

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 16340 of 2017

ORDER:

- 1) The present writ petition is filed with the following prayer”

“seeking issuance of writ of mandamus declaring the action of the second respondent in not taking any suitable action on the complaint dated 10.04.2017, made by the petitioner, as illegal and arbitrary; and consequently direct the second respondent to act in accordance with law on the complaint of the petitioner dated 10.04.2017.”

- 2) The averments in the affidavit filed in support of the writ petition would show that the petitioner society registered under the Societies Registration Act with Registration No.203/ 70. The society was incorporated for the purpose of upliftment of the poor and also for the welfare of the people belonging to Munnuru-Kapu community. The main activities of the society relate to payment of monthly pensions to the poor widows, handicapped person and also render financial assistance to the poor people of the said community for the marriage and medical aid etc. The society has its own bye-laws. It is stated that some of the persons belonging to the society are working against the interest of the society and are putting hurdles in smooth functioning of the society. As such, the President of the society was constrained to file a complaint, pursuant to which a case in Crime No.32 of 2017 came to be registered. After investigation, the 2nd respondent also filed

charge sheet in the said crime. It is stated that some of the persons, whom the society has appointed for the purpose of running the marriage bureau, have misappropriated amounts of the society. Hence, the President of the petitioner lodged a complaint on 10.04.2017. The second respondent received the said complaint on 15.04.2017 and forwarded the same to the Commissioner of Police, Hyderabad, Deputy Commissioner of Police, East Zone and also to the Assistant Commissioner of Police. The allegations in the complaint are that some of the persons are running the marriage bureau though they are not supposed to do and that there are misappropriating the funds of the society and by impersonating the members of the marriage bureau are cheating the community people. But for the reasons best known, the second respondent did not take any action on the complaint dated 10.04.2017. The inaction of the second respondent lead to filing of the present writ petition.

3) A counter came to be filed by the seventh respondent questioning the maintainability of the writ petition. It is averred that the deponent of the writ affidavit was removed from the Post of the President in the General Body Meeting held on 24.05.2015. The petitioner is said to have suppressed the fact of filing I.A.No.151 of 2015 in O.P.No.8 of 2015, to stall the General Body Meeting dated 24.05.2015. The said I.A. was dismissed and the meeting was held on 24.05.2015, wherein the petitioner was removed from the post of the President of the Society. The petitioner also suppressed the fact that pursuant to the complaint

made by the un-official respondents, a case in Crime No.15 of 2016 came to be registered. It is also stated that a plain reading of the representation dated 10.04.2017 does not indicate commission of a cognizable offence. Since the O.P.No.8 of 2015 is pending, no police complaint can be registered. It is said that a dispute between the members of the society is sought to be dragged to police station by making wild and baseless allegations. Hence, prayed to dismiss the writ petition.

4) A perusal of the complaint dated 10.04.2017, may disclose it be civil in nature, but the judgment of the Apex Court in *LALITA KUMARI V/s. 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

¹ (2014) 2 SCC 1

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 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.

5) In view of the judgment of the Apex Court and also taking into consideration the representation made by the petitioner and also by the un-official respondents herein, the police shall follow the dicta laid down in Lalitha Kumari's case and if in their view it does not disclose any commission of offence, they shall furnish a copy of the report, as early as possible, preferably within a period of three (3) weeks from today, to the informant, who shall take recourse to law. If they intend to register any crime, disclosing commission of cognizable offence and if the offences alleged are punishable with imprisonment of 7 years and less, they shall follow 41-A Cr.P.C. and the judgment of the Apex Court in *Arnesh Kumar v. State of Bihar and another*².

6) With the above direction, the writ petition is disposed of. There shall be no order as to costs.

7) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.07.2017
gkv/ GM

² 2014 (2) ALT (CrI.) 457 SC