IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2018

BEFORE

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

CRIMINAL PETITION NO.5016/2017

BETWEEN:

1. Sri. Kishor Piraji Kharat
   S/o late Piraji Subhaje Kharet
   Aged about 58 years
   Ex-MD & CEO of IDBI Bank and
   (Presently MD & CEO of Indian Bank)
   Cuffe Parade, Mumbai City,
   Maharashtra-400 005.

2. Sri. A. Vasanthan
   S/o Annadurai A
   Aged about 33 years
   Manager, IDBI Bank Ltd.,
   Indiranagar Branch, Indiranagar,
   Bengaluru-560 038.

3. Sri. Kumar Pranay
   S/o Ajit Kumar Singh
   Aged about 33 years
   Manager, IDBI Bank Ltd.,
   Indiranagar Branch, Indiranagar,
   Bengaluru-560 038.

4. Sri. Darshan Shetty
   S/o Chandrashekar Shetty
   Aged about 35 years

Manager, IDBI Bank Ltd.,
Indiranagar Branch, Indiranagar,
Bengaluru-560 038.

5. Sri. Nitin Antony Sequeria
S/o Simplen Peter Sequeira
Aged about 43 years
Asst. General Manager
Customer Care Service,
IDBI Bank Ltd., Cuffe Parade,
Mumbai-400 005.

6. Sri. Kumar Sujeet
S/o Rajesh Kumar
Aged about 35 years
Manager, IDBI Bank Ltd.,
Indiranagar Branch, Indiranagar,
Bengaluru-560 038.

...Petitioners

(By Sri N. Damodar, Advocate)

AND:

1. Rajeshwar Reddy Karnati Venkata
No.42, Garden Estate Jakkur,
Plantation Jakkur,
Bangalore-560 064.
Rep. by his GPA Holder Smt.Roopa Reddy.

2. The State of Karnataka
Indiranagar Police Station,
Bangalore-560 038.
Rep. by SPP.

...Respondents

(By Sri S.K. Prabhakar Shetty, Advocate for R1;
Sri Sandesh J. Chouta, SPP-II for R2)

This Criminal Petition is filed under Section 482 of Cr.P.C. praying to quash the entire proceedings launched against the petitioners i.e., Accused Nos.1 to 6 in Crime No.63/2017 registered by the Respondent No.2 police on the behest of the order passed by the IV Additional Chief Metropolitan Magistrate at Bengaluru on 23.02.2016 in the PCR No.1547/2016 filed by the Respondent No.1 and now pending on the file of IV Additional Chief Metropolitan Magistrate at Bengaluru.

This Criminal Petition coming on for Admission this day, the Court made the following:

ORDER

Heard the learned counsel for the petitioners and the learned High Court Government Pleader for respondent No.2. Respondent No.1 and his counsel are remained absent.

2. Respondent No.1 has filed a private complaint in PCR No.1547/2016. The learned Magistrate has referred the complaint for investigation under Section 156(3) of Cr.P.C. to the jurisdictional police for investigation and report. The

said order of referring the complaint to the police is called in question before the Court. Though the learned counsel has also challenged the reference order on various other grounds, in my opinion the order is not technically sound. In view of the decision rendered by the Apex Court reported in ***(2015)6 SCC 287*** *in the case of* ***PRIYANKA SRIVASTAVA AND ANOTHER Vs. STATE OF UTTAR PRADESH AND OTHERS,*** the Apex Court has categorically observed at paragraphs 30 and 31 in the following manner:

> "30. 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 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

3. In view of the above said dictum of the Apex Court, it is clear that the complainant has to file an affidavit about the efforts made by him under Sections 154(1) and 154(3) of Cr.P.C. and also the affidavit should contain the truthfulness and the contents of the complaint. In the absence of such affidavit being filed, the Magistrate gets no jurisdiction to refer the private complaint for investigation under Section 156(3) of Cr.P.C.

4. The learned counsel has strongly contended before the Court that even considering the entire

contents of the complaint there is no allegations which constitute any offence under the provisions of Sections 403, 406, 415 r/w 34 of IPC. I do not want to express anything so far as this aspect is concerned., because it is the jurisdictional Magistrate, who has to apply his judicious mind to find out whether there are any allegations in the complaint which constitute any offence against the petitioners and thereafter pass appropriate orders in accordance with law. The Magistrate has to go through the decision noted above and can take appropriate action in accordance with law. Therefore, the reference order is liable to be quashed and consequently registration of the First Information Report and all further proceedings therein are required to be quashed. Hence, the following

ORDER

The petition is allowed. The order passed by the learned Magistrate dated 23.2.2016 referring the

complaint under Section 156(3) of Cr.P.C. and registration of First Information Report in Crime No.63/2017 and all further investigation therein are hereby quashed. The Magistrate can pass appropriate orders in accordance with law on the complaint lodged by respondent No.1 taking into consideration the observation of the Hon'ble Apex Court in the above said case.

Sd/-
JUDGE

ap*

Not to be Officially Published