

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.24054 OF 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue an appropriate Writ more particularly one in the nature of Writ of Mandamus declaring that the action of respondents more particulars that of respondent No.4 in not issuing any FIR against respondent no.5 in spite of petitioner's complaint dated 12-05-2015 as officially acknowledged by the respondent No. 4 on the same date is questioned in this Writ Petition as being arbitrary, illegal and violative of Articles 14, 21 and 25 of the Constitution of India part from being violative of Section 297 of IPC and pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case.”

2. When the matter is called today, written instructions dated 05.08.2015, furnished by the Inspector of Police, P.S. Dabeerpura, Hyderabad, have been placed on record by the learned Government Pleader for Home and the said instructions read as under:

“In this regard, it is respectfully submit that, on 12-05-2015 Sri Mir Mohd. Taqi Razvi (Herein petitioner), S/o Mir Ali Razvi, R/o H.No. 22-3-925/1, Darulshifa, Hyderabad, Phone No. 8801101382 came to P.S. Dabeerpura and lodged a petition wherein it was stated that, the present Mutwalli Mir Mazher Ali Khan, R/o H.No. 22-2-684, Darulshita, Hyderabad, Cell No. 9052912268 desecration of a grave in Graveyard of Etesamul Mulk, Jambagh, Hyderabad without the permission and required consent of the progeny of the deceased, tried to disturb the present form of the above mentioned grave in the aforementioned graveyard and tried to present this case as an old structure whereas this was contrary to the previous size and shape of the said grave. The demolition and restructuring of any grave in

the whole graveyard has to be done with proper consent by the present progeny of the deceased and cannot be infringed upon by anyone, let alone mutawalli or any other representative of the mutawalli or anyone else, as this tends to break the fundamental ingredients of the Mohammedan Law as well as the law of the land and the mutawalli Mr. Mir Mazhar Ali Khan Razvi, S/o Late Mir Turab Ali Khan Razvi has infringed upon the fundamental rights of the deceased. Mr. Late Mir Ali Khan Razvi, S/o Late Mir Mohd. Taqi Khan Razvi and the present children of the above mentioned deceased are in a mode of strong under protest and are expecting immediate action from the law enforcing agencies herein.

The above petition was received by Dabeerpura Police on 12-05-2015 at 1841 hours and issued acknowledgment vide No. U2023086153900174 to the petitioner.

*It is respectfully submitted that, the above said petition was entrusted to the Sector SI Sri S.Koteshwara Rao of P.S. Dabeerpura for enquiry and necessary action. Upon which, the said SI rushed to the spot i.e. Maqbera Nawab Etesamul Mulk, Jambagh, Darsulshifa Hyderabad and caused enquiries with the present Mutawalli Sri Mir Mazher Ali Khan, S/o Late Mir Turab Ali Khan, aged about 62 yrs, R/o H .No. 22-2-83, Post Office Lane, Darulshifa, Hyderabad and he disclosed that, he had taken prior permission orally from Sri Mir Dawar Ali Khan, (**Elder brother to the petitioner Sri Mir Mohd. Taqi Razvi**) S/o Late Mir Ali Razvi, aged about 69 yrs, R/o Golden Function Hall, Azampura, Hyderabad, raised and repaired the old grave of their father Late Mir Ali Razvi. Later, Sri Mir Dawar Ali Khan also given No objection letter, dated: 13-05-2015 to this effect to the Mutawalli Sri Mazher Ali Khan and the same letter has been submitted at P.S. Dabeerpura. Subsequently, on 27-05-2015 the SI Sri S. Koteshwara Rao recorded the statement of Sri Mir Dawar Ali Khan, S/o Late Mir Ali Razvi in which he stated that, he is elder son to his parents and Mir Mohd. Taqi Razvi is his younger brother. His father Late Mir Ali Razvi was demised in the year 1986. Later, his grave had constructed in the premises of Maqbera Nawab Etesamul-Mulk situated at Jambagh, Darulshifa,*

Hyderabad. But, due to bad condition and under height comparing to the other graves, he requested the Mutawalli Sri Mazher Ali Khan to repair and raise height of his father's grave with the remaining graves to enable them to offer Fatiha comfortably. On his request, the said Mutawalli Sri Mir Mazher Ali Khan repaired and raised the height of his father grave and kept in good condition. Later, he came to know that, his younger brother Mohd. Taqi Razvi lodged a complaint at P.S. Dabeerpura to this effect. Hence, he voluntarily came to P.S. Dabeerpura and given his statement by briefing the facts and the same was informed to the petitioner orally and disposed off the petition accordingly.

In view of the above mentioned facts, it is clearly established that, the repair and raising of height of the grave of Late Mir Ali Razvi was done with the consent of the petitioner's elder brother Sri Mir Dawar Ali Khan only and kept the grave in good condition.

In view of the above facts, no FIR has been registered and not initiated any further action on the said petition. The copies of consent letter of Sri Mir Dawar Ali (Elder brother of the petitioner), the explanation given by the Mutawalli (Respondent No. 5) and the statement of Mir Dawar Ali recorded by SI Sri S.Koteshwara Rao along with photos of the grave of Late Mir Ali Razvi are enclosed here with for kind perusal.”

3. On noticing the said instructions, it is submitted by the learned counsel for the petitioner that non registration of crime by the police and failure to take further action is highly illegal, arbitrary and contrary to the provisions of Code of Criminal Procedure and the petitioner herein may be permitted to file a private complaint.
4. In view of the above, writ petition stands disposed of, keeping it open to the petitioner herein to avail the remedies available under the Code of Criminal Procedure. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

17th August, 2015
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