

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.2098 OF 2017

BETWEEN

SRI. M.P. RENUKACHARYA

... PETITIONER

(BY SRI HAREESH BHANDARY T., ADVOCATE)

AND

- 1 . STATE OF KARNATAKA
LOKAYUKTHA POLICE,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
M.S. BUILDINGS,
BANGALORE.
- 2 . SRI GURUPADIAH KABBINAKANTHI MATTAD

... RESPONDENTS

(BY SRI B.S. PRASAD, ADVOCATE FOR R1
SRI J.D. KASHINATH, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN CRIME NO.6/2015 REGISTERED BY THE DAVANAGERE LOKAYUKTHA POLICE STATION ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE FOR OFFENCE PUNISHABLE UNDER SECTIONS 13(1)(e) READ WITH SECTION 13(2) OF PREVENTION OF CORRUPTION ACT, 1988 AND SECTIONS 120B AND 420 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.03.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner/accused under Section 482 of Cr.P.C. for quashing the criminal proceedings in FIR in Crime No.6/2015 registered by the Davangere Lokayukta police for the offence punishable under Sections 13 (1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 and Sections 120B and 420 of IPC pending on the file of Principal District and Sessions Judge, Davangere.

2. Heard the arguments of learned counsel for the petitioner and special counsel for respondent No.1/Lokayukta and learned counsel for respondent No.2.

3. The case of the prosecution is that on the complaint filed by respondent no.2 one Gurupadaiah the police have registered FIR on 30.11.2015 in crime No.6/2015 and it was alleged that the respondent No.2 claiming himself to be president of Brashtachara Virodi Vedike filed a private complaint under Section 200 of Cr.P.C before the special Court for Lokayukta on 28.4.2015 alleging that the petitioner had amassed wealth disproportionate to his known source of income while he was a Member of Legislature Assembly during 2004 to 2008, again from 2008 to 2013 and also from 25.12.2009 to 23.12.2013 when he was Cabinet Minister of Government of Karnataka. In the year 2004 when he had filed nomination paper for contesting the MLA election at Honnali, he has declared his assets at Rs.26,07,319/-and thereafter in the year 2008 election he had declared his

assets as Rs.73,97,828 and in the year 2013 he has declared assets as Rs.4,95,32,608/-. It was alleged that there was raise of income and assets during his tenure as Minister in the State Government of Karnataka, he along with his brother has established Educational Institution by name Bapuji Educational Institution at Shimoga and the brothers had also amassed huge wealth when the petitioner was MLA and there after became the Minister. The petitioner by using office and by abusing his official position accumulated huge movable and immobile properties, which is disproportionate to his income. Based upon the private complaint, the same was referred to Lokayukta police under section 156 (3) of Cr.P.C, in turn the police investigated the matter and submitted the report. The police in Crime No.5/2015 against the petitioner and his brothers for the offence punishable under Sections 13 (1)(d) and (e) of the Prevention of Corruption Act, 1988 and Section 120B and 420 of IPC. It is further alleged that the petitioner and his brother have challenged FIR in Crime No.5/2015 by filing

Crl.P.No.3431/2015 before the High Court. The High Court vide its order dated 04.09.2015 had allowed the petition and quashed the FIR and consequential proceedings and liberty was reserved for complainant to pursue his complaint in accordance with procedure laid down by Hon'ble Supreme Court in the case of ***Priyanaka Srivastava and Anr. Vs. State of Uttar Pradesh and other*** reported in **(2015) 6 SCC 287** and all contentions of both parties were left open.

4. Subsequently the petitioner had approached the Superintendent Police of Lokayuktha and filed the complaint and the same was registered by the Lokayuktha police in Crime No.6/2015 for the same alleged offence punishable under section 13 (1)(d) and (e) of the Prevention of Corruption Act, 1988 and section 120B and 420 of IPC and registered the FIR which is under challenge.

5. The learned counsel for the petitioner has contended based upon the same set of facts two FIR's

have been registered which is clear case of abuse of process of law and the respondent have filed false complaint against the petitioner and when the High Court set aside the FIR, the question of filing complaint to Lokayukta Police does not arise as the High Court had set aside the FIR for non following the guidelines of **Priyanaka Srivastava** stated supra. Therefore, the respondent required to file private complaint, but he has filed a direct complaint to the police which is registered as FIR. Absolutely, there is no material against the petitioner. The respondent No.2 is Janatha Dal political party, an opponent to the petitioner for prosecuting the case against the petitioner. The sanction under section 197 of Cr.P.C is mandatory which is not obtained by the prosecution, therefore the learned counsel for petitioner prayed for quashing the FIR.

6. Per contra learned special counsel for Lokayukta has contended the police already investigated the matter and final report was ready, they were waiting for receiving the sanction from the State for filing the

charge sheet and further contended that the previous complaint has been quashed by the High Court on the ground for not following the guidelines issued by the Hon'ble Supreme Court in **Priyanaka Srivastav's case** as he did not approach the police and higher official of police under section 154 (1) & 154 (3) of Cr.P.C. Therefore, in order to comply the provisions of 154 (1) of Cr.P.C, he approached the police and filed the complaint, but the Lokayukta police received the complaint and registered the FIR. Therefore, there is no need for approaching the higher officers under section 154 (3) of Cr.P.C and filing private complaint under section 200 Cr.P.C does not arises. There is no flaw in the procedure, it is not second FIR, based upon the same set of facts as in the first FIR the complaint has been quashed by the High Court and liberty was granted. Hence prayed for dismissing the petition.

7. The learned counsel for respondent No.2 also submitted the same and contended, he has acted in

accordance with law and therefore, prayed for dismissing the petition.

8. Having heard the arguments and perused the records. On perusal of the records, it is an admitted fact, the respondent No.2 filed a private complaint against this petitioner which was numbered as PCR No.2/2015 on the file of Principal District and Sessions Court and Special Court, Davangere and learned Sessions Judge referred the complaint to the SP Lokayukta under section 156 (3) of Cr.P.C. Inturn the Lokayukta police registered the FIR in Crime No.5/2015 on 2.5.2015 for the offences punishable under Sections 13 (1)(d) and (e) of the Prevention of Corruption Act, 1988 and Section 120B and 420 of IPC. It is also an admitted fact, that both petitioners approached the High Court by filing the criminal petition under section 482 of Cr.P.C and the coordinate bench of this court has quashed the FIR, in CrI.P.No.3431/2015 dated 4.9.2015 as there was no compliance of **Priyanaka Srivastav's case** for non filing the affidavit and approaching the police under section 154 of Cr.P.C. and liberty given to the complainant

to pursue the complaint in accordance with procedure laid down by the Hon'ble Supreme Court.

9. In view of the judgment of the co-ordinate bench of the High Court for having quashed the FIR and complaint for non-compliance of **Priyanaka Srivastav's case** as he had not approached the police under section 154 of Cr.P.C. Therefore, in order to comply the guidelines of the Hon'ble Supreme Court, the petitioner filed First information before Lokayukta police and immediately Lokayukta police Davangere received the complaint and registered the FIR in Crime No.6/2015 which is under challenge.

10. The learned counsel for the petitioner has contended, it is a multiple FIRs on the same complaint and he has relied upon the judgment of Hon'ble Supreme Court **AIR Online 2022 SC 1393::2022 (3) CRI LR (RAJ) 1132** and prayed for quashing the FIR. Therefore, prior to discussing the case on merits, it is worth to mention the guidelines issued by Hon'ble Supreme Court in **Priyanaka**

Srivastava's case at para.29, 30, and 31.... which is as under:-

"29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

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* [(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.”

On bare reading of the principle laid down by the Hon'ble Supreme Court at Para 31, it has held prior to invoking the provisions under section 156 (3) of Cr.P.C for referring the complaint to the police upon filing the private complaint, the complainant shall first approach the police authority under section 154 (1) Cr.P.C and if the police have not taken any action, then as per section 154(3) of Cr.P.C, the complaint shall be sent to the higher authorities like Superintendent of Police etc., Even then the police not acted upon on the complaint of the complainant, then the complainant shall approach the Magistrate by filing private complaint under Section 200 of Cr.P.C and shall get it referred to the police under section 156 (3) of Cr.P.C.

11. Admittedly, the complainant without approaching the Lokayukta police at Davangere in order to file First Information as required under section 154 (1) of Cr.P.C or 154 (3) of Cr.P.C before the Superintendent of Police, but he has directly filed private complaint before the District Court and got it referred to the police for investigation under section 156 (3) of Cr.P.C. Therefore, the co-ordinate bench of High Court has rightly quashed the FIR and the complaint. The liberty was granted to follow the procedures as per the **Priyanaka Srivastava's case**. As per the judgment of the co-ordinate bench of this court in CrI.P.No.3431/2015 dated 4.9.2015. Therefore, the respondent/complainant in order to invoke section 154(1) of Cr.P.C., he went to the Lokayukta police Davangere, for filing the complaint under section 154 (1) of Cr.P.C but the Lokayukta police received the complaint and acted upon, by registering the FIR in Crime No.6/2015 for the above said offences as on 30.11.2015. Therefore, once the case filed under section 154(1) of Cr.P.C has been complied by the complainant and the police also

registered the FIR. The question of the complainant going to the Superintendent of Lokayukta under section 154(3) of Cr.P.C does not arise. Moreover when the Lokayukta already received the complaint and registered the FIR, the question of going back to Sessions Judge for filing the complaint under Section 200 of Cr.P.C and referring the complaint under section 156(3) of Cr.P.C does not arise. As per the Hon'ble Supreme Court in **Priyanaka Srivastava's** case the litigant shall approach the Magistrate under section 200 of Cr.P.C and referring the complaint to the police under section 156 (3) of Cr.P.C only after exploring the remedies available before the police under section 154 (1) and (3) of Cr.P.C. Such being the case, the contention of the learned counsel for the petitioner that this FIR is based upon the same cause of action and multiple FIR's cannot be acceptable as there is no multiple FIR in this case, since the earlier FIR has been quashed by co-ordinate bench in CrI.P.No.3431/2015 . However, if at all the complaint in PCR is pending before the Sessions Judge, it is no use as the complainant can

withdraw the same on the ground of becoming infructuous as the police already registered FIR and investigating the matter. Therefore the judgment relied by the learned counsel for the petitioner in **AIR Online 2022 SC 1393::2022 (3) CRI LR (RAJ) 1132** is not applicable to the case on hand as there is no multiple FIR on the same cause of action. Therefore, the petition is devoid of merits and liable to dismissed.

Accordingly the criminal filed by the petitioner accused is hereby **dismissed**.

**Sd/-
JUDGE**

AKV