

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.9449 of 2016

ORDER:

1) This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief:

“ ... to issue a writ , order or direction especially in the nature of Writ of Certiorari or any other appropriate writ or order to call for records pertaining to Crime No.34 of 2016 dt.03.03.2016 on the file of the 4th respondent as illegal, arbitrary, abuse of process of law, contrary to Criminal Procedure Code, 1973 and contrary to The SC & ST (Prevention of Atrocities) Act, 1989, Rules made thereunder and Articles 14 and 21 of Constitution of India and consequently quash the proceedings in Crime No.34 of 2016 dt.03.03.2016 on the file of 4th respondent and pass such other order or orders as are deemed fit and proper”.

2) Heard Sri S.Subba Reddy, learned counsel for the petitioners, learned Government Pleader for Home for respondents 1 to 4 and Sri Rama Murthy P.V.S.A, learned counsel appearing for respondent No.5.

3) The averments made in the affidavit filed in support of the writ petition would show that under the leadership of 5th respondent, some persons belonging to SC colony of the village, tied a flexi of Dr.B.R.Ambedkar to the pole at the village center. As per the orders passed and G.O.s issues, a resolution was passed by the Gram Panchayat to remove the said flexi, as the same was sought to be installed on the R&B road margin near the bus stop. Pursuant to the same, the VRO with

an intention to control law and order situation, got deputed Police personnel at the spot. On 25.02.2016 at about 3.45 a.m. 5th respondent and other villagers, obstructing the officials present at the spot, installed the statue of Dr.B.R.Ambedkar. The same was complained by the VRO before the Police on 25.02.2016 at 6.00 a.m. by way of lodging a report against R-5 and 27 others which is subject matter of Crime No.29 of 2016 of Alamuru Police Station. It is also evident from the averments made in the affidavit, that petitioners 3 and 4 herein approached this Court by way of filing W.P.No.6803 of 2016 and WPMP No.8664 of 2016 seeking a direction to the respondent authorities not to permit erection/installation of statue of Dr.B.R.Ambedkar or any other statue on the road margin of R & B road, near bus stand of Gummileru Village. By an order, dated 02.03.2016, this Court while referring to G.O.Ms.No.18 dated 18.02.2013 which embodies the policy of the Government with regard to installation of statues, issued a direction to the respondents authorities to ensure compliance therewith. Thereafter, on 03.03.2016 R.5 and 14 others lodged a report before the Police alleging that on 25.02.2016 at about 11.00 a.m. while they were installing the statue of Dr.B.R.Ambedkar near Gram Panchayat Cheruvu land, writ petitioners herein obstructed them and also abused them by touching their caste and the same is the subject matter of crime No.34 of 2016 of Alamuru Police Station. Aggrieved by the same, present Writ Petition is filed, seeking quashing of the F.I.R.

4) On 22.03.2016, while admitting the writ petition, this Court granted interim stay of all further proceedings including arrest of the

petitioners in connection with FIR No.34 of 2016. Seeking to vacate the said order, WVMP No.2787 of 2016 came to be filed by R.5 opposing the averments made in the writ petition and contending that if the petitioners are aggrieved by registration of FIR No.34 of 2016, the remedy available to them is only under Section 482 Cr.P.C. but not Article 226 of the Constitution of India. It is further contended that delay in lodging report is only due to threat and fear from the petitioners. It is also urged that the petitioners in collusion with VRO and other respondent-officials have registered two cases against him and other villagers. It is further contended that the respondents ought to have accorded permission for installation of statue of Dr.B.R.Ambedkar as per G.O.Ms.No.55 dated 08.04.2013 and that G.O.Ms.No.18 is not at all applicable to the case on hand. Thus, prayed for dismissal of the writ petition.

5) A perusal of the material placed before the Court would show that the alleged incident took place on 25.02.2016 at about 11.00 a.m. whereas the report, which is the subject matter challenge in the writ petition, was lodged on 03.03.2016. As against the very same incident, the Village Revenue Officer also lodged a report against R.5 and others stating that the incident took place on 25.02.2016 at about 3.45 a.m.

6) Learned counsel for the petitioners would submit that the very registration of FIR itself is illegal. Though the incident took place on 25.02.2016, the report was lodged on 03.03.2016 and there is no proper explanation for the delay so caused. He further submits that after passing

orders by this Court in WPMP No.8664 of 2016 in WP No.6803 of 2016 on 02.03.2017 directing the respondent authorities to strictly follow G.O.Ms.No.18 with regard to installation of statue, the present report is filed with a malafide intention.

7) Learned counsel for R-5, though did not dispute the factual aspects would however submit that the Court has no power to interfere with the investigation. In this context, he relied upon a judgment of this Privy Council in Emperor v. Khwaja Nazir Ahmad¹.

8) The two questions that fall for consideration before this Court are :

- (1) Whether this Court can entertain a writ under Article 226 of the Constitution of India for quashing of FIR?
- (2) Whether the registration of the crime was with a malafide intention and whether the same amounts to abuse of process of law?

9) The issue as to the maintainability of the writ petition to quash the F.I.R. under Article 226 of the Constitution of India is no more *res integra* in view of the recent judgment of the Supreme Court in **State of Telangana v. Habib Abdullah Jeelani**² wherein the Apex Court in Para No.11 held as under:

11. Once an FIR is registered, the accused persons can always approach the High Court under Section 482 Cr.P.C. or under Article 226 of the Constitution for quashing of the FIR. In Bhajan Lal (AIR 1992 SC 604) the two-Judge

¹ AIR (32) 1945 Privy Council

² AIR 2017 Supreme Court 373

Bench after referring to *Hazari Lal Gupta v. Rameshwar Prasad* [(1972) 1 SCC 452], *Jehan Sing v. Delhi Administration* [AIR 1974 SC 1146], *Amar Nath v. State of Haryana* [(1977) 4 SCC 137], *Kurukshetra University v. State of Haryana* [(1977) 4 SCC 451], *State of Bihar v. J.A.C. Saldanha* [AIR 1980 SC 326], *State of West Bengal v. Swapna Kumar Guha* [AIR 1982 SC 949], *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi* [AIR 1976 SC 1947], *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre* [(1988) 1 SCC 692], *State of Bihar v. Murad Ali Khan* [(1988) 4 SCC 692] and some other authorities that had dealt with the contours of exercise of inherent powers of the High Court, thought it appropriate to mention certain category of cases by way of illustration wherein in the extraordinary power under Article 226 of the Constitution or inherent power under Section 482 Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Court also observed that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad cases wherein such power should be exercised....”

10) In view of the judgment referred to above, it is clear that the proceedings can be challenged by way of a writ petition under Article 226 of the Constitution of India. Consequently the Court can quash an F.I.R. if the petitioner is able to show the Court that his case falls under any of the guidelines laid down by the Apex Court in *Bhajan Lal's Case*.

11) The next issue that falls for consideration is whether the averments in the First Information Report and un-disputed material placed before the Court show that there was any abuse of process of law or whether

criminal proceedings were attended with any malafide intention or with a motive to wreck vengeance.

12) It is true that the bar under Article 226 of the Constitution of India seeking quashing of F.I.R. has to be exercised sparingly and with caution and when only such exercise is justified by the test specifically laid down in the provision itself. In fact in *Habib Abdullah case* (referred supra) this Court held as under:

“We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate.”

13) The un-disputed material placed before the Court more particularly the First Information Report and orders of this Court, which are relied upon by both the parties would show that on 25.02.2016 the members of Harijana Sangam of the village, under the leadership of the 5th respondent, brought a statue of Dr. B.R.Ambedkar on a vehicle and tried to erect the same on the road margin of the road leading to Mandapeta from Ravulapalem/Alamuru. The Revenue officials and panchayat officials are said to have been intervened and prevented them from installing the statue, as there was no permission from the concerned authorities for installation of the said statue. At that time an incident took place wherein the members of Harijana Sangam are alleged to have threatened the officials of Gram Panchayat and Revenue department. Basing on a report given by the V.R.O. of the village, a case in Crime No.29 of 2016 came to be registered at Alamuru Police Station, for the

offences punishable under Sections 143, 147, 188, 353 read with 149 IPC against 28 members of Harijana Sangam including the 5th respondent herein. In respect of the very same incident, the 5th respondent along with others held Rastha Roko which lead to registration of Crime No.30 of 2016 at the instance of V.R.O. At that point of time, the 3rd petitioner herein filed W.P.No.6803 of 2016 seeking a direction to the officials not to permit the installation of the statue. By an order, dated 02.03.2016, this Court passed the following order:

“Learned Assistant Government Pleader concerned placed before this Court a copy of G.O.Ms.No.18, Transport, Roads, Buildings (Road-I) Department, dated 18.02.2013, which embodies the present policy of the Government with regard to installation of statues. Thereunder, the Government indicated its decision not to grant permission for installations of any statue or construction of any structures in public roads, pavements, sideways and other public utility places.

In the light of the afore-stated policy decision, there shall be a direction to the respondent authorities to ensure compliance there with.”

14) After passing of the order by this Court on 02.03.2016, the present report came to be lodged on 03.03.2016 at 8.00 p.m. The averments in the report are in respect of an incident which took place on 25.02.2016. Of course, delay by itself cannot be a ground to quash the proceedings but the Court has to test as to whether the said report came to be initiated with a malafide intention. In fact no explanation is given in the report

dated 03.03.2016 as to why they could not give the report immediately after the incident on 25.02.2016.

15) It is also to be noted that in the report given by V.R.O., against the 5th respondent and others, it was specifically mentioned that on 25.02.2016 at about 3.45 a.m. the members of Harijana Sangam came on Tata Ace vehicle along with the statue of Dr.B.R.Ambedkar, disobeyed the orders of the Panchayat and Revenue officials, who were on duty, and tried to install the statue in the disputed site. This report was given on the very same day at 6.00 a.m. informing about the incident which took place about the installation of the statue at 3.45 a.m. A week thereafter that too after the orders of this Court in W.P.No. 6803 of 2016, a report is given showing the date of incident as 25.02.2016 and time at 11.00 a.m. Though the issue as to whether the incident took place at 3.45 a.m. or 11.00 a.m. may require investigation but admittedly there was a dispute with regard to installation of statue on the road margin on 25.02.2016. The V.R.O. lodged a report against the 5th respondent and others on the very same day ie. 25.02.2016 at about 6.00 a.m. and the 3rd and 4th petitioner filed W.P.No.6803 of 2016 questioning the installation of the statue on the road margin. An interim order came to be passed by this Court directing the authorities to scrupulously follow G.O.Ms.No.18, Transport, Roads, Buildings (Road-I) Department, dated 18.02.2013, which embodies the policy of the Government with regard to installation of the statue. Thereafter, the present report came to be lodged by the 5th respondent against the petitioners including the persons, who filed the writ petition, earlier.

16) Having regard to the facts narrated above, this Court is of the opinion that the same would fall under Category No.7 of Bhajan Lal's case (referred to above), namely that the report came to be lodged with a malafide intention and to wreck vengeance.

17) Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.03.2017
sur/gkv

