

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
MISC. CRIMINAL CASE No. 30540 of 2019**

BETWEEN:-

- IPCA LABORATORIES LIMITED
MANAGING DIRECTOR LOCAL OFFICE
1. POLOGROUND INDORE (M.P.) / REG.
OFFICE 48, KANDIVALI INDUSTRIAL
ESTATE WEST MUMBAI (MAHARASHTRA)
 - MR. CHANDRA SEN HILAL S/O SHRI
ANAND RAO JI HILAL, AGED ABOUT 51
YEARS, OCCUPATION: FACTORY
 2. MANAGER IPCA LABORATORIES LTD.
LOCAL OFFICE:-POLOGROUND INDORE
(M.P) (MADHYA PRADESH)
 - MR. PRAVEEN TRIPATHI S/O SHRI D.C. JI
TRIPATHI,, AGED ABOUT 41 YEARS,
OCCUPATION: MANAGER HR IPCA
 3. LABORATORIES LTD. LOCAL OFFICE:-
POLOGROUND INDORE (M.P) (MADHYA
PRADESH)
 - MR. RAJENDRA BHANDARI S/O SHRI
MADANLAL BHANDARI, AGED ABOUT 58
YEARS, OCCUPATION: ACCOUNTS
 4. DEPARTMENT IPCA LABORATORIES LTD .
VILLAGE SEJAWAT DISTRICT RATLAM
(MADHYA PRADESH)
 - MR. PREMCHAND GODHA S/O SHRI G.L.
GODHA, AGED ABOUT 73 YEARS,
OCCUPATION: MANAGING DIRECTORE
 5. IPCA LABORATORIES LIMITED , REG.
OFFICE 48, KANDIVALI INDUSTRIAL
ESTATE WEST MUMBAI (MAHARASHTRA)
(MAHARASHTRA)
 6. MR. PRANAY GODHA S/O SHRI P.C.
GODHA, AGED ABOUT 46 YEARS,
DIRECTOR IPCA LABORATORIES
LIMITED REG. OFFICE -48, KANDIVALI

**INDUSTRIAL ESTATE WEST MUMBAI
(MAHARASHTRA)**

- MR. A K JAIN S/O SHRI BHAWARLAL JAIN,
AGED ABOUT 63 YEARS, OCCUPATION:
7. DIRECTOR IPCA LABORATORIES
LIMITED , REG. OFFICE 48, KANDIVALI
INDUSTRIAL ESTATE WEST MUMBAI
(MAHARASHTRA) (MAHARASHTRA)**

- MR. SANJAY JADHAV S/O SHRI
AATMARAM JADHAV, AGED ABOUT 55
YEARS, OCCUPATION: VICE PRESIDENT
8. (HR) IPCA LABORATORIES LIMITED ,
REG. OFFICE -48, KANDIVALI
INDUSTRIAL ESTATE WEST MUMBAI
(MAHARASHTRA) (MAHARASHTRA)**

.....APPLICANT

***SHRI BRIAN DA SILVA, SENIOR ADVOCATE, SHRI AVINASH SIRPUKAR
SENIOR ADVOCATE, ALONG WITH SHRI DHARMENDRA SHARMA
ADVOCATE AND SHRI SHASHANK SHARMA, ADVOCATE***

AND

- THE STATE OF MADHYA PRADESH
1. STATION HOUSE THR.PS. BANGANGA
INDORE (MADHYA PRADESH)**

- RAKESH VYAS (DECED.) THROUGH LRS
(A) SMT. ANITA VYAS, AGED ABOUT 55
2. YEARS, OCCUPATION: HOUSEMAKER
303, MANGALAM APPT. PRATAP NAGAR,
RATLAM (MADHYA PRADESH)**

- RAKESH VYAS (DECED.) THROUGH LRS
(B) SH TANUJ VYAS, AGED ABOUT 30
3. YEARS, OCCUPATION: PRIVATE JOB 303,
MANGALAM APPT. PRATAP NAGAR,
RATLAM (MADHYA PRADESH)**

- RAKESH VYAS (DECED.) THROUGH LRS
(C) SH ANKIT VYAS, AGED ABOUT 28
4. YEARS, OCCUPATION: PRIVATE
BUSSINESS 303, MANGALAM APPT.
PRATAP NAGAR, RATLAM (MADHYA
PRADESH)**

.....RESPONDENTS

SHRI SURENDRA KUMAR GUPTA, GOVT.ADVOCATE

SHRI BHASKAR AGRAWAL, RESPONDENT NO.2

Reserved on : 30.04.2024

Pronounced on :6.6.2024

.....

This application having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

1. Heard.
2. This petition has been filed by the **petitioners/IPCA Laboratories Limited and its office bearers** under Section 482 of Criminal Procedure Code, 1973 (hereinafter to be referred to as “CRPC”) against the order dated 8.7.2019, passed in Criminal Case No.0/2019 by learned Judicial Magistrate First Class Indore; whereby, the application under Section 156(3) of CRPC was allowed and direction has been issued to the police officials to register a criminal case against the petitioners after conducting inquiry and to file the charge sheet. Pursuant to which, the FIR has been registered against the present petitioners at Crime No 867/2019 under sections 406, 420 and 120 (b) of IPC on 15.07.2019 at Police Station Banganga District, Indore.
2. In brief facts of the case are that the petitioner no.1/IPCA Laboratories Limited is a company registered under the provisions of the Companies Act, 1956 and having its registered office at Kandivali,

Industrial Estate West Mumbai, Maharashtra. The Company is engaged in the business of manufacturing and marketing of life saving drugs and has directly employed nearly 17,000 people in India as well as indirect employment to several more thousand people in the country.

3. The case of the petitioners is that petitioners no.2 to 8 are the Office bearers of petitioner no.1/Company including its Director, Manager/HR, Account Officer etc., and the company is governed by mandatory provisions under different Labour laws. According to the petitioner a contractor, is deployed by them to maintain its employees establishment, and the contractor is also required to maintain its separate account/code before the various authorities like Employees Provident Fund Organization, Employees State Insurance Organisation, GST, Service Tax etc., and the contractor is also required to submit the legal dues/contributions made by him in respect to its employees before the concerned authorities, and thereafter, the same are to be credited in favour of the employees.

4. The case of the petitioners is that on 9.8.2018, the petitioners received a notice from the Employees Provident Fund Organization regarding the pending legal dues to the tune of Rs.19,09,453/- required to be deposited by the respondent no.2/contractor, thus, the aforesaid legal dues were duly communicated by the petitioner/company to the respondent no.2 vide its letter dated 10.8.2018, however, the respondent no.2 failed to clear the dues, hence, the provident fund authorities recovered the partial amount by

attaching the account of the company. However, as the respondent no.2 contractor was not ready to clear his dues, the petitioner no.1 /company issued a one month's notice dated 20.9.2018, for termination of the contract which led the respondent no.2 to stop the deployment of labours as well as cancelled the contract with the labours prematurely, without settling their wages, bonus, canteen payment etc. and stopped acting upon the contract.

5. Respondent no.2 had also filed an application before the Labour Commissioner and the Collector. However, as there was agitation of contract workers for nonpayment of dues, the Assistant Labour Commissioner Indore directed the petitioner/company vide its letter dated 10.10.2018 and 2.11.2018, in accordance with the contract Labour Act directing the petitioner/ company to pay wages, bonus etc., to those contractor employees, and the said directions have also been complied by the petitioner company, intimation regarding which has also been made to the concerned authority. Documents regarding which are also placed on record.

6. It is further the case of the petitioner/company that the respondent no.2 did not comply with the mandatory requirements of labour laws towards its employees only with a view to pressurize the petitioner/Company, hence, the recoveries have been made from the petitioner/company.

7. Subsequently, a private complaint was filed by respondent no.2 under Sections 406, 420, 120(b) of Indian Penal Code 1860 along with an application under Section 156(3) of CRPC before the Judicial

Magistrate First Class, Indore, and the learned JMFC, Indore has allowed the aforesaid application vide its order dated 8.7.2019, directing the Respondent No.1 to register the FIR against the petitioners and submit the investigation report, hence, Police Station Banganga District Indore has registered the FIR at Crime No. 867/2019 on 15/07/2019, and being aggrieved, the present petition has been filed.

8. Shri Brian Da' Silva, learned senior Counsel as also Shri Avinash Sirpukar, learned senior counsel for the petitioners/Company have submitted that lodging of the FIR is bad in law, because even a bare perusal of the complaint clearly reveals that it was a dispute between the Company and the contractor, arising out of a contract between them, which was purely civil in nature, however, with a view to pressurize and wreck vengeance against the company and its office bearers, a false complaint has been filed by the respondent no.2 contractor, trying to make out a criminal case against the petitioner/company arising out of a purely civil dispute between the parties.

9. Senior Counsel for the petitioners have also drawn attention of this Court to the agreement dated 6.4.2017, entered into between the petitioner/company and respondent no.2 with specific reference to clauses 6,7 and 8 which provide that the contractor is duty bound to comply with all the provisions of law, and have also relied upon clause 16 which is regarding various responsibilities of the contractor.

9. It is further submitted that even otherwise, the application under Section 156 (3) of CrPC filed by the respondent no.2 was not supported by an affidavit, and despite the same not being on record, the learned judge of the trial court has taken cognizance of the matter which is clearly violation of the order passed by the Supreme Court in the case of **Priyanka Shrivastava Vs. State of Uttar Pradesh reported as (2015) 6 SCC 287** the relevant paragraphs 30 reads as under:-

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

(emphasis supplied)

10. Reliance has also been placed on the same decision in the case **Priyanka Shrivastava** (supra) to submit that it is purely a civil dispute which has been given the colour of criminal case, and thus, it is submitted that it is a fit case for quashing the complaint/FIR

12. The prayer is opposed by Shri Bhaskar Agrawal, learned counsel for the legal heirs of respondent no.2 as respondent no.2 has already died, and the legal representatives were brought on record. It is submitted that the documents filed by the petitioners cannot be looked into at this stage, as they are the subject matter of trial and can be looked into by the trial court only after they are proved in accordance with law.

11. Counsel for the respondent no.2 has further submitted that in the complaint, clear averments have been made regarding the fraud played by the petitioner/company with respondent no.2 and thus, the matter needs to be decided after evidence is led by the parties.

12. Heard. On perusal of the record, this Court finds that so far as the private complaint as also application filed under section 156(3) of CRPC are concerned, the main allegations are that the petitioner/company has not complied with various provisions of law

and has not paid its dues to the tune of Rs.37,24,445/- to the respondent no.2. It is further alleged that the said amount has been used by the Company to its own, and thus, has committed criminal breach of trust. In the considered opinion of this Court, such allegations, that too by contractor and not the labours, are purely civil in nature, and cannot be made basis to lodge a criminal case against the petitioners, and **on this ground only the petition is liable to be allowed.**

13. On the other hand, to ascertain the submissions as advanced by the counsel for the petitioners that the complaint under Section 156(3) of CRPC is not supported by an affidavit, this Court had also requisitioned the record of the criminal case, and it is found that the complaint is not supported by any affidavit. Thus, the requirement of filing an affidavit along with an application u/s.156(3), as mandated by the Supreme Court in the case of **Priyanka Shrivastava (supra)** would come into play, and the petition is also liable to be allowed on this ground only.

14. So far as the documents filed by the petitioners along with the petition are concerned a specific query was made by this Court to counsel for the respondent no.2 shri Bhaskar Agrawal if he is disputing the documents, mainly, the contract agreement, to which it is informed that the same is not disputed. However, his contention is that the same shall be subject matter of trial only. In the considered opinion of this court, in the absence of rebuttal on the part of the respondent no.2, the contract between the parties can be looked into

by this court in this petition u/s.482 of Cr.P.C. In this regard, reference may be had to the decision rendered by the Supreme Court in the case of **Rukmini Narvekar Vs. Vijaya Satardekar, reported reported as (2008) 14 SCC 1**, where it has been held that the documents filed by the petitioner can be relied upon in a petition u/s.482 of Cr.P.C. under certain conditions. The relevant para of **Rukmini Narvekar (supra)** reads as under:-

“38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.”

(Emphasis Supplied)

15. Thus, considering the fact that the respondents have not rebutted the documents filed by the petitioners, the same can be taken note of in this petition under Section 482 of CRPC, and it is apparent that petitioner/company has paid its dues and has raised all the legal objections with respondent no.2, however, instead of complying with the legal provisions relating to Labour Laws, the respondent no.2 has lodged a criminal complaint which is apparently an act of wreaking vengeance against the petitioner company and its office bearers.

It is also found that in the impugned order the learned JMFC has not only directed that the FIR be registered against the petitioners, but also that the Chargesheet be also filed after carrying out the investigation. In the considered opinion of this court such direction to file the chargesheet is not envisaged under s.156 of Cr.P.C., as it only provides for the powers of police officer to investigate, and subsection (3) provides for the powers of a Magistrate empowered u/s.190 to order investigation to be carried out and nothing more. Thus, on this ground also, that the Magistrate has exceeded its jurisdiction by directing the police officer, not only to lodge an FIR, but also to file chargesheet against the petitioners, **the impugned order dated 15.07.2019 is liable to be and is hereby set aside.**

16. In view of the aforesaid discussion on facts and on law, the petition stands allowed as the continuance of the trial shall be a sheer misuse of the process of the court. Accordingly, the FIR lodged at Crime No 867/2019 dated 15.07.2019 at Police Station Banganga District, Indore under Sections 406, 420 and 120 (b) of IPC is hereby quashed, and the subsequent proceedings arising out of the same, are hereby **set aside.**

17. With the aforesaid observation, ***the petition stands allowed and disposed of.***

(SUBODH ABHYANKAR)
JUDGE

das