

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 22377 of 2017

ORDER :

Heard both sides. With the consent of both parties the writ petition is disposed of at the admission stage.

2. The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent No. 5 in not taking action on the complaint dated 02.05.2017, made by the petitioner seeking appropriate action against respondent No.6 for misappropriation of funds to a tune of Rs.1,30,000/- of Godakondla Grampanchayat, by violating the rules and regulations, which were released towards General fund, S.F.C., 13th Finance, as illegal and arbitrary.

3. It is the case of the petitioner that initially the petitioner (4th ward member) along with Upa Sarpanch made a representation dated 18.07.2016, to the District Collector, Nalgonda demanding action against respondent No.6, for misusing of huge amounts relating to Godakondla Grampanchayath. As there was no response from the District Collector, the petitioner filed W.P.No.1553 of 2017 before this Court, which is still pending. Thereafter, the petitioner lodged a report before respondent No.5 on 02.05.2017. The grievance of the petitioner is that though the said report was received and sent to respondent Nos.2 to 5 through post, the SHO – respondent No.5 did not register FIR. Hence the present writ petition came to be filed.

4. The Apex Court in *LALITA KUMARI Vs. GOVERNMENT OF UTTAR PRADESH*¹ laid down certain guidelines as to what has to be done when the police report is lodged before them. After considering various case laws, the Constitution Bench of the Apex Court 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 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:

¹ (2014) 2 SCC 1

- 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. Having regard to the above, the writ petition is disposed of directing the respondent police to deal with the report dated 02.05.2017, made by the petitioner, in terms of the guidelines laid down in Lalita Kumari’s case. In case if the averments in the report do not make out a case, then a copy of the said finding arrived at by the police shall be communicated to the petitioner giving reasons, so as to enable him to avail the remedies available under law. In case if any case is registered for the offences punishable with imprisonment of seven years or less, the investigating agency shall scrupulously follow the conditions stipulated in the judgment of the Apex Court in

*ARNESH KUMAR Vs. STATE OF BIHAR AND ANOTHER*² before taking any coercive steps against the accused. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.07.2017
vnb



² 2014 (2) ALT (CrI.) 457 SC