

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12657 OF 2012

ORDER:

This writ petition is filed seeking writ of mandamus declaring the inaction of the respondents 2 to 6 in not taking action against the respondent Nos.7 to 10 in the complaint made by the petitioner as illegal and arbitrary.

2. It is the case of the petitioner that his mother by name Smt. Y.Seeta Mahalaxmi purchased vacant land to an extent of 225 sq.yds situated in Sy.Nos.134/1 and 134/3, plot No.12 in Kurmanapalem village, Gajuwaka Mandal, Visakhapatnam under registered sale deed dated 06.10.1989 from Y.Narasaveni and others for valuable consideration and the said sale deed was executed by their GPA Holder V.V.Bangar Raju. That in the said GPA, the 7th respondent is the 1st attester; that from the date of purchase, they are in peaceful possession and enjoyment of the subject property without any obstructions from anybody. That in the month of July, 2005, when the 7th respondent made attempts to interfere with their peaceful possession of the subject property, they filed a suit OS No.34 of 2006 on the file of Senior Civil Judge, Gajuwaka for declaration and permanent injunction against the 7th respondent and said suit is coming up for trial. That along with the petitioner, neighboring plot

owners also filed several suits against 7th respondent seeking permanent injunction and all are pending before the Senior Civil Judge Court at Gajuwaka and that in all the suits, the 7th respondent filed written statement. In the written statement filed by the 7th respondent in the suit, it is found that the 7th respondent had created some fake and false documents with the active help of respondents 8 to 10 in the year 2005 and that subsequently, they filed criminal complaints before the 4th respondent against respondents 7 to 10. The 4th respondent had colluded with the respondents 7 to 10 and when the 7th respondent lodged a complaint before the 2nd respondent grievance cell against the mother of the petitioner, the 4th respondent registered a case in Cr.No.18 of 2010 against his mother and other neighbouring plot owners for the offences under Sections 447, 427, 506, 323, 509 r/w 34 of IPC.

3. Respondents 5 and 6 herein are investigating officers in the aforesaid crime and witnesses were cited as LW1 to LW9 and filed charge sheet before the I Addl. Chief Metropolitan Magistrate at Visakhapatnam in CC No.166 of 2011, wherein the mother of the petitioner was shown as accused No.6. When mother of the petitioner filed Crl. Petition No. 3181 of 2011 before this Court, she was granted interim order of stay of arrest. The 5th respondent during the course of investigation in the said crime, had recorded

the statements of respondents 9 and 10, wherein the 9th respondent was shown as LW3 and he clearly admitted that he received an amount of Rs.50,000/- from the 7th respondent and as per his instructions, he went to Registrar Office at Gajuwaka and there he met the 8th respondent, who paid Rs.50,000/- to the 10th respondent through him and later 10th respondent registered the GPA cum Sale in his favour and after 10 days the 9th respondent registered sale deed in favour of the 7th respondent. The 9th respondent also admitted that he had no prior knowledge about sale-cum-GPA prepared by the 8th respondent. 7th respondent took the signature of the 9th respondent.

4. The 5th respondent also recorded the statement of 10th respondent, who is shown as LW5, who clearly admitted that the property belongs to his father, which is his self acquired property and he had knowledge that during the life time of his father, he had alienated the said property to Y.Narasaveni and others under registered sale deed in the year 1983 and he had also knowledge about the said purchasers. Subsequently, the said land was converted into plots to an extent of Ac.1.00 and except 3 plots all the plots were sold to one V.V.Bangar Raju by way of GPA-cum-Sale deed and subsequently, the said V.V.Bangar Raju (L.W.4) sold the same to others. Believing the versions of the 8th and 9th respondents, they executed GPA in respect of the land

sold by them, in favour of 9th respondent, as representative of Y.Narasaveni and 6 others vide document No.1963/2005, dated 02.04.2005 in the office of the Sub-Registrar, Gajuwaka and signed on the GPA, as such, the 8th and 9th respondents cheated the petitioner.

5. The 5th respondent also examined the vendor of the mother of the petitioner, who is shown as LW4, who clearly states that he sold the property covered under plot No.12 in Sy.No.134/1 and 134/3 to his mother, and other neighbouring plot owners. That as per the statements of 9th & 10th respondents before the 5th respondent, a cognizable offence is made out as the 7th and 8th respondents jointly colluded and conspired together and created false and fake documents in order to grab the properties of innocent people like petitioner's mother and neighbouring plot owners. Though the petitioner made complaint before the 2nd respondent on 16.09.2011 and also on 10.10.2011 against the respondents 7 to 10, no action is being taken by the 2nd respondent. Aggrieved by the same, present writ petition is filed.

6. Counter affidavit is filed by the 4th respondent on 19.06.2012 and another counter affidavit filed on behalf of the respondent 1 to 4 on 21.06.2017 denying some of the averments in the affidavit filed in support of the writ petition and admitting that the petitioner made representations

dated 16.09.2011 & 10.10.2011 to the 2nd respondent for taking action against respondents 7 and 8 for creating false documents and that the same was forwarded to the 4th respondent for enquiry and report. As per the instructions of the 2nd respondent, the 4th respondent conducted enquiry in the matter and submitted report on 01.11.2011 to the 2nd respondent. In the said report it is elicited that the 7th respondent purchased the land to an extent of 2250 sq.yds covered in Sy.No.134/1 from the legal heirs of A.K.Mohiddin and 19 others and they executed GPA in favour of 9th respondent. It is also elicited that the versions of the legal heirs of A.K.Mohiddin were not supported by any other witnesses, since the version of witnesses discloses about physical possession and enjoyment of the schedule property, as per the opinion of APP, filed charge sheet, with the available material on record, on 10.01.2011 without arrest of any accused and the same was taken on file as CC No.166 of 2011 by the I Additional Chief Metropolitan Magistrate, Visakhapatnam. It is further stated that this Court passed interim stay on 18.04.2011 in CrI.P No.3388 of 2011. It is also stated that there is no supporting evidence in connection with involvement of 8th respondent, as such, no action was required to be taken against 8th respondent. That as there is no evidence against respondents 8th and 9th respondents, no action was taken against them and that it is

open for the petitioner to seek his redressal in a competent civil court. Since the allegation of the petitioner against the respondents 7 to 10 are relating to the fabricated document in O.S.No.34 of 2006, which is subject matter in the said suit pending before the Senior Civil Judge Court, Gajuwaka, it is in the jurisdiction of the said Court to give a finding in that regard. As such, necessary action enquiry was conducted on the representations of the petitioner dated 16.09.2011 and 10.10.2011 and no further action is necessary to be taken by the police and sought for dismissal of the writ petition.

7. Counter affidavit is filed by the 10th respondent denying the averments in the affidavit filed in support of the writ petition stating that during the course of investigation in Crime No.18 of 2010 of Gajuwaka Police, he was examined by the 5th respondent and recorded his statement. He stated that the property belongs to his father, which is self acquired property and he had knowledge that during life time of his father, he alienated the said property to Y.Narasaveni and others under registered sale deed in the year 1983 and that he also had knowledge that the said purchasers later converted agricultural land into plots to an extent of Ac.1.00 except three plots and all the plots were sold to V.V.Bangar Raju by way of G.P.A cum Sale deed, later the said Bangar Raju sold the same to others. It is also

stated that in the year 2005, the respondents 8 and 9, came to the 10th respondent and stated that as his father died, the registration in respect of 2,250 sq.yds in Sy.Nos.134/1 and 134/3 was not done since 1983 and asked them to execute a GPA assuring that he would not have any problems and also paid Rs.45,000/- towards expenses. Believing them, they executed GPA in respect of the land sold by their father in favour of 9th respondent as representative of Y.Narasaveni and other vide document No.1963 of 2005, dated 02.04.2005 in the office of Sub-Registrar, Gajuwaka and signed on the GPA. That the respondents 8 and 9 cheated the 10th respondent. It is also stated that they did not execute GPA in respect of 2250 sq.yds site to sell again. It is stated that the father of the 10th respondent sold Ac.1.00 in the year 1983 to Y.Narasaveni and others. As there was mistake with regard to extent in survey numbers, his father executed rectification deed in the year 1990 in favour of Narasaveni and others and later they converted the land into plots and executed GPA in favour of one V.V.Bangar Raju to sell the plots, who in turn sold the plots to others including the mother of the petitioner. It is also stated that he was cheated by the respondents 8 and 9 and same was informed to police, no action is being taken by the police and that they have no disputes with the purchasers of their father and they never claimed the property already sold by their father.

8. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Home appearing for respondents 1 to 6.

9. Learned counsel for the petitioner submits that as per the statements of respondents 8 and 9 before the 5th respondent and even according to the statement of 10th respondent before the 5th respondent, a cognizable offence is made out, though the petitioner made representations on 16.09.2011 and also on 10.10.2011, no crime was registered against respondents 7 and 8 by referring to the statements of respondents 9 and 10, as per Section 157 (1) of Cr.P.C. He further submits that when the same was brought to the notice of the 5th respondent, who investigated the case, he has not taken any action. He further submits that the 5th and 6th respondents are obligated to register crime as per Section 157 (1) of Cr.P.C by relying on the judgment reported in **Lalita Kumari v. Government of Uttar Pradesh and others**¹.

10. On the other hand, learned Assistant Government Pleader for Home while reiterating the averments in the counter affidavits filed by the respondents 1 to 4, submits that the complaints/representations of the petitioner were enquired into and as they were found to be without any basis, charge sheet was filed in Cr.No.18 of 2010 and same is pending trial before the Court below. He further submits

¹ (2014) 2 SCC 1

that if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case by virtue of section 157 (1)(b) of Cr.P.C. He further submits that since civil suit filed by the petitioner is pending before the Court below, he has to seek remedy before the said Court.

11. For better appreciation of facts, it is relevant to extract Section 157 (1) and (2) of Cr.P.C, which reads as follows:

“Section 157 in The Code Of Criminal Procedure, 1973

157. Procedure for investigation preliminary inquiry.

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.”

12. A perusal of the statement of respondent No.9 (Gandham Gandhiji) before the Police, Gajuwaka in Cr.No.18 of 2010, Visakhapatnam goes to show that the said respondent made allegations against respondents 7 and 8. Even the statement of respondent No.10 as L.W.5 before the Police, Gajuwaka also goes to show that the respondents 7 and 8 have cheated them. The counter affidavit of the 10th respondent, which is referred to above also goes to show that the respondents 7 and 8 have cheated them. Aforesaid acts of the respondents 7 and 8 show that the same is cognizable offence and the 4th respondent is obligated to send the report to the Magistrate. But in the present case on hand, no such report was sent by the 4th respondent to the concerned Magistrate. Thereafter, the petitioner gave complaints/representations dated 16.09.2011 and also on 10.10.2011, but no information was provided to the petitioner. It is only stated in the counter affidavit filed by the respondents 1 to 4 that no case was made out as there is no supporting evidence in support of the statements made by the respondents 9 and 10 and that action was initiated on the representations of the petitioner by inquiring into the same. Neither the 5th respondent nor the 6th respondents informed the same to the petitioner as per Section 157 (2) of Cr.P.C. Learned Assistant Government Pleader for Home produced report submitted by the 4th respondent to the 2nd

respondent, dated 10.10.2011 stating that the 2nd respondent has called for the information from the Investigating Officer on the complaint of the petitioner dated 10.10.2011. The 4th respondent submitted report stating that they have addressed a letter to Tahasildar, Gajuwaka Mandal, Visakhapatnam with a request to visit the land in question and peruse the documents produced by both parties. The Tahsildar, after due enquiry gave a reply stating that the issue has to be adjudicated by the Civil Court only. The said report of the Tahsildar was not furnished to the petitioner.

13. Though the learned Assistant Government Pleader for Home appearing for the official respondents submits that as per Section 157 (1)(b) of Cr.P.C, if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. But in such a situation, the procedure under Section 157 (2) of Cr.P.C had to be followed. Admittedly, the said procedure had not been followed in this case by the respondents 2 and 4.

In **Lalita Kumari v. Government of Uttar Pradesh and others (Supra)**, the Hon'ble Supreme Court held as follows:

“97) [The Code](#) contemplates two kinds of FIRs. The duly signed FIR under [Section 154\(1\)](#) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [[Section 157\(1\)](#)]

and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under [Section 154\(1\)](#) of the Code or otherwise under [Section 157\(1\)](#) of the Code is obligatory. The obligation to register FIR has inherent advantages:

- a) It is the first step to 'access to justice' for a victim.
- b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
- c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
- d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR.

119) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

In view of above principle laid down by the Hon'ble Supreme Court, the registration of FIR either on the basis of the information furnished by the informant under Section 154 (1) of the code or otherwise section 157 (1) of the Code is obligatory. But in the present case on hand, though specific allegations are made by LWs 3 and 5 in Cr.No.18 of 2010, against respondents 7 and 8, no report is made as envisaged

under Section 157 (1) of the Cr.P.C by the 4th respondent and that he has not made any report as per Section 157 (2) of Cr.P.C and had not done any investigation and that the same was also not furnished to the petitioner i.e., informant. In view of the principle laid down in the aforesaid Judgment of Hon'ble Supreme Court, at the stage of FIR, it is not necessary for the Investigating Officer to enquire into the facts whether truth or otherwise of the allegations made by the informant. If the allegations in the FIR otherwise constitutes cognizable offence, the respondent No.4 should have filed report before the concerned Magistrate under Section 157 (1) of Cr.P.C. In the instant case, no such procedure was followed, however, the official respondents justified their actions stating that there is no supporting evidence with regard to commission of cognizable offence by the respondents 7 and 8 without sending report to the concerned Magistrate under Section 157 (1) of Cr.P.C or under Section 157 (2) of Cr.P.C. The so-called reports said to have been made in pursuant to complaints made by the petitioner, are not in tune with Section 157 of Cr.P.C.

In view of above facts and circumstances, the respondents 2 and 4 are directed to take appropriate action on the complaints/representations of the petitioner dated 16.09.2010 and 10.10.2011 in accordance with law.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

11-07-2017
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12657 OF 2012



kvs



