

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 22634 of 2017

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in not considering the representations made by the petitioner on 01.07.2017 and 06.07.2017 before the Station House Officer, Market Police Station, Secunderabad and the Commissioner of Police, Hyderabad City respectively, as illegal and arbitrary.

2) Learned counsel for the petitioner mainly submits that he gave a representation to the Station House Officer, Market Police Station, Secunderabad on 01.07.2017 seeking action against the persons, who are trying to interfere with the shifting of idol from the old temple to a newly constructed temple. It is said that the grandfather of the petitioner by name Madan Gopal Khandelwal constituted a private family trust in the name of Sri Bhagawan Sri Laxminarayan and constructed a Dharmasala in the premises bearing No.4075, Subhash road, Secunderabad, which was renumbered as H.No.7-1-560, 562 and 507 to 512. Sri Madan Gopal Khandelwal who also constructed a temple of Sri Laxminarayan and Sri Shivji, constituted a private family trust, vide Doc.No.464 of 1933 registered at S.R.O., Secunderabad on 11.08.1933. As the entire

structure is in a dilapidated condition, the GHMC authorities demolished the entire structure on 20.09.2016 and March, 2017 leaving the temple as it is. Since then the said land is in their custody and they have constructed a small temple on the North-East side and planned to shift the idols of Sri Laxminarayan and Shivji from the existing old temple to newly constructed temple. The same is sought to be prevented by anti-social elements.

3) Though the learned counsel for the petitioner sought for police protection but the said relief cannot be granted as a matter of course. Having regard to the above circumstances and taking into consideration that there is interference from unauthorized persons, in shifting the idols from the old temple to a newly constructed temple, the respondents/police shall act on the report of petitioner in terms of the judgment of the Apex Court in ***LALITA KUMARI Vs. GOVERNMENT OF UTTAR PRADESH***¹, wherein it is held 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

¹ (2014) 2 SCC 1

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."

4) With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:11.07.2017
GM

