

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21869 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, came to be filed seeking to declare the action of respondent Nos.2 and 3 in not registering the FIR against respondents 4 and 5, as illegal and arbitrary.

2) Heard the learned counsel for the petitioner and learned Assistant Government Pleader for Home. With their consent, the Writ Petition is disposed of at the stage of admission itself. Since this Court is not going into the merits of the case, there is no necessity to issue notice to unofficial respondents.

3) The case of the petitioner, as seen from the affidavit filed in support of the Writ Petition, is that in the year 2014, the petitioner took a loan of Rs.5 lakhs from R-5 and after some time, he discharged the said loan. However, alleging that the petitioner was due to pay some amount in respect of said transaction, respondents 4 and 5 along with their followers, started harassing the petitioner. Complaining about the same, the petitioner sent a report to the second respondent on 05.05.2017. Alleging inaction on the said representation, the present Writ Petition is filed.

4) Learned Assistant Government Pleader for Home, on instructions, would submit that the report sent by the petitioner to the second respondent has been forwarded to the Deputy Superintendent of Police, for taking necessary action.

5) The judgment of the Apex Court in ***Lalita Kumari vs. Government of Uttar Pradesh***¹, which is pressed into service, relates to action of police in not entertaining the complaints disclosing commission of cognizable offence and also if it discloses commission of non-cognizable offence. The Apex Court, speaking through a Constitution Bench, summarized the law in connection with the registration of crimes as under:

1. The registration of a FIR is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
2. 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 a cognizable offence is disclosed or not.
3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where the 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 the reasons in brief for closing the complaint and not proceeding further.
4. A police officer cannot avoid his duty of registering a FIR if a 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.
5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but

¹ (2014) 2 SCC 1

only to ascertain whether the information reveals any cognizable offence.

6. 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 a criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay
7. 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.
8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, all information relating to cognizable offences, whether resulting in registration of a 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 therein.

6) In view of the ratio laid down by the Apex Court in *Lalita Kumari's case* (referred supra), it is not open for the respondents-Police to act in a lethargic way in taking an appropriate action after receiving the report dated 05.05.2017. The respondents-Police

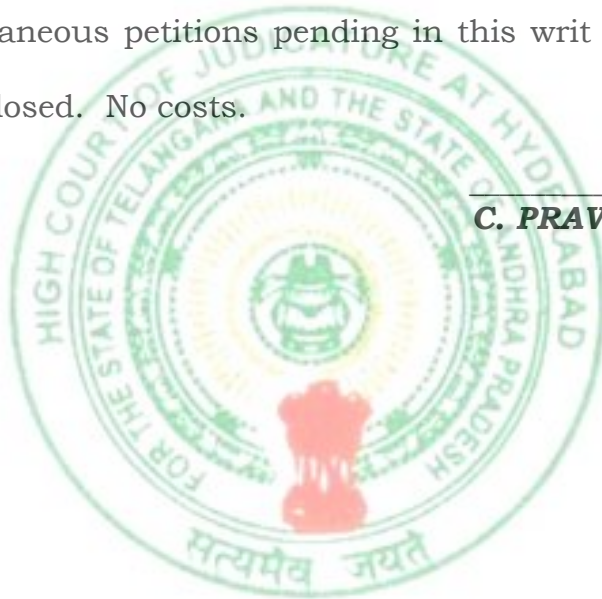
must act in accordance with the law laid down therein expeditiously, preferably within a period of three weeks from the date of receipt of a copy of this order. Further, if the respondents-Police intend to register any crime, disclosing commission of cognizable offence and if such offences are punishable with imprisonment of 7 years and less, they shall follow Section 41-A Cr.P.C. and also the judgment of the Apex Court in ***Arnesh Kumar v. State of Bihar and another***².

7) Accordingly, the Writ Petition is disposed of.

8) Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No costs.

10.07.2017
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C. PRAVEEN KUMAR, J



² 2014 (2) ALT (CrI.) 457 SC