

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.975 of 2012

ORDER:

The petitioner prays for Mandamus declaring the action of respondents 1 to 4 in not taking action against respondents 5 and 6 and not registering crime against responsible persons for forcibly receiving Rs.8,00,000/-; not recovering gold ornaments taken from the petitioner; not investigating properly on the complaints of petitioner, registering petty cases against culprits as illegal, arbitrary, violation of Police Laws, Criminal Procedure Code and unconstitutional.

The petitioner consequently prays for a direction to take action against respondents 5 and 6 by directing investigation by some independent authority for thorough investigation and recover Rs.8,00,000/- and gold ornaments allegedly given by petitioner and her husband as a result of force used by respondents 5 and 6.

Mr.Kunareddy Anji Reddy has made detailed submissions basing on the material available on record. The prayer is opposed on all four by respondents.

Having regard to the rhythm in which the issue is joined by the parties, though in normal circumstance the reference to all details in the matter is not necessary, still the court considers it proper to refer to the allegations in the affidavit and the counter affidavit.

The allegations in the affidavit are that on 11-10-2008 respondents 5 and 6 called the petitioner and her husband to

Piduguralla Police Station, detained the petitioner and her husband illegally in the custody and abused them in filthy language. The petitioner for dignity refrains from adverting to these words in the writ affidavit. It is further stated that respondents 5 and 6 threatened to beat the petitioner and her husband. The petitioner refers to a loan transaction with one Yeluri Pitchaiah and his sons, and by way of reply states that the petitioner paid a sum of Rs.4,00,000/- in cash and transferred land worth Rs.6,00,000/- to Pitchaiah. According to petitioner, the dues of Yeluri Pitchaiah have been settled. Notwithstanding such payment, it is alleged that respondents 5 and 6 prepared a false report against the petitioner and her husband, and intimidated them to repay a sum of Rs.8,10,000/- to the individuals referred to above. The petitioner claims to have come under threat and paid a sum of Rs.3,26,000/- and Rs.1,74,000/- after selling gold ornaments of petitioner's sibling. To discharge the arbitrary dictates imposed by respondents 5 and 6, the petitioner claims to have borrowed a further sum from the relatives and issued a cheque bearing No.862551 drawn at State Bank of India, Piduguralla Branch.

Now the complaint of petitioner is that the payments, referred to above, made by her in favour of Yeluri Pitchaiah are on account of threat, coercion and abusive language used by respondents 5 and 6 against the petitioner. The respondents ought not to be parties to such unauthorized acts.

It is further alleged that the petitioner has given representation against highhanded acts of respondents 5 and 6 but without any result.

On the representation given by petitioner, respondents 2 and 3 directed the Inspector of Police, Piduguralla, to enquire. Instead of proceeding with the enquiry or investigation, it is stated that with the assistance and encouragement of 5th respondent, a few antisocial elements with 12 goondas, particularly with support of one Shaik Mastanvali, a follower of one Yeluri Nageswara Rao, trespassed into petitioner's house, these individuals abused the petitioner and her husband in filthy language, beat them, snatched away gold ornaments weighing 40 sovereigns and disturbed the household articles. It is further complained that these anti-social elements have necked the petitioner out and further threatened her with dire consequences. The act of trespass, intimidation, physical assault etc., were properly stated by way of a complaint before the Station House Officer, Piduguralla Police Station.

Now the grievance of petitioner against the latter portion of the incident is that though crime is registered, the investigation is not proceeding on the lines obligated by Criminal Procedure Code. In spite of complaint, the accused are freely roaming in the street and, therefore, the investigation of Cr.No.201 of 2008 is lax and defective. Hence, the writ petition.

Stated briefly, the petitioner prays for enquiry/investigation into the alleged excesses of respondents 5 and 6 during illegal custody

imposed by respondents 5 and 6 and for proper investigation into Cr.No.201 of 2008.

The petitioner annexed Ex.P-1 dated 15-01-2009, Ex.P-2 dated 26-11-2008 and Ex.P-3 dated 26-11-2008 in support of her case that the circumstances now stated in the affidavit have been brought to the notice of the higher authorities at the earliest point of time. Before referring to the stand taken in the counter affidavit, for contemporaneous appreciation of the annexures on which the petitioner relies upon, the court considers it appropriate to remark that though these annexures have been filed along with the writ affidavit, the petitioner did not and could not place any document evidencing either dispatch of these complaints to respective authorities or acknowledgment of these complaints by respondents 1 to 3. Therefore, the annexures do not probablise the case of petitioner's of contemporaneous complaint to authorities.

The Station House Officer, Piduguralla Police Station/4th respondent filed counter affidavit and reply of the 4th respondent is as follows:-

That the deponent assumed charge of 4th respondent police station on 25-12-2001. From the records available in this behalf and by referring to them, the counter affidavit is filed. On 22-12-2008, the petitioner lodged a complaint stating that one Utukuri Svaji and others trespassed into her house, picked up quarrel, abused petitioner and her husband in filthy language and have taken away gold ornaments. The petitioner requested for taking necessary action.

The 6th respondent registered a case in Cr.No.201 of 2008 under Sections 448, 427, 323, 379 read with 34 of IPC against 1) Utukuri Svalingeswara Rao @ Svaji 2) Chintha Sridhar and ten others.

In the investigation, it transpired that the alleged theft of gold ornaments could not be made out from the statements of LWs.3 and 4. It was reported that there was, in fact, trespass into the house of petitioner and accordingly on 11-09-2009 charge-sheet was filed under Sections 323, 427 and 448 read with 34 IPC. By the time the counter affidavit was filed, the case was pending trial in C.C.No.171 of 2009.

The 4th respondent denies that respondents 5 and 6 called petitioner and her husband to police station illegally, detained them much less during detention and abused them.

As a sequence to the denial of detention complained in the affidavit, deponent further states that the direction to pay money or collection of gold etc., is denied by the 4th respondent. It is further stated that the Circle Inspector of Police, Piduguralla Police Station, did not receive endorsement from respondents 2 and 3 about interference of respondents 5 and 6 for further action in the matter. The 4th respondent summarizedly submits that to the extent of first portion of the allegations in the affidavit, the same is untenable and are denied, as to the second portion, it is stated that proper investigation has been conducted and charge-sheet is filed. He therefore, prays for dismissing the writ petition.

I have taken note of the submissions of learned counsel for petitioner as well as respondents.

The counter affidavit was filed on 27-01-2012. As regards improper and incorrect investigation into Cr.No.201 of 2008, the 4th respondent has explained that the allegations of the petitioner are unfounded and the petitioner, if aggrieved by the report or charge-sheet by the respondent, the complainant could have worked out the same as appropriate remedy in law. As regards the prayer of petitioner for appropriate action against respondents 5 and 6, the Court considers it convenient to refer to the earliest date relied upon by petitioner. The petitioner refers to annexure Ex.P-3 dated 26-11-2008. The petitioner filed complaint against Utukuri Svaji and others on 22-12-2008. Admittedly, there is no reference to the alleged excesses by respondent Nos.5 and 6 at the earliest point of time. The petitioner relies upon Ex.P-2 dated 26-11-2008, which refers to the excesses of respondents 5 and 6. Finally, a detailed representation dated 15-01-2009 is filed as annexure Ex.P-1. Now the complaint is that respondents 1 to 3 have not moved in the matter. Therefore, appropriate directions are issued for investigating into the excesses committed by respondents 5 and 6.

The chronological reiteration and the deficiency of each one of the exhibits is sufficient to conclude that the allegations now made against respondents 5 and 6 cannot be treated as made to respondents 1 to 3 at the earliest point of time, and that there is inaction in considering and disposing of the allegations of petitioner

against respondents 5 and 6. If there was no timely or proper action, it is needless to observe that the petitioner is not denied of other remedies under the Criminal Procedure Code. From the chronology, it is clear that charge-sheet was filed in the crime on 11-09-2009. Thereafter, the writ petition was filed on 13-09-2011. Considering the totality of circumstances and the conduct of petitioner, this Court is not inclined to exercise the discretion or consider the prayers of petitioner.

The writ petition fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 01-03-2017
Prv



S. V. BHATT, J

