A MRS. PRIYANKA SRIVASTAVA AND ANOTHER

v.

STATE OF U.P. AND OTHERS

B (Criminal Appeal No.781 of 2012)

MARCH 19, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

C *Code of Criminal Procedure, 1973: s.156(3) – Power under, scope – Borrower-respondent no.3 who defaulted in repayment of loan and against whom action under SARFAESI Act was taken filed criminal cases against the* D *bank officials – Borrower and the bank officials entered one time settlement with stipulation to withdraw various cases – Borrower had filed another application u/s. 156(3) alleging cheating against the bank officials and FIR was registered in that complaint – In the OTS, borrower did not disclose about* E *the said FIR – Appellants-bank officials moved High Court – High Court refused to interfere – Held: The FIR is liable to be quashed – The purpose of respondent no.3 was to only harass the appellants with the sole intent to avoid the payment of loan – The Magistrate should have kept himself alive to* F *the provision relating to protection of action against secured creditors or any of its officers before venturing into directing registration of the FIR u/s.156(3) – SARFAESI Act.*

Allowing the appeal the Court

G

HELD: 1. When a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of

H

Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the Magistrate. It also encourages the unscrupulous and unprincipled litigants, like respondent no.3, to take adventurous steps with courts to bring the financial institutions on their knees. Respondent no. 3 had prosecuted the earlier bank authorities and after the matter was dealt with by the High Court in a writ petition recording a settlement, he did not withdraw the criminal case and waited for some kind of situation where he could take vengeance. During the tenure of appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of appellant No.1. The devilish design of the respondent No.3 was to harass the appellants with the sole intent to avoid the payment of loan. [Paras 24, 25 and 26] [132-F-H; 133-A-C]

2. The power under Section 156(3) warrants application of judicial mind. It is not the police taking steps at the stage of Section 154, Cr.P.C. 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 litigation takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same. A stage has come in this country where Section 156(3) Cr.P.C. applications

A 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 Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This B affidavit can make the applicant more responsible. 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 C 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 D undue advantage in a criminal court as if somebody is determined to settle the scores. 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 E necessary documents to that effect shall be filed. The direction that an application under Section 156(3) be supported by an affidavit shall deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, the veracity of the same can also be F verified by the Magistrate, regard being had to the nature of allegations of the case. The Magistrate should have kept himself alive to the provision relating to protection of action against secured creditors or any of its officers before venturing into directing registration G of the FIR under Section 156(3) Cr.P.C. [Paras 26, 27 and 30] [133-F-H; 134-A-G; 135-E]

Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and others **2012 (8)** H

SCR 1015 : (2012) 10 SCC 517; *Devarapalli Lakshminarayana Reddy and Ors. v. V. Narayana Reddy and Ors.* **1976 (0) Suppl. SCR 524 : (1976) 3 SCC 252;** *Anil Kumar v. M.K. Aiyappa* **2013 (9) SCR 869 : (2013) 10 SCC 705;** *Dilawar Singh v. State of Delhi* **(2007) 12 SCC 496;** *CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.* **2005 (2) Suppl. SCR 873 : (2005) 7 SCC 467;** *Ramdev Food Products Private Limited v. State of Gujarat* **Criminal Appeal No. 600 of 2007 decided on 16.03.2015;** *Lalita Kumari v. Govt. of U.P.* **(2014) 2 SCC 1 – relied on.**

Case Law Reference

2012 (8) SCR 1015	**Relied on.**	**Para 4**
1976 (0) Suppl. SCR 524	**Relied on.**	**Para 18**
2013 (9) SCR 869	**Relied on.**	**Para 19**
(2007) 12 SCC 496	**Relied on.**	**Para 20**
2005 (2) Suppl. SCR 873	**Relied on.**	**Para 21**
(2014) 2 SCC 1	**Relied on.**	**Para 23**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 781 of 2012

From the judgment and order dated 23.12.2011 of the High Court of Judicature at Allahabad in Crl. Misc. W.P. No. 24561 of 2011

Ajay Kumar, Sudeep Dey for the Appellants.

Vikrant Yadav, Gaurav Dhingra, Ashutosh Sharma, Sunil Kumar Jain, Kaushik Chaudhary, Akarsh Garg for the

A Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 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 skillful 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 pressurize 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.

2. The facts which need to be stated are that the respondent No.3, namely, Prakash Kumar Bajaj, son of Pradeep Kumar Bajaj, had availed a housing loan from the financial institution, namely, Punjab National Bank Housing Finance Limited (PNBHFL) on 21st January, 2001, vide

housing loan account No.IHL-583. The loan was taken in the name of the respondent No.3 and his wife, namely, Jyotsana Bajaj. As there was default in consecutive payment of the installments, the loan account was treated as a Non-Performing Asset (NPA) in accordance with the guidelines framed by the Reserve Bank of India. The authorities of the financial institution issued notice to the borrowers under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short, 'the SARFAESI Act') and in pursuance of the proceedings undertaken in the said Act, the PNBHFL, on 5th June, 2007, submitted an application before the District Magistrate, Varanasi, U.P. for taking appropriate action under Section 13(4) of the SARFAESI Act.

3. At this juncture, the respondent No.3 preferred W.P. No. 44482 of 2007, which was dismissed by the High Court on 14th September, 2007, with the observation that it was open to the petitioner therein to file requisite objection and, thereafter, to take appropriate action as envisaged under Section 17 of the SARFAESI Act. After the dismissal of the writ petition with the aforesaid observation, the respondent No.3, possibly nurturing the idea of self-centric Solomon's wisdom, filed a Criminal Complaint Case No.1058 of 2008, under Section 200 Cr.P.C. against V.N. Sahay, Sandesh Tiwari and V.K. Khanna, the then Vice-President, Assistant President and the Managing Director respectively for offences punishable under Sections 163, 193 and 506 of the Indian Penal Code (IPC). It was alleged in the application that the said accused persons had intentionally taken steps to cause injury to him. The learned Magistrate vide order dated 4th October, 2008, dismissed the criminal complaint and declined to take cognizance after recording the statement of the complainant under Section 200 Cr.P.C.

A and examining the witnesses under Section 202 Cr.P.C.

4. Being grieved by the aforesaid order, the respondent No.3 preferred a Revision Petition No.460 of 2008, which was eventually heard by the learned Additional Sessions B Judge, Varanasi, U.P. The learned Additional Sessions Judge after adumbrating the facts and taking note of the submissions of the revisionist, set aside the order dated 4th October, 2008 and remanded the matter to the trial Court with the direction that he shall hear the complaint again C and pass a cognizance order according to law on the basis of merits according to the directions given in the said order. Be it noted, the learned Additional Sessions Judge heard the counsel for the respondent No.3 and the learned counsel for the State but no notice was issued to the accused persons D therein. Ordinarily, we would not have adverted to the same because that lis is the subject matter in the appeal, but it has become imperative to do only to highlight how these kind of litigations are being dealt with and also to show the E respondents had the unwarranted enthusiasm to move the courts. The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons. A three-Judge F Bench in Manharibhai Muljibhai Kakadia and Anr. v. ***Shaileshbhai Mohanbhai Patel and others***[1] has opined that in a case arising out of a complaint petition, when travels to the superior Court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages G are reproduced hereunder:

> 46. .....If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the

H

[1] (2012) 10 SCC 517

question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/ suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

xxxxx xxxxx xxxxx

48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203-although it is at preliminary stage-nevertheless results in termination of proceedings in a complaint

against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

xxxxx xxxxx xxxxx

53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan2, Raghu Raj Singh Rousha3 and A.N. Santhanam4. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the

accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process."

Though the present controversy is different, we have dealt with the said facet as we intend to emphasize how the Courts have dealt with and addressed to such a matter so that a borrower with vengeance could ultimately exhibit his high-handedness.

5. As the narration further proceeds, after the remand, the learned Magistrate vide order dated 13th July, 2009, took cognizance and issued summons to V.N. Sahay, Sandesh Tripathi and V.K. Khanna. The said accused persons knocked at the doors of the High Court under Section 482 Cr.P.C. and the High Court in Crl. Misc. No.13628 of 2010, by order dated 27th May, 2013, ruled thus:

"A perusal of the complaint filed by the respondent no.2

A also indicates that the issues were with regard to the action of the bank officers against respondent no.2 on the ground of alleged malafide and as such an offence under sections 166/500 I.P.C. was made out. Both the sections are non cognizable and bailable and triable by
B Magistrate of First Class. For the foregoing reasons the 482 Petition deserves to be allowed and the criminal complaint filed by the respondent no.2 being Complaint Case No.1058 of 2009 is liable to be quashed.

C Accordingly the application under section 482 Cr.P.C. is allowed and the Criminal Complaint Case No.1058 of 2009, Prakash Kumar Bajaj versus P.N.B. Housing Finance Ltd. And others, pending in the Court of Additional Chief Judicial Magistrate, Court No.2
D Varanasi is quashed."

6. Presently, we are required to sit in the time machine for a while. In the interregnum period the borrowers filed an objection under Section 13(3A) of the SARFAESI Act. Be it
E noted, as the objection was not dealt with, the respondent No.3 preferred W.P. No.22254 of 2009, which was disposed of on 5th May, 2009 by the High Court, directing disposal of the same. Eventually, the objection was rejected
F by the competent authority vide order dated June 1, 2009. Being grieved by the aforesaid order of rejection, the respondent No.3 filed Securitisation Appeal No.5 of 2010, before the Debt Recovery Tribunal (DRT), Allahabad, U.P., which was rejected vide order dated 23rd November, 2012.
G The non-success before the DRT impelled the borrowers to prefer an appeal before the Debts Recovery Appellate Tribunal (DRAT), Allahabad, U.P.

7. At this stage, it is apposite to state that the third
H respondent, if we allow ourselves to say so, have possibly

mastered how to create a sense of fear in the mind of the officials who are compelled to face criminal cases. After the High Court had quashed the earlier proceeding, the third respondent, in October, 2011, filed another application under Section 156(3) CrPC against V.N. Sahay, Sandesh Tripathi and V.K. Khanna alleging criminal conspiracy and forging of documents referring to three post-dated cheques and eventually it was numbered as Complaint Case No. 344/2011, which gave rise to FIR No. 262 of 2011 under Sections 465, 467, 468, 471, 386, 506, 34 and 120B IPC. Being not satisfied with the same, on 30.10.2011, he filed another application under Section 156(3) against the present appellants alleging that there has been under-valuation of the property. It was numbered as Complaint Case No. 396/2011 wherein the Trial Magistrate directed the SHO to register FIR against the present appellants. Pursuant to the said order, FIR No. 298/2011 was registered.

8. At this juncture, it is imperative to state that the third respondent made the officials agree to enter into one time settlement. The said agreement was arrived at with the stipulation that he shall withdraw various cases filed by him on acceptance of the one time settlement. As the factual matrix would reveal, the third respondent did not disclose about the initiation of the complaint cases no. 344/2011 and 396/2011. On 28.11.2011, the one time settlement was acted upon and the third respondent deposited Rs.15 lakhs.

9. At this stage, it is apt to mention that V.N. Sahay and two others approached the High Court of Allahabad in Writ (C) No. 17611/2013 wherein the learned Single Judge heard the matter along with application under Section 482 CrPC in Crl. Misc. No. 13628/2010. We have already reproduced the relevant part of the order passed therein. Be

A it noted, the writ petition has also been disposed of by the High Court by stating thus:

> "Heard Mr. Manish Trivedi, learned counsel for the petitioner, Mr. Vivek Kumar Srivastava, learned counsel
B appearing on behalf of respondent no.3 and learned AGA.
>
> It is submitted by learned AGA that in the present case investigation has been completed and final report has
C been submitted, considering the same, this petition has become infructuous.
>
> The interim order dated 2.12.2011 is hereby vacated.
>
> Accordingly, this petition is disposed of."
D

10. At this juncture, we are impelled to look at the past again. The respondent had preferred, as has been stated before, an appeal before the DRAT. The said appeal was numbered as Appeal No. 5 of 2013. In the said appeal, the
E following order came to be passed:

> "During the pendency of the said application, a proposal was submitted by the borrower to settle the claim for an amount of Rs.15.00 lacs. The said proposal was
F accepted by the Bank by its letter dated 15.11.2011 and the appellant also deposited the full amount, for which the settlement was arrived at i.e. Rs.15.00 lacs. Thereafter, the grievance of the appellant was that since
G the full amount of the settlement has been paid by the appellant, therefore, the bank should be directed to return the title deed, as the title deed was not returned.
>
> The Tribunal was of the view that since the matter has been settled, therefore, the securitization application was
H

dismissed as infructuous and the Tribunal did not pass any order for return of the title deed. Therefore, the appellant being aggrieved of the judgment dated 23.11.2011 passed by the Tribunal has filed the present appeal.

Learned counsel for the appellant submitted that after when the full amount under the settlement has been paid, the respondent-Bank was duty bound to return the title deed, which has not been returned to the appellant.

It is contended on behalf of the respondent-Bank that the settlement was accepted by letter dated 14.11.2011, wherein the condition was mentioned that the appellant shall withdraw the complaint case which he has filed before the Criminal Court.

Learned counsel for the appellant submitted that he has no objection to withdraw the complaint case but the title deed must be returned to the appellant.

The title deed shall be returned by the respondent-Bank to the appellant within seven days from today and thereafter, the appellant shall move an application to withdraw the Criminal Case No.1058/09 which is pending before the Chief Judicial Magistrate, Varanasi."

11. The labyrinth maladroitly created by the respondent No.3 does not end here. It appears that he had the indefatigable spirit to indulge himself in the abuse of the process of the Court. The respondent No.3 had filed an application under Section 156(3) Cr.P.C. before the learned Additional Chief Judicial Magistrate on 30th October, 2011, against the present appellants, who are the Vice-President and the valuer respectively. In the body of the petition, as we

A find in the paragraphs 19 and 20, it has been stated thus:

> "That the aforesaid case was referred to the Deputy Inspector General of Police, Varanasi through speed post but no proceeding had been initiated till today in
B that regard.
>
> That the aforesaid act done by the aforesaid accused prima-facie comes in the ambit of section 465, 467, 471, 386, 504, 34 & 120B IPC and in this way cognizable
C offence is made out and proved well."

12. On the basis of the aforesaid application the learned Additional Chief Judicial Magistrate, Varanasi, U.P., called for a report from the concerned police station and
D received the information that no FIR had been lodged and hence, no case was registered at the local police station. Thereafter, the learned Additional Chief Judicial Magistrate observed as follows:

> E "It has been stated clearly in the application by the applicant that it is the statement of applicant that he had already given 3 postdated cheques to the financial bank for payment and despite the availability of the postdated cheques in the financial society, even a single
> F share in the loan account has not been got paid. The opposite parties deliberately due to conspiracy and prejudice against applicant have not deposited previously mentioned postdated cheques for payment and these people are doing a conspiracy to grab the
> G valuable property of the applicant. Under a criminal conspiracy, illegally and on false and fabricated grounds a petition has been filed before District Collector (Finance & Revenue) Varanasi, which comes under the ambit of cognizable offence. Keeping in
> H

view the facts of the case, commission of cognizable offence appears to be made out and it shall be justifiable to get done the investigation of the same by the police."

After so stating it directed as follows:

"In the light of the application, SHO Bhelpur, Varanasi is hereby directed to register the case and investigate the same."

13. On the basis of the aforesaid order, F.I.R. No.298 of 2011 was registered, which gave rise to case Crime No.415 of 2011 for the offences punishable under Sections 465, 467, and 471 I.P.C. Being dissatisfied with the aforesaid order, the appellants moved the High Court in Crl. Misc. No.24561 of 2011. The High Court in a cryptic order opined that on a perusal of the F.I.R. it cannot be said that no cognizable offence is made out. Being of this view, it has declined to interfere with the order. Hence, this appeal by special leave.

14. In course of hearing, learned counsel for the State of U.P. has submitted that the investigating agency has already submitted the final report on 21st November, 2012. The said report reads as follows:

"Complainant in the present case has not appeared before any of the investigators, even after repeated summoning. And that the action of Smt. Priyanka Srivastava has been done as per her legal rights in 'good faith', which is protected under Section 32 of the SARFAESI Act, 2002. With the abovestated investigations, the present report is concluded."

15. On a query being made, learned counsel for the State would contend that the learned Magistrate has not passed any order on the final report. Mr. Ajay Kumar, learned

A counsel appearing for the appellants would submit that the learned Magistrate has the option to accept the report by rejecting the final form/final report under Section 190 Cr.P.C. and may proceed against the appellants or may issue notice to the complainant, who is entitled to file a protest petition
B and, thereafter, may proceed with the matter and, therefore, this Court should address the controversy on merits and quash the proceedings.

16. We have narrated the facts in detail as the present
C case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) Cr.P.C., as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and
D if, a borrower is allowed to take recourse to criminal law in the manner it has been taken it, needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the
E statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one time settlement which the financial institution possibly might not have acceded. That apart,
F despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bonafide. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no
G efforts were made.

17. The learned Magistrate, as we find, while exercising the power under Section 156(3) Cr.P.C. has narrated the allegations and, thereafter, without any application of mind, has
H

passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

> "156. Police officer's power to investigate congnizable case. -(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was no empowered under this section to investigate.
>
> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

18. Dealing with the nature of power exercised by the Magistrate under Section 156(3) of the CrPC, a three-Judge Bench in ***Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others***[2], had to express thus:

> "It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with

[2] (1976) 3 SCC 252

A a report or chargesheet under Section 173."

19. In ***Anil Kumar v. M.K. Aiyappa***[3], the two-Judge Bench had to say this: "The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This B Court in Maksud Saiyed [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate C is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the D complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order E investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."y

F

20. In ***Dilawar Singh v. State of Delhi***[4], this Court ruled thus:

"18. ...11. The clear position therefore is that any Judicial G 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

H

[3] (2013) 10 SCC 705

[4] (2007) 12 SCC 496

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."

21. In ***CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.***[5], the Court while dealing with the power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure.

And again:

"When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under [pic]Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring

[5] (2005) 7 SCC 467

A into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the
B power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied
C in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

22. Recently, in ***Ramdev Food Products Private Limited v. State of Gujarat***[6], while dealing with the exercise
D of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that:

"....the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not
E find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or
F weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine
G "existence of sufficient ground to proceed."

23. At this stage, we may usefully refer to what the Constitution Bench has to say in ***Lalita Kumari v. Govt. of U.P.***[7] in this regard. The larger Bench had posed the following

H [6] Criminal Appeal No. 600 of 2007 decided on 16.03.2015

[7] (2014) 2 SCC 1

two questions:-

"(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the questions posed, the larger Bench opined thus:

"49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of Such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable [pic]offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

"Shall"

xxx xxx xxx xxx

A 72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as
B by the competent court to which copies of each FIR are required to be sent.

"Information"

C xxx xxx xxx xxx

111. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under
D Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the
E requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure
F of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

G xxx xxx xxx xxx

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there
H

may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. After laying down so, the larger Bench proceeded to state:-

"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

A 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."

B We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not.

C 24. 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 D 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 above law. But, the learned E 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 F the jurisdiction under Section 156(3) Cr.P.C. 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.

G 25. Issuing a direction stating "venas per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, H Prakash Kumar Bajaj, to take adventurous steps with courts

to bring the financial institutions on their knees. As the factual exposition would reveal, he 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 the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.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) Cr.P.C. 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 of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

26. 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 fellows

A citizens, efforts are to be made to scuttle and curb the same.

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 B 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 C 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 D 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 E 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 the application under Section F 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 G 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, H

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.

28. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

29. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows :

"32. *Protection of action taken in good faith.*-

No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

30. In the present case, we are obligated to say that learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) Cr.P.C. It is because the Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needles to emphasize, the legislative mandate, has to be kept in mind.

31. In view of the aforesaid analysis, we allow the appeal, set aside the order passed by the High Court and quash the registration of the FIR in case Crime No.298 of 2011, registered with Police Station, Bhelupur, District Varanasi,

A U.P.

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
B 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.

C Devika Gujral Appeal allowed.