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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No. 1448 of 2024

Hari Shankar Patnaik

....

Petitioner

Mr. D.K. Mohapatra, Advocate

-versus-

State of Orissa and others

....

Opp. Parties

Mr. A.K. Apat, ASC

CORAM:

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 06.08.2025

Chittaranjan Dash, J.

1. By means of this application, the Petitioner seeks indulgence of this Court praying to quash the judgment dated 27.07.2024 passed in Criminal Revision No.5/01 of 2024 by the learned Additional Sessions Judge, Sundargarh wherein the learned court confirmed the order dated 01.05.2024 passed by the learned S.D.J.M., Sundargarh in G.R. Case No.696 of 2015.

2. The background facts of the case are that Opposite Party No. 2, i.e., the Branch Manager of Kotak Mahindra Bank Ltd., filed a complaint before the learned S.D.J.M., Sundargarh, registered as ICC No. 126 of 2015, praying for cognizance to be taken under Section 156(3) Cr.P.C., and for a direction to the police to register an FIR and investigate the matter. The learned S.D.J.M., Sundargarh, pursuant to the said complaint, directed the Town P.S.,



Sundargarh, to register the FIR and conduct an investigation. Accordingly, the IIC, Town P.S., registered the FIR, took up the investigation, and upon its completion, submitted the charge sheet against the Petitioner and another, implicating them in offences under Sections 406/420/201/34 IPC.

3. The learned counsel for the Petitioner, while assailing the impugned order, respectfully submitted that the very foundation of the criminal proceeding initiated against the Petitioner is vitiated on account of non-compliance with the mandatory procedural requirement laid down by the Hon'ble Supreme Court in ***Priyanka Srivastava vs. State of U.P. and Others***, reported in (2015) 6 SCC 287. It was contended that the complaint filed by Opposite Party No. 2 under Section 156(3) of the Cr.P.C. before the learned S.D.J.M., Sundargarh, was not accompanied by an affidavit of the complainant as mandated by the Apex Court. The said affidavit is not a mere formality but a statutory safeguard to prevent abuse of the criminal process and to ensure accountability of the complainant. In the absence of such a supporting affidavit, the complaint is not maintainable in the eyes of law and any direction by the Magistrate to register an FIR based thereon is without jurisdiction. The learned counsel therefore submitted that the proceedings initiated on the basis of such a procedurally defective complaint are liable to be quashed, and the impugned order rejecting the Petitioner's prayer for discharge is unsustainable in law.



4. Mr. Apat, learned Additional Standing Counsel for the State, opposing the Petitioner's challenge, submitted that the objections raised regarding the absence of an affidavit are more of a technical nature and do not go to the root of the matter. It was argued that even if there was any lapse in procedural compliance at the initial stage, it does not automatically invalidate the entire process, especially when the investigation has already been completed and a charge sheet has been filed. Mr. Apat pointed out that the Magistrate has taken cognizance after considering the available materials, which disclose sufficient grounds to proceed against the accused and the trial court's order rejecting the discharge petition is reasoned and based on the merits of the case, and the revisional court has rightly declined to interfere. He contended that the focus at this stage, should not be on minor technicalities but on whether there is enough material to justify a trial.

5. The learned court, having taken cognizance of the offences, posted the case for framing of charge. Instead of facing the charge, the Petitioner moved the learned court by filing a petition under Section 239 Cr.P.C., praying to be discharged from the offences. The learned S.D.J.M., having heard the parties, was pleased to reject the Petitioner's prayer. Being aggrieved thereby, the Petitioner moved the learned Sessions Judge, Sundargarh, and the matter, having been transferred to the file of the learned Addl. Sessions Judge, Sundargarh, in Criminal Revision No. 5/01 of 2024, was heard by the learned Addl. Sessions Judge, who, after



hearing the parties, was pleased to confirm the order dated 01.05.2024 passed by the learned S.D.J.M., vide his judgment dated 27.07.2024. Being aggrieved by the said judgments passed by the learned courts below, the Petitioner has moved this Court herein.

6. The learned court, while answering the questioning on maintainability, held that although the accused persons challenged the discharge order on the ground that the original complaint under Section 156(3) Cr.P.C. was not supported by an affidavit as mandated in *Priyanka Srivastava (Supra)*, the existence of procedural error alone was not sufficient to discharge the accused. The court noted that cognizance of offences under Sections 406/420/201/34 IPC had already been taken and remained unchallenged. Upon examining the police papers and materials on record, it found prima facie evidence against the accused to proceed with the trial. It further clarified that in a revision petition, the merits of the case are not to be assessed, but only the correctness and propriety of the impugned order is to be examined. Finding sufficient material and no illegality in the order of the learned S.D.J.M., the court dismissed the revision and upheld the rejection of the discharge petition.

7. The Petitioner's challenge to the maintainability of the complaint under Section 156(3) Cr.P.C. is rooted in the absence of a supporting affidavit, as mandated by the Hon'ble Supreme Court in *Priyanka Srivastava (Supra)*. This requirement, though procedural in form, has been categorically held to be mandatory in substance.



8. The legal position has been further clarified in the recent decision of the Hon'ble Apex Court in *S.N. Vijayalakshmi & Ors. vs. State of Karnataka & Anr.*, reported in **2025 INSC 917**, where the Court distilled and reaffirmed the binding nature of *Priyanka Srivastava (Supra)*. While holding that the affidavit requirement is a mandatory precondition for invoking the jurisdiction of the Magistrate under Section 156(3), the Court also clarified that the defect is curable, provided it is rectified before the Magistrate passes any substantive order on the complaint. It is held as follows:

“45. The High Court has taken a view that this is a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under Section 156(3) of the CrPC, the required formalities were done. In our considered opinion, this approach cannot be labelled erroneous. The requirement under Priyanka Srivastava (supra) is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement could not be said to be a mere formality. One of us (Sudhanshu Dhulia, J.) as a Single Judge of the Uttarakhand High Court, in *Sachin Chamoli v State of Uttarakhand*, 2016 (3) NCC 68, where no affidavit had been filed, held that filing of affidavit was a mandatory requirement as per *Priyanka Srivastava (supra)*. In *Babu Venkatesh v State of Karnataka*, (2022) 5 SCC 639, this Court held that the Magistrate concerned should not have entertained the complaint/application under Section 156(3) of the CrPC therein, as it was not supported by an affidavit. In the case at hand, before the ACMM passed the referral order, the complaint was backed by an affidavit. In *Ramesh Kumar Bung v State of Telangana*, 2024 SCC OnLine SC 264, the Court, while stating that the directions in *Priyanka Srivastava (supra)* are mandatory, declined to interfere with the order(s) impugned therein, but noted that the informant had filed the affidavit belatedly. To complete the



discussion on this aspect of the law, we may also refer to our judgment in *Kanishk Sinha v State of West Bengal*, 2025 SCC OnLine SC 443 where, speaking through Sudhanshu Dhulia, J., this Court upheld an order of the Calcutta High Court, to the effect that the direction in *Priyanka Srivastava (supra)* to file the affidavit, was prospective in nature. Therefore, if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law exposited in *Priyanka Srivastava (supra)*. We sum up our conclusions on this score as follows: (i) Directions issued in *Priyanka Srivastava (supra)* are mandatory; (ii) Guidelines laid down in *Priyanka Srivastava (supra)* operate prospectively; (iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with *Priyanka Srivastava (supra)*.”

9. The object behind requiring an affidavit is not merely formal or technical. As observed in *Priyanka Srivastava (Supra)* and reaffirmed in *S.N. Vijayalakshmi (Supra)*, this requirement serves as a crucial procedural safeguard aimed at ensuring that the criminal process is not lightly invoked without due responsibility or accountability on the part of the complainant. The affidavit acts as a self-certifying threshold, discouraging frivolous or mala fide applications and making the complainant personally answerable for the truth of the allegations made. This safeguard is not only in the interest of judicial discipline, but equally if not more in the interest of the accused, who otherwise could be dragged into the rigours of



a criminal trial on the basis of unverified, and potentially vexatious, allegations. Criminal law entails not just reputational harm but also serious personal and procedural consequences, including arrest, custodial interrogation, and the burdens of a protracted trial. Therefore, strict compliance with the affidavit requirement is essential to ensure that an accused is not exposed to the criminal justice system without minimal procedural due diligence by the complainant.

10. Where, as in the present case, no affidavit was filed at all, the safeguard has not merely been overlooked but has been completely bypassed. This failure is not a trivial irregularity, it strikes at the very legitimacy of the Magistrate's act of directing registration of the FIR, which in turn triggered the cascade of investigative and judicial proceedings that followed. Allowing such proceedings to continue despite this omission would render the mandatory safeguards illusory, and would result in prejudice to the accused.

11. Upon consideration of the submissions advanced by learned counsel for the parties, the materials on record, and the legal position settled by the Hon'ble Supreme Court in ***Priyanka Srivastava v. State of U.P.*** (Supra) and ***S.N. Vijayalakshmi & Ors. v. State of Karnataka & Anr.*** (Supra), this Court is of the considered view that the complaint filed under Section 156(3) Cr.P.C., not being supported by a duly sworn affidavit of the complainant, suffers from a fatal procedural defect. In the absence of such an affidavit, the complaint could not have been acted upon,



and the order of the learned Magistrate directing registration of the FIR suffers from a jurisdictional error. Consequently, the rejection of the Petitioner's discharge application, which is rooted in such procedurally defective initiation, cannot be sustained in law.

12. However, it is made clear that this order shall not preclude Opposite Party No. 2 from approaching the appropriate court afresh, in accordance with law, by duly complying with the procedural requirements laid down by the Hon'ble Supreme Court.

13. Accordingly, the CRLMP is allowed. The impugned judgment dated 27.07.2024 passed by the learned Addl. Sessions Judge, Sundargarh in Criminal Revision No. 05/01 of 2024, as well as the order dated 01.05.2024 passed by the learned S.D.J.M., Sundargarh in G.R. Case No. 696 of 2015, are hereby set aside.

14. As a result, the proceedings initiated pursuant to the complaint in ICC No. 126 of 2015 and the consequential G.R. Case No. 696 of 2015 shall stand quashed.

(Chittaranjan Dash)
Judge

K.C.Bisoi/A.R.-cum-Sr. Secretary