A.2 and A.3 used to come to jail and talk with him and Gangi Reddy. Thereafter, the case was transferred to CBI for investigation. CBI officials enquired him several times in Pulivendula R&B guest house and Kadapa Central Prison guest house and he co-operated with the officials. On 20.02.2021, CBI issued a notice to him asking to come on 03.03.2021 at 10.30 AM to CBI Office for inquiry. A.2 arranged him flight tickets to go to Delhi and also a room. CBI inquired him till end of March. During inquiry, A.1 was asking him to give statement as per their version, and when he was not inclined to give such statement, he was harassed several times using 3rd degree methods. Though he informed the same to A.2, there was no response from A.2. A.2 and A.3 called him and asked to attend before CBI, and accordingly, he used to go to Pulivendula R&B guest house and Kadapa Central Prison guest house. A.1, who was there, was pressurizing him to give a statement about involvement

of Devireddy Siva Sankar Reddy and some important political people, for which he refused. On 18.10.2021, A.2 and A.3 called him through his son and he met them at their new office in Hyderabad, where they asked him to do what A.1 says and stated that if he does so, A.1 would save him. But, he refused to do so, upon which A.3 got angry and shouted at him in loud voice. When he was replying A.3, A.2 came to him and tried to convince him.

(c) It is further alleged in the private complaint that on 29.11.2021, at the instance of A.1, when 2nd respondent/defacto complainant called A.1 over phone, he informed that Ranganna co-operated with them stating as per their version and hence he was out of the case, so also Dastagiri, and if he also does what they say, he would also be out of the case, otherwise he would be implicated as accused. He was asked to come to Kadapa Central Prison guest house on the next day by 11.00 AM, along with his two sons. When A.2 was informed of the same, A.2 told to attend and do what

they say and co-operate with them. On the next day 30.11.2021, he and his two sons attended. In the presence of his sons, A.1 reiterated what he stated supra and insisted him to state that there is hand of Devi Reddy Siva Sankar Reddy and others. But, he stated that he already revealed the information known to him and he cannot implicate others, for which A.1 became angry and beat him with stick on his thighs and foot for about 20 times in front of his sons. Still, he sticked to his stand. A.1 retained him illegally in guest house till 6.00 PM abusing him and pressurizing him to co-operate with them, for which he did not agree. A.1 sent him to house saying to change his mind in a week time and co-operate with them, so that he would be out of the case, otherwise threatening false implication.

(d) It is further alleged in the private complaint that for falsely implicating others, 2nd respondent/defacto complainant was being pressurized to give false evidence and when he refused therefor, he was beaten and abused by A.1 in active collusion with A.2 and A.3. When he

approached local police station, there was no response from them. Then, he gave a petition to the Superintendent of Police, YSR Kadapa district on 13.12.2021, but he did not take any action. Hence, the private complaint.

6. The learned Magistrate, by way of Order dated 08.12.2023, forwarded the said private complaint to the Station House Officer, Pulivendula police station under Section 156 (3) CrPC, for investigation and report. Pursuant to the said order, the subject crime No.642 of 2023 of Pulivendula (U/G) police station, Kadapa district came to be registered against the petitioners herein for the aforesaid offences. Seeking to quash the same, the present Criminal Petitions are filed.

7. Sri Gudipati Venkateswara Rao, learned counsel for petitioners in Criminal Petition No.10080 of 2023 (A.2 and A.3) strenuously contended that the learned Magistrate passed the Order dated 08.12.2023, forwarding the private complaint filed by 2nd respondent under Section 156 (3) CrPC, mechanically without any

reasons. According to him, even before referring the private complaint to police under Section 156 (3) CrPC, it is essential that prior applications under Sections 154 (1) and 154 (3) CrPC have to be made and the same should be spelt out. Apart from the same, sworn affidavit has not been filed along with the complaint. Hence, he prayed to quash the Order dated 08.12.2023 passed in CFR No.1114 of 2021 passed by the learned Magistrate.

8. Learned counsel for petitioners/A.2 and A.3 relied on the following decisions.

(a) In *Priyanka Srivastava & another v. State of Uttar Pradesh & others*[1] wherein it is held thus: (paragraphs 27 and 28).

> **"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

[1] (2015) 6 SCC 287

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) CrPC 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.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because

an application under Section 156(3) CrPC is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned."

(b) In *Anjuri Kumari v. The State Govt of NCT of Delhi and others*[2], wherein it is held thus: (paragraph 17)

"17. In view of the discussions mentioned hereinabove, I am of the view that the directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be viewed depending upon the facts and circumstances involved therein. In the facts and circumstances of a given case, the Magistrate may take a decision that the complainant can prove the facts alleged in the complaint without the assistance of the police. In such cases, the Magistrate may proceed with the complaint under Section 200 of the Code and examine witnesses produced by the complainant. The Magistrate ought to direct investigation by the police if the evidence is required to be collected with the assistance of the police. In the present case, all the facts and evidence are within the knowledge of the petitioner, which he can adduce during the inquiry conducted by the learned Metropolitan Magistrate under Section 200 of the Code."

[2] MANU/DE/7957/2023

(c) In *V.Harinath and another v. State of A.P.*[3], wherein it is held thus: (paragraph 8)

> "The learned counsel for the petitioners further submitted that the learned Magistrate mechanically forwarded the case for investigation without properly applying mind and passed a cryptic order as follows:
>
> "Complainant present.
> Heard complainant. Perused the records, sworn statement and connected papers. *Prima facie* offence is made out against the accused. Hence the complaint is forwarded to Station House Office, Ananthapuramu IV Town Police Station U/s 156(3) of Cr.P.C. with a direction to register and investigate the case and submit report by 03.11.2023."
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> In view of the above proposition of law, order passed by the learned Magistrate in the present case suffers from illegality and is liable to be set aside."

(d) In *Syed Anwar Ahmed & others v. State of Maharashtra & others*[4], wherein it is held thus: (paragraph 25).

> "25. To summarise,
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> (a) While dealing with a Complaint seeking an action under Sub-Section (3) of Section 156 of Cr.P.C, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the

[3] Order dated 01.12.2023 passed by a learned single Judge of this Court in Criminal Petition No.8278 of 2023.
[4] MANU/MH/0680/2017

Complaint and the documents produced along with the Complaint ;

(b) An Order passed on the said Complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it not necessary to record detailed reasons;

(c) The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned 26 of 31 cr wp-924.16.sxw Magistrate can go in to the issue of the veracity of the allegations made in the Complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations;

(d) When a Complaint seeking an action under Sub-Section (3) of Section 156 is brought before the learned Metropolitan Magistrate or the learned Judicial Magistrate, it must be accompanied by an affidavit in support as contemplated by the decision of the Apex Court in Priyanka Srivastava. The affidavit must substantially comply with the requirements set out in Chapter VII of the Criminal Manual and especially paragraphs 5 and 8 which are quoted above; and

(e) Necessary averments recording compliance with Sub-Sections (1) and (3) of Section 154 of the CrPC should be incorporated with material particulars. Moreover, the documents in support of the said averments must filed on record."

9. Sri Sh.Anil Kumar Tanwar, learned Special Public Prosecutor for C.B.I., appearing on behalf of petitioner in Criminal Petition No.10085 of 2023, while reiterating the submissions made by the learned counsel appearing for the petitioners in Criminal Petition No.10080 of 2023, submitted that no sanction as contemplated under Section 197 CrPC has been obtained in order to prosecute A.1, and hence, he prayed to quash the impugned proceedings. The learned counsel relied on the following decisions.

(a) In *A.Srinivasulu v. the State rep. by the Inspector of Police*[5], wherein it is held thus: (paragraphs 37, 38, 39, 41).

> **"37.** It is seen from the portion of the decision extracted above that the Federal Court categorised in *Dr. Hori Ram Singh* (supra), the decisions given under Section 197 of the Code into three groups namely *(i)* cases where it was held that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it; *(ii)* cases where more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence; and *(iii)* cases where stress is laid almost exclusively on the fact that it was

[5] MANU/SC/0723/2023

at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed. While preferring the test laid down in the first category of cases, the Federal Court rejected the test given in the third category of cases by providing the illustration of a medical officer committing rape on one of his patients or committing theft of a jewel from the patient's person.

38. In *Matajog Dobey* v. *H.C. Bhari*[4] a Constitution Bench of this Court was concerned with the interpretation to be given to the words, "*any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty*" in Section 197 of the Code. After referring to the decision in *Dr. Hori Ram Singh*, the Constitution Bench summed up the result of the discussion, in paragraph 19 by holding :

"There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

39. In State of *Orissa through Kumar Raghvendra Singh* v. *Ganesh Chandra Jew*[5], a two Member Bench of this Court explained that the protection under Section 197 has certain limits and that it is available only when the alleged act is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The Court also explained that if in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection.

41. In *Devinder Singh* v. *State of Punjab through CBI*[8], this Court took note of almost all the decisions

on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:

*"**39.** The principles emerging from the aforesaid decisions are summarised hereunder:*

***39.1.** Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

***....**""*

(b) In *General Officer Commanding & others v. CBI & others*[6], wherein it is held thus: (paragraphs 24 and 25)

> "In fact, the issue of sanction becomes a question of paramount importance when a public servant is alleged to have acted beyond his authority or his acts complained of are in dereliction of the duty. In such an eventuality, if the offence is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, grant of prior sanction becomes imperative. It is so, for the reason that the power of the State is performed by an executive authority authorised in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power has to be exercised in terms of Article 162 thereof. (See *State of Punjab* v. *Mohd. Iqbal Bhatti* [(2009) 17 SCC 92 : (2011) 1 SCC (Cri) 949] .)
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> **47.** In *Satyavir Singh Rathi* [(2011) 6 SCC 1 : (2011) 2 SCC (Cri) 782] this Court considered the provisions of Section 140 of the Delhi Police Act, 1978 which bars the suit and prosecution in any alleged offence by a police officer in respect of the act done under colour of duty or authority in exercise of any such duty or authority without the sanction and the same shall not be entertained if it is instituted more than 3 months after the date of the act complained of. A complaint may be entertained in this regard by the court if instituted with the previous sanction of the administrator within one year from the date of the offence. This Court after considering its earlier judgments including *Jamuna Singh* [AIR 1964 SC 1541 : (1964) 2 Cri LJ 468] , *State of A.P.* v. *N. Venugopal* [AIR 1964 SC 33 : (1964) 1 Cri LJ 16] , *State of*

[6] MANU/SC/0351/2012

> *Maharashtra* v. *Narhar Rao* [AIR 1966 SC 1783 : 1966 Cri LJ 1495] , *State of Maharashtra* v. *Atma Ram* [AIR 1966 SC 1786 : 1966 Cri LJ 1498] and *Prof. Sumer Chand* v. *Union of India* [(1994) 1 SCC 64 : 1994 SCC (Cri) 99] , came to the conclusion that the prosecution has been initiated on the basis of FIR and it was the duty of the police officer to investigate the matter and to file a charge-sheet, if necessary. If there is a discernible connection between the act complained of by the accused and his powers and duties as police officer, the act complained of may fall within the description of colour of duty. However, in a case where the act complained of does not fall within the description of colour of duty, the provisions of Section 140 of the Delhi Police Act, 1978 would not be attracted."

10. On the other hand, Sri Y.Nagi Reddy, learned Public Prosecutor, assisted by Sri Soora Venkata Sainath, learned Special Public Prosecutor, appearing for 1st respondent-State in both the Criminal Petitions submitted that in the case on hand, the learned Magistrate did not take cognizance of the offence basing on the complaint, but only referred the same to police for investigation and filing report. He further submitted that the allegations made in the complaint before the learned Magistrate disclose *prima facie* cognizable offences punishable under Sections 352, 323, 330, 342, 348, 506, 195A, 166A (b) and 109 IPC. He further submitted

that in pursuance to the Order dated 08.12.2023 referring the complaint to police for investigation, police registered a case in crime No.642 of 2023 of Pulivendula (U/G) police station, Kadapa district, investigated into the same and as there is a *prima facie* case, police filed charge sheet under Section 173 (2) CrPC. He further submits that the course adopted by the learned Magistrate cannot be found fault. As regards sanction under Section 197 CrPC to prosecute A.1, he submits that protection under Section 197 CrPC cannot be extended to A.1 since the acts allegedly committed by him do not in any way come within the purview of discharge of his official duties, and hence prayed to dismiss the Criminal Petitions.

11. On the other hand, Sri T.Pradyumna Kumar Reddy, learned senior counsel appearing on behalf of the counsel for 2nd respondent/defacto complainant submits that the Order passed under Section 156 (3) CrPC is only preemptory reminder or intimation to police to exercise

its plenary power of investigation under Section 156 (1) CrPC, which consequently ends with filing of a report under Section 173 (2) CrPC, and in those circumstances, a reasoned order is not required while referring the complaint to police for investigation and only satisfaction of the learned Magistrate to investigate, is *sine qua non*. The learned senior counsel further submitted that the power under Section 156 (3) CrPC to order the police to investigate is different from the power to direct investigation conferred by Section 202 (1) CrPC. The learned senior counsel further submitted that sanction as contemplated under Section 197 CrPC is not meant to protect a public servant dealing with life or personal liberty of a man out of the law or procedure established by law. According to the learned senior counsel, a police officer has to act within the limitations of legal domain recognized by CrPC or any other enactment. He submitted that going by the averments contained in the complaint, A.1 exceeded his limits so as to seek protection under Section 197 CrPC. He submits that

the requirement of sanction under Section 197 CrPC for prosecution of a public servant arises only when cognizance is taken and no such sanction is required at the stage of setting the law into motion and reference under Section 156 (3) CrPC for investigation, and hence, he prays to dismiss the Criminal Petitions.

12. Heard and perused the record.

13. 2nd respondent/defacto complainant lodged a private complaint vide CFR No.1114 of 2021 before the learned Judicial Magistrate of First Class, Pulivendula against the petitioners in the present Criminal Petitions and the learned Magistrate, vide Order dated 08.12.2023 passed in CFR No.1114 of 2021 passed the following Order:

> "Complainant present. Complaint is forwarded to SHO, Pulivendula u/S.156 (3) CrPC to investigate and for final report."

Pursuant to the said order passed by the learned Magistrate, police registered a case in crime No.642 of

2023 of Pulivendula (U/G) police station, Kadapa district for the offences punishable under Sections 352, 323, 330, 342, 348, 506, 195A, 166A (b) and 109 IPC, and laid charge sheet after completion of investigation.

14. It is the contention of Sri Gudipati Venkateswara Rao, learned counsel for petitioners in Criminal Petition No.10080 of 2023 (A.2 and A.3) that applications under Sections 154 (1) and 154 (3) CrPC are essential before filing a complaint seeking to forward the same under Section 156 (3) CrPC. He contended that these aspects should be clearly spelt out in the complaint. This Court perused the complaint and the affidavit filed by 2nd respondent/defacto complainant. The averments of the said documents would clearly go to show that 2nd respondent/defacto complainant was pressurized by A.1, with the active connivance of A.2 and A.3, to give false evidence implicating unconnected persons into the said crime, and when he refused, he was beaten and abused by A.1 at the instance of A.2 and

A.3 in various ways. He categorically alleged that he approached the local police, but there was no response from them. Then, he gave a petition to the Superintendent of Police, YSR Kadapa district on 13.12.2021, but inspite of the same, he did not take any action on the complaint given by 2nd respondent/defacto complainant. Hence, he filed the complaint before the learned Magistrate for forwarding the same to police concerned for registration of FIR and investigation. These aspects spelt out in the sworn affidavit filed along with the complaint, are in accordance with Sections 154 (1) and 154 (3) CrPC. A perusal of the material on record further discloses that on 07.01.2022, the complaint was returned with an objection that the complaint should be supported by an affidavit duly sworn in, by the complainant. Thereafter, on 11.01.2022, the complaint was represented by complying with the objection, by filing the sworn affidavit. A perusal of the material on record further discloses that thereafter, the said complaint was being adjourned from time to time and on

08.12.2023, the learned Magistrate passed order forwarding the same to the Station House Officer concerned for investigation and filing report. Therefore, from the recitals in the complaint and the sworn affidavit, it is clear that as the concerned police have not taken any action by registering the FIR as contemplated under Section 154 (1) CrPC, 2nd respondent/defacto complainant sent a copy of the complaint on 13.12.2021 to the Superintendent of Police concerned, and as there was no action by the said authority also, he filed the private complaint before the learned Magistrate. Therefore, the statutory requirements under Sections 154 (1) and 154 (3) CrPC are complied with.

15. Learned counsel for petitioners further submitted that the learned Magistrate passed the Order dated 08.12.2023 mechanically by forwarding the same to police concerned for investigation and filing report and it is *bereft* of any reasons. He laid emphasis on the ruling in *Priyanka Srivastava & another v. State of Uttar*

Pradesh & others case (1 supra). Section 156 (3) CrPC deals with police officer's powers to investigate cognizable case. As per Section 156 (3) CrPC, any Magistrate empowered under Section 190 CrPC may order such an investigation as above-mentioned. Basing on the principle laid down in *Priyanka Srivastava & another v. State of Uttar Pradesh & others* (1 supra), the learned counsel continued to contend that the Order dated 08.12.2023 passed by the learned Magistrate is not sustainable in the eye of law.

16. In *Priyanka Srivastava & another v. State of Uttar Pradesh & others* case (1 supra), one Prakash Kumar Bajaj availed housing loan from financial institutions and defaulted in repayment of the same, and thereby invited proceedings under the SARFAESI Act. He challenged them in Writ Petition, but the same was dismissed. It was then he filed a complaint before learned Magistrate for offences under Sections 163, 193, 506 of the IPC as against the Vice President, Assistant

President, Managing Director and other officers of a Nationalized Bank. That complaint was dismissed. He filed a revision and a learned Additional Sessions Judge allowed the revision and remanded the matter to the learned Magistrate. Thereafter the learned Magistrate took cognizance and issued summons. Then the high ranking officers challenged it under Section 482 CrPC. The High Court quashed the proceedings. Then Sri Prakash Kumar Bajaj filed another application under Section 156(3) CrPC making some more allegations against so many people and that was forwarded by the Magistrate and thereupon FIR was registered. Thereafter those officers filed quash petitions and writ petitions. It is in the context of above facts, the Hon'ble Apex Court opined that there should not be any misuse of criminal justice machinery by unscrupulous elements. The same was set out by Their Lordships as under: (paragraph No.1)

> *"The present appeal projects and frescoes a scenario which is not only disturbing but also has the*

potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the court, as if, it is a laboratory where multifarious experiments can take place and such skilful persons can adroitly abuse the process of the court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurise in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one-time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount."

In order to contain frivolous complaints filed by unscrupulous elements and in order to bar them from misusing the criminal justice machinery, it is laid down that the complaint has to be supported by an affidavit and the complainant should have exhausted the remedies under Section 154 (1) and 154 (3) CrPC.

17. Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many

words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. (see *Mohd. Yousuf v. Afaq Jahan (smt.) and another* (2006) 1 SCC 627).

18. When a Magistrate applies his mind not for the purpose of proceeding under subsequent sections of Chapter XVI CrPC but for taking action some other kind viz. ordering investigation under Section 156 (3) CrPC, he cannot be said to have taken cognizance of the offence. The said observations by Das Gupta, J. in *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerji* AIR 1950 Cal 437 are approved by *R.R.Chari v. State of Uttar Pradesh* (1951) SCR 312.

19. In *Devarapally Lakshminarayana Reddy & others v. V.Narayana Reddy & others,*[7] it is held thus: (paragraphs 18 and 19).

> **"18.** In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under Section 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200 CrPC, which is the first step in the procedure prescribed under that chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police under Section 156.
>
> **19.** This being the position, Section 202(1), first proviso was not attracted. Indeed, it is not necessary for the decision of this case to express any final opinion on the ambit and scope of the first proviso to Section 202(1) of the Code of 1973. Suffice it to say, the stage at which Section 202 could become operative was never reached in this case. We have therefore in keeping with the well established practice of the Court, decided only that much which was essential for the disposal of this appeal, and no more."

20. In *Suresh Chand Jain v. State of M.P. & another,* it is held thus: (paragraphs 8 and 9).

> **"8.** The investigation referred to therein is the same investigation, the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the

[7] (1976) 3 SCC 252

entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e.

"or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him."

21. The principle laid down in *Priyanka Srivastava & another v. State of Uttar Pradesh & others* case (1 supra) is a consequence of misuse of criminal justice mechanism by unscrupulous elements. The said principle is a procedural safeguard in order to contain frivolous complaints being filed. In the present case on hand, though the learned Magistrate has not stated in many words, has referred the case to police under Section 156 (3) CrPC for investigation. In pursuance to the same, police registered the FIR, investigated into the case and filed the charge sheet. The learned Public Prosecutor appearing for 1st respondent-State submitted that a charge sheet has been filed and returned for want of sanction under Section 197 CrPC. Irrespective of the same, when once the police have investigated into the case and filed charge sheet, by of it, it can be safely inferred that *prima facie* case is made out as against the petitioners/A.1 to A.3. The fact that merely because the learned Magistrate has not passed a reasoned order would not prejudice the petitioners herein for the reason

that police have thoroughly investigated into the case and filed the charge sheet. At this stage, the petitioners are not entitled to raise a question that no reasoned order has been passed by the learned Magistrate.

22. On a perusal of the catena of judgments, it is made clear that while passing an order under Section 156 (3) CrPC, the learned Magistrate does not take cognizance. The order of the Magistrate is in the nature of a pre-emptory reminder or intimation to the police to exercise their primary duty and power of investigation. The power of the Magistrate under Section 156 (3) CrPC is not affected by the provisions of Sections 202 CrPC, for the reason that these powers are exercised before cognizance is taken. There may be circumstances where the learned Magistrate, before taking cognizance of the case by himself, chooses to order a pure and simple investigation under Section 156 (3) CrPC. These cases would fall in different class. This view was also taken by

the Hon'ble Supreme Court. (see *Rameshbhai Pandurao Hedau v. State of Gujarat* (2010) 4 SCC 185).

23. On this aspect, it is pertinent to refer to an Order dated 13.12.2023 rendered by a learned single Judge of this Court in Criminal Petition No.5562 of 2019, wherein it is held thus:

> "The fact that there was no misuse of criminal justice machinery is very clear since that complaint was thoroughly investigated into by the state police and they filed the charge sheet also. It is at that belated stage, this accused is not entitled to raise a question as to the efficacy of the complaint before the learned trial court. Even otherwise, the order of the Magistrate in forwarding a complaint to the police under section 156(3) CrPC does not really require any more elaboration except a direction is clear from the mandate laid down by the Hon'ble Supreme Court of India in Supreme Bhiwandi wada's case mentioned earlier. It is in these circumstances, this court finds no merit in the petition and there is no merit in the legal submissions argued on behalf of the petitioner."

24. When a *prima facie* case is made out, at this stage, the petitioners cannot question the same on the ground that the learned Magistrate has not passed a reasoned order while forwarding the complaint to police under Section 156 (3) CrPC. By virtue of the police filing charge sheet, making it clear that there is a *prima facie* case made out as against the petitioners, the

procedural safeguards as envisaged in *Priyanka Srivastava & another v. State of Uttar Pradesh & others* case (1 supra) have been taken care of. At this stage, quashing the proceedings on the ground that no reasoned order has been passed by the learned Magistrate, would trigger to unintended consequences. The entire exercise done by the police would be put at naught.

25. The other ground raised by the learned counsel appearing for petitioner/A.1 is that sanction has not been obtained as contemplated under Section 197 CrPC to prosecute A.1. He relied upon the decision in In *A.Srinivasulu v. the State rep. by the Inspector of Police* case (5 supra) and submitted that sanction is required not only for the acts done in discharge of his official duty but also required to any act purported to be done in discharge of official duty or authority.

26. Section 197 CrPC reads thus:

"Prosecution of Judges and public servants:

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction(save as otherwise provided in the Lokpal and Lokayuktas Act, 2013)-

(a) in the case of a person who is employed, or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a Sate, of the State Government."

A bare reading of the said provision would go to show that sanction is required for prosecution of a public servant who is accused of any offence alleged to have been committed by him while acting or purportedly acting in discharge of his official duties.

27. Referring to the factual aspects, it is alleged that A.1 confined 2nd respondent/defacto complainant

wrongfully and pressurized him to give false evidence before the Hon'ble Court/Magistrate under Section 164 CrPC incriminating the persons who are unconnected to the crime No.642 of 2023 of Pulivendula (U/G) police station, Kadapa district. It is alleged that on 30.11.2021, A.1 threatened 2nd respondent/defacto complainant and his two sons that he would talk to parents of bride and see that marriage of his second son is stopped, and in consequence of his threat, on 01.11.2021, A.2 and A.3 invited parents of bride and threatened them of dire consequences, resulting in cancellation of the marriage, which was scheduled to be held on 09.12.2021. On a plain reading of the allegations in the complaint would go to show that it clearly indicates that the accused conspired together and committed the offence against 2nd respondent/defacto complainant.

28. In the background of the said accusations, the judgment relied on by the learned counsel for

petitioner/A.1 in *A.Srinivasulu v. the State rep. by the Inspector of Police* case (5 supra) has been distinguished in the decision in *Shadakshari v. State of Karnataka & another*[8] case, wherein it is held thus: (paragraphs 26, 27 and 28).

> **"26.** After the hearing was over, learned counsel for respondent No. 2 circulated a judgment of this Court in *A. Srinivasulu* v. *State Rep. by the Inspector of Police*, 2023 SCC OnLine SC 900 in support of the contention that a public servant cannot be prosecuted without obtaining sanction under Section 197 of Cr. P.C. We have carefully gone through the aforesaid decision rendered by a two Judge Bench of this Court in *A. Srinivasulu* (supra). That was a case where seven persons were chargesheeted by the Central Bureau of Investigation (CBI) for allegedly committing offences under Section 120B read with Sections 420, 468, 471 along with Sections 468 and 193 IPC read with Sections 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act, 1988'). Four of the accused persons being A-1, A-2, A-3 and A-4 were officials of Bharat Heavy Electricals Limited, a public sector undertaking and thus were public servants both under the IPC as well as under

[8] 2024 SCC OnLine SC 48

the P.C. Act, 1988. Accused No. 1 had retired from service before filing of the chargesheet. Insofar accused Nos. 3 and 4, the competent authority had refused to grant sanction but granted the same in respect of accused No. 1. It was in that context that this court considered the requirement of sanction under Section 197 Cr. P.C. *qua* accused No. 1 and observed that accused No. 1 could not be prosecuted for committing the offence of criminal conspiracy when sanction for prosecuting accused Nos. 3 and 4 with whom criminal conspiracy was alleged, was declined. This court held as follows:

"52. It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 and A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal conspiracy with the others to commit these offences. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that the decisions taken were in the realm of commercial wisdom of the Company. If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to

disentitle him for protection under Section 197(1) of the Code."

27. Admittedly, facts of the present case are clearly distinguishable from the facts of *A. Srinivasulu* (supra) and, therefore, the said decision cannot be applied to the facts of the present case.

28. The question whether respondent No. 2 was involved in fabricating official documents by misusing his official position as a public servant is a matter of trial. Certainly, a view can be taken that manufacturing of such documents or fabrication of records cannot be a part of the official duty of a public servant. If that be the position, the High Court was not justified in quashing the complaint as well as the chargesheet in its entirety, more so when there are two other accused persons besides respondent No. 2. There is another aspect of the matter. Respondent No. 2 had unsuccessfully challenged the complaint in an earlier proceeding under Section 482 Cr. P.C. Though liberty was granted by the High Court to respondent No. 2 to challenge any adverse report if filed subsequent to the lodging of the complaint, instead of confining the challenge to the chargesheet, respondent No. 2 also assailed the complaint as well which he could not have done."

29. In other words, the essential requirements postulated to obtain sanction to prosecute public servants are that the act must have been done while acting or purporting to act in discharge of his official duties. If any act or omission is committed by a public servant, it would amount to be an integral part of his performance of his duty. In those circumstances, public servant is entitled to protection under Section 197 CrPC. In such circumstances, without previous sanction, the offences alleged against a person cannot be proceeded. The protection of obtaining prior sanction is an assurance to honest and sincere officers to discharge their duties to the best of their ability. However, any public servant who performs his duty under the colour of public authority, cannot be camouflaged to commit a crime. In view of the principle laid down in *Shadakshari v. State of Karnataka & another* case (8 supra), when the acts attributed to the accused do not form integral part of discharge of his official duties, Section 197 CrPC or Section 140 of the Delhi Police Act, 1978 would not be

made applicable to such persons. Even assuming for the sake of arguments that the provisions of the Delhi Police Act, 1978 apply, if the acts of the accused are exceeded, then the police officer cannot take shelter under Section 140 of the Delhi Police Act, 1978.

30. In the present case, using of third degree methods on 2nd respondent/defacto complainant in order to compel him to give false evidence implicated unconnected persons into the crime, would not certainly come within the discharge of official duties of A.1. The alleged acts of A.1 are not integrally connected with discharge of his official duties. The learned Public Prosecutor contended that the aforesaid the petitioner/ A.1 was relieved from the investigation in the above case on 29.03.2023 and the CBI pleased before the Hon'ble Supreme Court that SIT is reconstituted for expeditious investigation and the same is reflected in the Order dated 29.03.2023 passed by the Hon'ble Supreme Court of India in W.P. (Criminal) No.104 of 2023.

31. The paramount duty of the State functionaries is to protect the citizens and not to commit gruesome offences against them. The diabolic recurrence of police torture results in a terrible scarce in the minds of the common citizens. The exaggerated adherence to, and insistence upon, the establishment of proof beyond every reasonable doubt by the prosecution, at times, even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system vulnerable.

32. The acts alleged against A.1 in compelling 2nd respondent/defacto complainant to give false evidence would fall outside the discharge of his public duty and it is inconceivable that the case of A.1 would come within the purview of Section 197 CrPC.

33. It is the submission of the learned counsel appearing for petitioner/A.1 that A.1 is Superintendent of Police, C.B.I. and there is protection under Section 140 of the Delhi Police Act, 1978. According to Section 1 of the Delhi Police Act, 1978, the said Act extends to the whole of the Union Territory of Delhi. As per Section 2 (f) of the Act, 'Delhi' means the Union Territory of Delhi. As per Section 2 (g) of the Act, 'Delhi police' or 'police force' means the police force referred to, in Section 3 and includes (i) all persons appointed as special police officers under sub-section (1) of section 17 and additional police officers appointed under section 18; and (ii) all other persons, by whatever name known, who exercise any police any police function in any part of Delhi. From a reading of the provisions of the said Act makes it clear that the said Act applies only to Union Territory of Delhi and the same is not applicable to C.B.I.

34. In *Satyaveer Singh Rathi v. State through CBI,*[9] it is held thus: (paragraphs 82, 83 and 90)

> **"82.** Sub-section (1) of Section 140 is reproduced below:
>
> "**140.*Bar to suits and prosecutions***.—(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:
>
> Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.
>
> (2)-(3)***"
>
> This section postulates that in order to take the shelter of the period of three months referred to therein the act done, or the wrong alleged to have been done by the police officer should be done under the colour of duty or authority or in excess of such duty or authority or was of the character aforesaid, and in no other case. It must, therefore, be seen as to whether the act of the appellants could be said to be under the colour of duty and therefore, covered by Section 140 ibidem.

[9] (2011) 6 SCC 1

> **83.** At the very outset, it must be made clear from the judgment of this Court in *Jamuna Singh case* [AIR 1964 SC 1541 : (1964) 2 Cri LJ 468] that the date of cognizance taken by a Magistrate would be the date of the institution of the criminal proceedings in a matter. The facts given above show that the cognizance had been taken by the Magistrate beyond three months from the date of incident. The larger question, however, still arises as to whether the shelter of Section 140 of the Delhi Police Act could be claimed, in the facts of this case.
> **90.** In the light of the facts that have been found by us above, it cannot, by any stretch of imagination, be claimed by anybody that a case of murder would fall within the expression "colour of duty". We find absolutely no connection between the act of the appellants and the allegations against them. Section 140 of the Delhi Police Act would, therefore, have absolutely no relevance in this case and Mr Sharan's argument based thereon must, therefore, be repelled."

On a perusal of the aforesaid judgment goes to show that the acts of the police are exceed in discharge of his official duties that the police officer cannot take shelter under Section 140 of the Delhi Police Act.

35. To sum up, the Criminal Petitions have been filed pursuant to filing of the charge sheet. A perusal of the allegations in the charge sheet goes to show that specific accusations have been made as against the petitioners/A.1 to A.3, which are severe in nature. Merely because charge sheet has been returned, it does

not preclude the complexity of the accused. It would be incredulous in seeking quashing of the proceedings on the ground that a reasoned order has not been passed, more so, when a *prima facie* case is made out for the offences alleged as against all the accused.

36. At the cost of reiteration, conspectus of the observations made in *Priyanka Srivastava & another v. State of Uttar Pradesh & others* (1 supra) are procedural safeguards, and to contain frivolous complaints from unsocial elements, the Hon'ble Apex Court observed to the extent that a reasoned order is essential. Merely because non-mentioning of reasons in the order passed by the learned Magistrate under Section 156 (3) CrPC would not in any way prejudice the accused for the reason that police conducted investigation in the subject crime and filed charge sheet. In such circumstances, I am of the opinion that non-mentioning of reasons in the order passed under Section 156 (3) CrPC by the learned Magistrate is an irregularity. When *prima facie*

accusations have been made which are grave in nature, truth or otherwise of the said accusations has to be decided during the course of trial. Investigation at this stage would amount to *denovo* investigation. Accordingly, there are no grounds to interfere in the impugned proceedings. The Criminal Petitions are devoid of merits.

37. The Criminal Petitions are, accordingly, dismissed.

Miscellaneous petitions pending, if any, in the Criminal Petitions shall stand closed.

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JUSTICE K. SREENIVASA REDDY

10.05.2024
DRK

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

COMMON ORDER
IN
CRIMINAL PETITION NOs.10080 OF 2023 &
10085 OF 2023

10.5.2024

DRK