

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**Reserved on: 14.3.2023
Pronounced on: 26.04.2023**

CRM(M) 231/2022
c/w
CRM(M) 273/2022, CRM(M) 274/2022,
CRM(M) 286/2022, CRM(M) 300/2022

Harbachan Singh

... Petitioner/Appellant(s)

Through: Mr. M. I. Dar, Advocate

V/s

Sr. Superintendent of Police Srinagar and others

Through: Mr. Sajad Ashraf, GA with Investigating Officer
Mr. Faisal Qadiri, Sr. Adv. with Mr. Salih Pirzada, Advocate

CORAM: **HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

J U D G M E N T

1. The instant petitions raise issues which are akin and analogous to each other as such are disposed of by this common judgment. The petitioners have questioned order dated 3.6.2022 passed by 2nd Additional Munsiff/Judicial Magistrate 1st Class, Srinagar (hereinafter the Magistrate) and the consequential FIR 49/2022 for offences under sections 506, 420, 120-B IPC registered by official respondents thereon against the petitioners herein upon an application filed by complainant/respondent 3 herein under Section 156 (3) of the Criminal Procedure Code (hereinafter CrPC) wherein the complainant/respondent 3 had alleged that the accused person (petitioner of petition-CRM (M) No. 273/2022) being known to him while residing in Delhi had approached him

in the year 2017 for making investments in the construction business he had been in with his family and offered him to invest in his three construction companies namely A. S. Build Pro LLP, Vicky Residenz LLP and Vicky Associates LLP and with an assurance that in the event of investing in the said companies, the complainant/ respondent 3 herein will get profits within a period of six months up to one year and in this way, a conspiracy was alleged to have been hatched by the accused person for making the complainant/respondent 3 to invest his money into the said construction business and that from the year 2017 to 2019 the complainant/respondent 3 herein invested an amount of Rs. 1,75,76,961/- through bank by way of RTGS in the account of M/s A. S. BuildPro Limited and that the said amount was in fact extorted by the accused person/petitioner herein from the complainant/respondent 3 herein without making any payments in return thereof, and upon making a demand by the complainant/respondent 3 herein for return of his money, the accused persons/petitioners herein threatened the complainant/respondent 3 herein and his family and in the process committed several criminal acts and even tried to kill the respondent 3 and his family, whereupon the complainant/respondent 3 approached the SHO Police Station Zakura for taking an action against the accused persons, which, however, he failed to take, and that the complainant/respondent 3 again on 31.3.2022 submitted a written complaint before the said Police Station requesting therein for registration of an FIR against the accused persons which too was not done whereafter the

complainant respondent 3 approached the SP/SSP concerned who too as well did not take any action necessitating the filing of application under Section 156(3) CrPC.

2. The Magistrate while considering the application, affidavit and documents appended thereto observed in the impugned order that there is commission of cognizable offence and, as such, directed respondent 2 to register an FIR and submit compliance report before him while placing reliance on the judgment of the Apex court passed in case titled "**Lalita Kumari vs. Government of UP and others reported in (2014) 2 SCC 1**", opining that the registration of FIR is mandatory under Section 154 CrPC if the information discloses the commission of a cognizable offence and that no preliminary enquiry is permissible in such a situation.
3. After passing of the impugned order, the respondent 2 herein registered the impugned FIR against the petitioners herein on 10.6.2022.
4. The impugned order as also the FIR are being challenged on the grounds urged in the petition.

Heard learned counsel for the parties and perused at the record.

5. Mr. M. I. Dar appearing counsel for the petitioners while making his submissions reiterated the contentions raised and the grounds urged in the petitions and would vehemently pray for quashment of the impugned order as well as the FIR, whereas on the contrary Mr. Faisal Qadiri, senior advocate, appearing counsel for respondent 3 and Mr. Sajad Ashraf, GA appearing counsel for respondents 1 and 2, would pray for the dismissal of the petitions

while opposing the contentions raised and grounds urged by Mr. Dar.

6. The fundamental ground being urged in the instant petitions by the petitioners is against the impugned order dated 3.6.2022 passed by the Magistrate upon the application filed by the complainant respondent 3 herein under Section 156 (3) CrPC and the consequential registration of impugned FIR by the respondent no. 2 pursuant to the impugned order.
7. Before advertng to the issues and grounds raised and urged in the instant petition, it would be appropriate to refer to the parameters in regard to the exercise of power under Section 156 (3) of the CrPC laid down by the Apex court in **Lalita Kumari's** case *supra* wherein following conclusion and directions came to be drawn and passed by the Apex court:

“120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

Furthermore, the Apex Court in case titled as **Priyanka Srivastava and another versus State of U. P. and others reported in (2015) 6 SCC 287** also laid down the following at para 31 in regard to Section 154 to 156(3) CrPC:-

“31. 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 the 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.”

8. Keeping in mind the aforesaid principles and position of law laid down by the Apex court in the judgments supra and reverting back to the case in hand, the Magistrate while directing registration of the impugned FIR in the impugned order though has in detail referred to the contents of the application in the order, yet has overlooked the said principles in particular para 120.6 which risking repetition in explicit terms provides that cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months’ delay in reporting the matter without satisfactorily explaining the reasons for delay, a preliminary inquiry be ordered in the matter, as a bare perusal of the application filed by the complainant/respondent no. 3 alleged the acts/offences committed by the accused persons/petitioners in the year 2019 without there being any explanation offered by the complainant/respondent no. 3 as to what prevented him then from approaching the official respondents for an action against the accused persons/petitioners, in that in the application it is admittedly averred that the

complainant/respondent no. 3 had submitted an application before the official respondents on 31.3.2022 for initiating an action against the accused persons/petitioners. There apparently has been a considerable delay in seeking registration of FIR by complainant/respondent no. 3 against the accused persons/petitioners for the commission of offences allegedly committed against the complainant/respondent no. 3 and his family initially in the month of September, 2019. The Magistrate apparently has not considered this aspect of the matter while overlooking clause (e) of para 126.6 of **Lalita Kumari's** case supra. The Magistrate in view of the aforesaid position, facts and circumstances of the case was required to have directed holding of a preliminary inquiry in the matter. The record of the case also reveals that the Magistrate has even ignored mandate of para 31 (supra) of the judgment passed by the Apex court in **Priyanka Srivastava's** case supra. The Magistrate apparently has exhibited not only lack of application of mind to the material on record but also seems to have approached the case very lightly and in a mechanical manner. The matter seemingly has not received appropriate consideration by the Magistrate thus requiring the remanding of the same back to the Magistrate for its revisiting and reconsideration.

9. Though the settled position of law is that the power to quash an FIR and consequential investigation is supposed to be exercised and used sparingly and rarely, but is required to be used when the High Court is satisfied that the same would result in miscarriage of justice. All the conditions under which the impugned order and

the consequential impugned FIR can be quashed on the threshold are present in the instant case for the reasons detailed out in the preceding paras.

10. In the background of what has been observed, considered and analyzed hereinabove, the impugned order dated 03.6.2022 and the consequential impugned FIR 49/2022 are liable to be quashed. Resultantly, the petitions are allowed and the impugned order dated 3.6.2022 is set aside and consequential FIR 49/2022 quashed and the matter is remanded back to the Magistrate for revisiting and reconsidering the application filed by the complainant respondent 3 herein under Section 156(3) CrPC against the accused persons/petitioners herein in accordance with law.

It is made clear that nothing herein shall be construed to be an expression of any opinion on the veracity or otherwise of the allegations leveled by the complainant/respondent no. 3 in the application filed under Section 156(3) against the accused persons/petitioners herein.

A copy of this judgment shall be placed on the record of each of the petitions.

JAVED IQBAL WANI)
JUDGE

Srinagar
26-04-2023
N Ahmad

Whether the order is reportable: Yes