

ORDER BELOW EXH.01 IN CRI. M.A. NO.63/2022.

Heard learned Counsel for the applicant. He submitted that, the offence is serious in nature, which require police investigation. He submitted that, compliance under section 154 of Cr.P.C. has been made by the applicant. He prayed that, direction be given under section 156(3) of Cr.P.C. to register the crime.

02- I have gone through the record. In this regard, the Hon'ble Supreme Court held in the case of ***Priyanka Srivastava & Anr Vs State Of U.P.& Ors on 19 March, 2015 in Criminal Appeal No.781 OF 2012*** in para 27 as below :-

27. *In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. 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 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. We have already indicated that there has to be prior applications under Section 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 so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal*

sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

Further it is stated in para 32 as below :-

32. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) Cr.P.C.

03- As the above Judgment is circulated to the Court therefore, it has been mentioned here. In view of the above Judgment of the Hon'ble Supreme Court, it is obligatory to see the veracity of the allegations.

04- I have gone through the copy of complaint filed by the applicant, as per list below Exh.04. Prima-facie, it appears that, the matter pertains the dispute regarding the immovable property. The applicant has not made out the sufficient case to invoke the jurisdiction of this Court under section 156(3) of the Cr.P.C. Moreover, the applicant knocks the door of this Court on 08/04/2022. The abnormal delay and laches on the part of applicant has not explained. Thus, in view of aforesaid facts, this Court not inclined to allow this application.

05- Therefore, considering the allegations, in view of above Judgment, no case is made out to invoke the power under section 156(3) of Cr.P.C. Considering the facts and circumstances, as alleged by the applicant in the instant application, I am inclined to place the matter for verification under section 200 of Cr.P.C. Accordingly, the applicant is hereby directed to proceed further with this case as a complaint case.

Date :- 01/07/2022

(S.S. Khirapate),
Judicial Magistrate, First Class,
Uran.