

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**Cril.Petn.No.38 of 2021
With
MC(Cril.Petn.)No.01 of 2023**

Md. Karimuddin Moulvi aged about 65 years S/o (L) Abdul Jalil, , a
permanent resident of Haoreibi Chandakhong PO & PS Lilong, Thoubal
District, Manipur

...Petitioner

- Versus -

1. The State of Manipur represented by Chief Secretary (In charge of Home). Government of Manipur, South Block (old Secretariat), PO & PS Imphal, Imphal West District, Manipur-795001.
2. The Director General of Police, Manipur PO & PS Imphal, Imphal West District, Manipur-795001.
3. The Superintendent of Police, Thoubal PO & PS Thoubal, Thoubal District, Manipur.
4. The Officer-in-charge, Lilong police Station, PO & PS Lilong, Thoubal District, Manipur.
5. Md. Waris Khan aged about 27 years s/o Karimuddin at lilong Haoreibi Chandakhong PO & PS Lilong, Thoubal District, Manipur.

... Respondents

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V.MURALIDARAN
ORDER**

15.03.2023

Heard Mr. M. Ibohal, learned counsel for the petitioner and Mr. RK Umakanta, learned Public Prosecutor for the respondent State.

2. This criminal petition has been filed by the petitioner under Section 482 Cr.P.C. to quash FIR No.96(09)2021 registered under Sections 380, 452, 506, 406 and 120B IPC against the petitioner/A1 on the file of Lilong Police Station, Thoubal District, Manipur.

3. The learned counsel for the petitioner submitted that the FIR No.96(09)2021 has been registered by the fourth respondent police against the petitioner and three others based on the complaint lodged by the fifth respondent who is none other than the son of the petitioner alleging that he is the proprietor of M/s.Ereicha Indane Gramin Vitrak and the accused are working in the said gas agency and they had stolen some gas cylinders and concealed at unknown place. The accused had also not reported for duty and have been hiding at unknown place possessing all the keys of the showroom and godown and they have also

taken the complainant's car bearing registration No.MN01AA2618 and kept in an unknown place.

4. The learned counsel for the petitioner would submit that the petitioner and his wife along with his four sons, including the complainant, formed and established a joint family business by way of partnership in the name and style of M/s.Ereicha Indane Gramin Vitrak at Lilong and the dealership/distributorship under the Indian Oil Corporation is a multiple dealership although it was issued in the name of the fifth respondent/complainant. While so, the complainant claimed multiple dealership as his own sole business and conspired with the fourth respondent to exclude the petitioner, his wife and three sons. Therefore, the petitioner lodged a complaint petition before the Manipur Human Rights Commission for a direction on the fourth respondent not to interfere in the family business and, by the order dated 2.9.2021, the Manipur Human Rights Commission had also directed the fourth respondent not to interfere in the family business.

5. The learned counsel further submitted that on the pretext of the direction of the Deputy Commissioner, Thoubal, the fourth respondent and his subordinate officers raided the business house and seized some empty cylinders and also the four wheeler on 8.9.2021. Aggrieved by the said action, on 24.9.2021, the petitioner complained the matter to the Chief Secretary, Government of Manipur to take action against the

Deputy Commissioner. When the petitioner's complaint was pending under enquiry, based on the false complaint dated 3.9.2021 lodged by the fifth respondent, the fourth respondent registered FIR No.96(09)2021. On 6.10.2021, the petitioner has lodged a complaint to the Director General of Police, Manipur to take necessary action against the fourth respondent.

6. The learned counsel added that the action of the fourth respondent is violative of the petitioner's right to life/personal liberty guaranteed by Article 21 read with Article 14 of the Constitution of India and further violative of the right to freedom of business etc. of the petitioner guaranteed under Article 19(1)(g) read with Article 300A of the Constitution of India.

7. By placing on record the decision of the Hon'ble Supreme Court in the case of ***Lalita Kumari v. Government of UP, AIR 2012 SC 1515 : (2013) 14 SCR 713***, the learned counsel for the petitioner argued that the fourth respondent/Officer-in-Charge of Lilong Police Station by violating the directions issued in the said case and taking law into his own hands for other ulterior motives/purposes than his duty under law and protection of the rights of the petitioner and his wife and three sons named in the complaint, harassing the petitioner and his family members. Despite knowing the factual scenario, the fourth respondent has

registered the FIR against the petitioner, his wife and three sons based on the false complaint lodged by the fifth respondent thereby causing miscarriage of justice, abuse of due process of law. Therefore, the impugned FIR is liable to be quashed.

8. Per contra, the learned Public Prosecutor appearing for the respondent police submitted that only based on the complaint lodged by the fifth respondent, the fourth respondent registered the FIR against the petitioner and others. He would submit that the fourth respondent never went to the house of the petitioner to make any seizure and the investigating officer of the case on being sure of the presence of some of the LPG cylinders stolen by the accused persons were kept in the outhouse of the petitioner, the investigating officer visited the spot and seized the LPG cylinders and, therefore, there is no illegality in making such seizure.

9. The learned Public Prosecutor further submitted that the fact that the petitioner was in possession of huge number of LPG cylinders without any valid document is evident enough that he had stolen said cylinders from the complainant which is being under investigation. In fact, the present petition has been filed only with an intention of hindering the investigation of the case.

10. Contending that the petitioner is not entitled to any of the reliefs as no harassment has been meted out to the petitioner by any of the respondents and does not have any genuine grievance which needs redressal, the learned Public Prosecutor prayed for dismissal of the criminal petition.

11. This Court considered the rival submissions and also perused the materials available on record.

12. The fifth respondent lodged a complaint dated 3.9.2021 before the fourth respondent against his father and brothers alleging that the accused persons who were working in his gas agency had stolen some gas cylinders and concealed the same at unknown place and they had also taken away all keys of the godown and showroom and not returned to the office. Moreover, the accused persons kept concealing the complainant's car at unknown place. Based on the said complaint lodged by the fifth respondent, the fourth respondent registered the FIR No.96(09)2021 and now the case is pending at investigation stage.

13. The petitioner claimed that he and his wife as well as his four sons established the joint family business by way of partnership in the name and style of M/s.Ereicha Indane Gramin Vitrak by taking the dealership in the name of fifth respondent Md. Waris Khan. Taking advantage of the dealership issued in favour of the fifth respondent, he

is claiming exclusive ownership over the business and conspiring with the fourth respondent, the complainant is giving trouble to the petitioner, his wife and three sons.

14. The petitioner contended that he and his two sons never worked under the complainant as alleged by him. Only the fourth respondent and his team raided the business house/godown and seized empty gas cylinders and also the four wheeler. In order to harass the petitioner and others, the fifth respondent has lodged the complaint. Taking the law in his own hand, the fourth respondent is acting against the petitioner.

15. The claim of the petitioner that whether M/s.Ereicha Indane Gramin Vitrak is a joint family business or the sole business of the fifth respondent cannot be decided in this jurisdiction. It is a private commercial dispute between the petitioner and fifth respondent which can be decided elsewhere in an appropriate proceedings.

16. Since the petitioner invoked the jurisdiction under Section 482 Cr.P.C. to quash the FIR registered against him, at best, the Court can look into whether the respondent police by following the established procedure and as per the guidelines issued by the Hon'ble Supreme Court in the celebrated judgment in the case of **Lalita Kumari**, supra has commenced the investigation.

17. In ***Lalita Kumari***, supra, the 5-Judge Constitution Bench of the Hon'ble Supreme Court observed that investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims, including violating their fundamental right to equality.

18. After elaborately discussing the issue involved, the Hon'ble Supreme Court, at paragraph 110, held:

"110. Therefore in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the

information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complaint for filing a false FIR.”

19. Finally, the Hon'ble Supreme in the said judgment issued the following conclusion/directions:

“111. In view of the aforesaid discussion, we hold:

- (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- (iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week, it must disclose reasons in brief for closing the complaint and not proceeding further.*
- (iv) The police officer cannot avoid his duty of registering offence, if cognizable offence is disclosed. Action must be taken against erring officers who do not*

register the FIR if information received by him discloses a cognizable offence.

(v) *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

(vi) *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.

(vii) *While ensuring and protecting the rights of the 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.*

(viii) *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to*

cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

20. At this juncture, drawing this Court's attention to paragraph 2.11 of the affidavit-in-opposition, the learned Public Prosecutor submitted that as the evidences collected in the enquiry show the commission of cognizable offences by the petitioner and his associates, the enquiry officer submitted a report that cognizable offence is disclosed by the report dated 3.9.2021 of Md. Waris Khan. Accordingly FIR No.30(9)2021 u/s 380/452/506/406/120-B IPC was registered and investigation has been set into motion. The further submission of the learned Public Prosecutor is that for the purpose of exercising power under Section 482 Cr.P.C. to quash the FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se and it has no jurisdiction to examine the correctness or otherwise of the allegations.

21. It is apposite to mention that nothing has been produced by the respondent police to establish and/or prove that before registering the FIR, a preliminary enquiry was conducted. While ensuring and protecting the rights of the accused and the complainant, a preliminary

enquiry should be made in a time bound manner as directed by the Hon'ble Supreme Court in the case of ***Lalita Kumari***, supra. However, in the case on hand, prima facie, there is absolutely no record to show that a preliminary enquiry was conducted and thereafter, FIR was registered and the investigation was set in motion.

22. The allegation/complaint, *inter alia*, levelled against the petitioner and other accused persons is that they have stolen gas cylinders and concealed at unknown place. As stated supra, the petitioner and the complainant are father and son and the son as complainant has lodged the criminal complaint against his father and brothers. Since the complaint was made against the blood relatives, the complaint requires a preliminary enquiry, which in the instant case has not been done by the respondent police. Nor any proof to show that preliminary enquiry was before registering the FIR was produced before this court. What the law says is that if the information does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted to ascertain whether information reveals any cognizable offence. If the enquiry discloses a cognizable offence, the FIR must be registered.

23. The argument of the learned Public Prosecutor is that the petitioner is alleging that the informant or complainant of the FIR in collusion with the police registered the FIR, which is not a ground for

quashing the FIR and such allegation may be put as defence in the trial, but not a ground for invoking the inherent power of jurisdiction under Section 482 Cr.P.C. Further, the learned Public Prosecutor argued that it is clear and undisputed fact that there was recovery of gas cylinders and vehicle for the gas agency/distributor from the petitioner which clearly points towards the commission of offence of stealing properties by the petitioner and his associates.

24. Prima facie, this Court is not concerned with the merits of the allegations made by the petitioner in this petition and the denial of the prosecution. However, this Court is duty bound to see whether any preliminary enquiry was conducted by the respondent police upon receipt of the complaint from the fifth respondent. As stated supra, there is nothing on record to show that preliminary enquiry was conducted by the respondent police.

25. Since the complaint involves a dispute pertaining to an gas cylinder agency, which is commercial in nature, this Court is of the view that before registering the FIR in question, the respondent police ought to have conducted the preliminary enquiry in the facts and circumstances stated in the complaint as directed in ***Lalita Kumari*** case.

26. At this juncture, it is to be pointed out that though the complaint was lodged on 3.9.2021, the FIR was registered only on 30.9.2021 with

a delay of nearly 27 days and the said delay has not been properly explained by the respondent police. As per the decision of the Hon'ble Supreme Court in ***Lalita Kumari***, supra, preliminary enquiry should be made in a time bound manner and in any case, it should not exceed 7 days. If really, the respondent police conducted any enquiry based on the complaint, they ought to have produced the General Diary entry or any shred of material in proof thereof. However, in the case on hand, no General Diary entry or preliminary enquiry report has been produced to show that before registering the FIR, the respondent police conducted the preliminary enquiry as per the guidelines/directions issued in the case of ***Lalita Kumari***, supra.

27. For all the reasons stated above, this Court directs the respondent police to strictly adhere to the guidelines/directions issued by the Hon'ble Supreme Court in the case of ***Lalita Kumari***, supra. Till such compliance is made, the respondent police is directed not to harass the petitioner and his family members.

28. The Criminal Petition No.38 of 2021 and the Miscellaneous Case No.1 of 2023 are disposed of in the terms aforesaid.

29. Before parting with the case, this Court wants to issue a direction to the Director General of Police, State of Manipur to issue appropriate circular to all Station House Officers in all the Police Station

in the State of Manipur that before registering any complaint or First Information Report, all Station House Officers should follow the Judgment passed by the Hon'ble Supreme Court of India in the case of ***Latta Kumari –Vs- Govt. of UP*** and others and the respective District Superintendent of Police are directed to monitor with the help of respective Deputy Superintendent of Police. This should be followed strictly by all the Station House Officers with letter and spirit.

ACTING CHIEF JUSTICE

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