

Kanishk Sinha & Another
v.
The State of West Bengal & Another
(Criminal Appeal No(s). 966-971 of 2025)

27 February 2025

[Sudhanshu Dhulia* and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Whether the High Court was justified in holding that the direction issued in Priyanka Srivastava v. State of Uttar Pradesh [2015] 4 SCR 108 that a complaint will be accompanied by an affidavit is prospective in nature not having any retrospective application and thus, will not be applicable to the complaint lodged against the appellants in the year 2010-2011.

Headnotes[†]

Judgments – Operation of – Plea of the appellants that the second FIR was registered on the complaint which was filed before the Magistrate u/s.156(3), CrPC, however, it was not accompanied by an affidavit and therefore, the direction issued by this Court in Priyanka Srivastava (2015) that all such complaints should now be accompanied by an affidavit was violated – High Court dismissing the criminal revisions filed by the appellants held that the direction in Priyanka Srivastava will only operate prospectively and thus, was not applicable to the complaint lodged against the appellants in the year 2010-2011 – Challenge to:

Held: High Court was right in holding that the direction in Priyanka Srivastava that a complaint will be accompanied by an affidavit, will be prospective in nature – In Priyanka Srivastava, this Court was seized with an issue where frivolous complaints were being filed before the Magistrate only to harass people and therefore, in order to check this trend, it was directed that all applications before the Court where s.156(3) CrPC applications are made must be supported by an affidavit duly sworn by the applicant who seeks to invoke the jurisdiction of the Magistrate – Such a step could only be prospective in nature, and this is clearly reflected from the very language used therein signifying that what the Court intended was

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that from now onward it would be necessary that an application would be accompanied by an affidavit – No merit in the present appeals. [Paras 4-6]

Judgments – Operation of – Always retrospective unless made prospective:

Held: The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively – The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time – It is done not to unsettle something which has long been settled, as that would cause injustice to many. [Para 3]

Case Law Cited

Priyanka Srivastava v. State of Uttar Pradesh [2015] 4 SCR 108 : (2015) 6 SCC 287 – clarified.

List of Acts

Criminal Procedure Code, 1973; Penal Code, 1860.

List of Keywords

Operation of a Judgment; Retrospective; Prospective; Complaint filed before the Magistrate; Not accompanied by an affidavit.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 966-971 of 2025

From the Judgment and Order dated 27.06.2024 of the High Court at Calcutta in CRR Nos. 608, 641, 794 and 795 of 2015 and CRR Nos. 3610 of 2011 and CRR No. 483 of 2013

Appearances for Parties

Advs. for the Respondents:

Ms. Madhumita Bhattacharjee, Ms. Debarati Sadhu, Anant.

Petitioner-in-person.

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1. Leave granted.
2. The appellants before this Court are husband and wife (appellant no.1 & 2, respectively), who are aggrieved by an order dated 27.06.2024 passed by the learned Single Judge of the Calcutta High Court by which the criminal revisions of the present appellants were dismissed. The appellants are accused in two different cases, the first registered as a First Information Report ('FIR') at police station Bhowanipur, Kolkata as FIR No.179 of 2010 dated 27.04.2010 under Sections 120B, 420, 467, 468, 469, 471 of the Indian Penal Code, 1860 ('IPC'), read with Section 66A (a)(b)(c) of the Information Technology Act, 2000 ('IT Act'). In the instant case, the complainant was Keyur Majumder. The second FIR which was initially moved as a complaint before the Ld. Magistrate, and the Ld. Magistrate in exercise of powers under Section 190 read with 156(3) of the Criminal Procedure Code, 1973 ('CrPC') directed registration of an FIR. The complainant in this case was Supriti Bandopadhyay, and the second FIR was registered as FIR No.298 of 2011 dated 08.06.2011 at police station Bhowanipur, Kolkata under Sections 466, 469, 471 read with 120B(ii) of IPC.
3. The nature of allegations in these two cases is similar against the appellants, relating to forgery, fraud, deception, cheating, damage caused to reputation, unlawful extraction of money, threat, misrepresentation and criminal conspiracy etc. In fact, six revisions were filed by the appellants before the Calcutta High Court regarding the filing of charge sheet, as well as against certain interim orders passed by the Lower Court. But that is not very relevant. What is relevant is the only point which has been raised by the appellants in their revisions before the High Court, which was that not only are these FIRs motivated and false, and thus liable to be quashed, but also that the second FIR has been registered on the complaint which was filed before the Magistrate under Section 156(3) of CrPC, and it was not accompanied by an affidavit and therefore, the law as

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laid down by this Court in ***Priyanka Srivastava vs. State of Uttar Pradesh (2015) 6 SCC 287*** has been violated as all such complaints should now be accompanied by an affidavit according to ***Priyanka Srivastava*** (supra). The learned Single Judge of the High Court was of the view that the directions of this Court in the above case could only operate prospectively and will not have any retrospective application, and will thus not be applicable to the complaint lodged against the appellants in the year 2010-2011.

The appellant no.1, all the same, who argued in person before the High Court, emphasised before this Court and would argue that all the judgments of this Court are retrospective in nature and therefore it cannot be said that this would not be retrospective particularly when it has not been specifically stated in the judgment of ***Priyanka Srivastava*** (supra) that it will operate prospectively.

Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had *bona fide*ly done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.

4. In ***Priyanka Srivastava*** (supra) this Court was seized with an issue where frivolous complaints were being filed before the Magistrate only to harass people and therefore, in order to check this trend, it was directed that all applications before the Court where Section 156(3) CrPC applications are made must be supported by an affidavit duly sworn by the applicant who seeks to invoke the jurisdiction of the Magistrate. Such a step could only be prospective in nature, and this is clearly reflected from the very language used by the Learned Judges in ***Priyanka Srivastava*** (supra), where it has been said as under:

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“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.”

(Emphasis provided)

5. This Court in the above case then also issued directions that a copy of the judgment be sent to all the Chief Justices of the High Courts, who in turn will circulate the said copy to all the Magistrates, so that they remain *“more vigilant and diligent while exercising the power under Section 156(3) CrPC”*.

It is necessary to mark the words in the above-quoted para 30 that *“...a stage has come in this country...”*, and thus, the above directions could only be prospective. This would signify that what the Court intended was that from now onward it would be necessary that an application would be accompanied by an affidavit.

6. We are of the opinion that the High Court was right in holding that the direction that a complaint will be accompanied by an affidavit, will be prospective in nature. We thus find no merit in these appeals and hence, the appeals stand dismissed.
7. We have been informed that the charge sheet has been filed in both the cases. In case charges have not been framed by the Court, then the appellants would be at liberty to move an application for their discharge, which shall be considered in accordance with law.

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8. Interim order(s), if any, stand(s) vacated.
9. Pending application(s), if any, stand(s) disposed of.

Result of the case: Appeals dismissed.

[†]*Headnotes prepared by:* Divya Pandey