

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITIONS No. 31830 & 32474 OF 2017

COMMON ORDER:

Both the Writ Petitions arise out of the disputes concerning the land admeasuring Acs.22.76 cents in Survey Nos. 436 and 826 situated at Agnigundala Village, Ipuru Mandal, Guntur District. While Writ Petition No. 31830 of 2017 has been filed seeking a direction to the respondent police authorities to grant protection for safeguarding the possession and enjoyment of the petitioner over the above land from the unlawful acts of Respondents 7 to 9, Writ Petition No. 32474 of 2017 has been filed to direct the 5th respondent Circle Inspector of Police, Vinukonda to register the F.I.R. on the complaints dated 25.07.2017 and 26.07.2017 of the petitioners therein.

The petitioners in both the Writ Petitions claim their right, title and interest over the subject property and they have gone up to the Supreme Court agitating their rights, which fact is evident from the orders annexed as material papers.

Learned Government Pleader for Home (Andhra Pradesh), on instructions, submits that based on the complaints given by the respective parties, F.I.R. Nos. 36 and 37 of 2017 have already been registered for the offences punishable under Sections 447 and 506 read with Section 34 of the Indian Penal Code on the file of Ipuru Police Station on 02.06.2017 and 03.06.2017 itself.

Now, the grievance nurtured in these Writ Petitions is that the petitioner in Writ Petition No. 31830 of 2017 has made further complaints on 19.06.2017, 10.09.2017 and 23.09.2017, likewise, the petitioners in Writ Petition No. 32474 of 2017 have made

complaints on 25.07.2017 and 26.07.2017, but the same have not been attended to so far.

The learned Government Pleader has placed before this Court the copies of the General Diary entries corresponding to the dates on which the petitioners are stated to have given their complaints, but however, submits the learned Government Pleader that since the *lis* is pending before the Court of civil jurisdiction, the respondent authorities are under the impression that no further action is required to be taken in the matter.

Learned Senior Counsel as well as learned counsel for the petitioners vehemently submit that there is a duty cast on the respondent police officials, particularly, the Station House Officer to adhere to the guidelines laid down by the Supreme Court in ***Lalita Kumari v. Government of U.P.***¹ It has been further submitted that to protect his interests, the petitioner in Writ Petition No. 31830 of 2017 has filed a civil suit i.e. R & T No. 19 of 2017.

As rightly contended by the learned counsel for the petitioners, the respondent police are under obligation to act on the complaints submitted by the parties and it is not just enough to make a General Diary entry, without making any investigation/enquiry into the same.

The Supreme Court, in ***Lalita Kumari's case***, particularly in para 111, has laid down certain guidelines, to be followed by the Investigating Agency. Para 111 has been extracted hereunder:

Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

¹ (2014) 2 SCC 1

ii) 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 cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where 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 reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if 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.

v) 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.

vi) 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 criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) 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.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of 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, as mentioned above.

In the light of the submissions made by the respective parties and since the rights of the parties are to be adjudicated by the civil Court, it is directed that the Station House Officer concerned shall strictly follow the guidelines laid down in para 111 of **Lalita kumari's case** (referred to supra), and take necessary action in accordance with law.

It is needless to say that the competent civil Court shall pass orders in the cases pending before it, on their own merits, without any regard to the interim order passed by this Court.

With the above observations, the Writ Petitions are disposed of. No costs.

Consequently, the interim order dated 22.09.2017 passed in Writ Petition No. 32474 of 2017 stands dissolved.

Time and again, this Court has been observing that it is only the inaction on the part of the respondent police officials to act in accordance with law and in consonance with the procedure prescribed thereunder that has been letting the respective parties to approach this Court. Hence, it is made clear that the failure of the respondent authorities in adhering to the guidelines laid down by the Supreme Court would render them liable for prosecution under the Contempt of Courts Act, 1971.

CHALLA KODANDA RAM, J

05th October 2017

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