

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.4023 of 2018

Between

B.Sailesh Saxena S/o Late B.P.C. Saxena,
Aged 39 years, Occ: Advocate, R/o. G1,
Nandanam Complex, Abids, Hyderabad

... Petitioner

and

1. The Union of India, Rep. by Secretary of
Ministry for Home Affairs, New Delhi;
and 16 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 08-6-2018

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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AND
HON'BLE Ms. JUSTICE J.UMA DEVI

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B.Sailesh Saxena S/o Late B.P.C. Saxena,
Aged 39 years, Occ: Advocate, R/o. G1,
Nandanam Complex, Abids, Hyderabad

... Petitioner

Vs.

- \$ 1. The Union of India, Rep. by Secretary of
Ministry for Home Affairs, New Delhi
2. The State of Telangana, Rep. by its Chief Secretary,
Secretariat, Hyderabad
3. The State of Telangana, Rep. by its Prl. Secretary,
Home Dept., Secretariat, Hyderabad
4. The Director General of Police, Telangana State,
Lakdi-ka-pool, Hyderabad
5. The Commissioner of Police, Hyderabad City,
Basheerbagh, Hyderabad
6. The SHO, Panjagutta PS, Hyderabad,
7. K.N. Vijay Kumar, S/o Nagamuni, Aged 55 years,
Occ: Asst. Commissioner of Police,
Central Crime Station, Hyderabad
8. Avinash Mohanty S/o A.K. Mohanthy, Aged 40 years,
Occ: Deputy CP, CCS, Hyderabad
9. Nayeem, Aged 43 years, Occ: SI Div.D,
CCS, Hyderabad
10. Govind Rajulu, Aged 46 years, Occ: Constable,
CCS, Hyderabad
11. R.Srinivas S/o R.Kistaiah, Aged 45 years,
Occ: Real Estate Agent, R/o 7-2-581/582,
Burgushetty Bazar, Secunderabad
12. R.Krishna Kumar S/o R.Kistaiah, Aged 43 years,
Occ: Real Estate, R/o 7-2-581/582,
Burgushetty Bazar, Secunderabad

13. P.Thirmal Reddy S/o P.Venkat Reddy, Aged 48 years,
Occ: Private Service, R/o Shamirpet, R.R. Dist.
14. Venkata Raya Verma Vegesna, Occ: MD,
Vertex Corporate, 4th Floor, Plot Nos.8&9,
Jubilee Enclave, Opp. Hitex Entrance,
Madhapur, Hyderabad
15. Ali Mohammed S/o Mirzaqudhrathullah, Aged 53 years,
R/o 22-4-431/1, Kotla Alijah, Hyderabad
16. J.Srinivas S/o Padmanabha Rao (Late), Aged 42 years,
Occ: Jr. Asst., o/o Deputy Inspector of Schools,
Khairtabad, Hyderabad, Flat No.202,
Sri Sai Nilayam Aptt., Abids, Hyderabad, R/o Phase-II,
Sri Sai Nilayam Aptt., Abids, Phase-II,
Chintal, Hyderabad
17. A.Shekar S/o late Subhash, Aged 32 years,
Occ: Jr. Asst., o/o Deputy Educational Office,
Ameerpet Zone, Hyderabad, R/o H.No.Mc-257,
Govt. Quarters, Malakpet Colony, Hyderabad
- ... Respondents
- ! Counsel for Petitioner: Mr. A.Srinath Reddy
- Counsel for Respondents 1&2: GP for GAD (TG)
- Counsel for Respondents 3to6: GP for Home (TG)
- Counsel for Respondents 7to10: Mr. N.Naveen Kumar
- Counsel for Respondents 11to 17: ---

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> Head Note:

? Cases referred:

1. (2014) 2 SCC 1

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.4023 of 2018

Order: (per V.Ramasubramanian, J.)

The petitioner, who claims to be practising as an Advocate, has come up with the above writ petition challenging the inaction on the part of the 6th respondent viz., the Station House Officer, Panjagutta Police Station, in registering a FIR against the respondents 7 to 17 despite the orders of the learned XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, in Sr.No.662/2018. The petitioner is also challenging the alleged harassment of himself and his family members by the 8th respondent/ Deputy Commissioner of Police.

2. Heard Mr. A.Srinath Reddy, learned counsel for the petitioner. The learned Government Pleader for Home (Telangana) took notice for the respondents 2 to 6 and filed a counter on behalf of the 5th respondent.

3. The averments with which the petitioner has come up with the above writ petition are that he is the legal advisor for the family of one Mr. J.C. Diwakar Reddy, a Member of Parliament belonging to the Telugu Desam Party and also the legal counsel for one G.Deepak Reddy, Member of the Legislative Council belonging to the Telugu Desam Party; that he had appeared in the cases filed on behalf of those clients; that the present Government is run by a political party which

has rivalry with the party to which the petitioner's clients belong; that due to political rivalry, the party in power is interfering in the civil disputes against the clients of the petitioner, though they are *sub judice* before the City Civil Court, the Special Court under the Lang Grabbing Act, the High Court and the Supreme Court; that with a view to harass the petitioner, the respondents are foisting false criminal cases against the petitioner; that there was also a threat to his life, on account of which he was given protection by the Government with a gunman; that the protection was later withdrawn due to political influence; that the petitioner was attacked in the year 2015 by land mafia gang belonging to the opposite political parties; that after getting defeated in the civil cases before various Courts, the land grabbers with political clout developed grudge against the petitioner; that with the help of corrupt police personnel, the petitioner and his family members were subjected to torture; that due to the harassment at the police station on 21-5-2017, the petitioner's father died after suffering a heart attack; that along with his client, the petitioner has also been added as a co-accused in Crime Nos.235/2016, 27/2017, 35/2017 and 49/2017 on the file of the Central Crime Station, Hyderabad; that the petitioner was sent to judicial remand in Crime Nos.35/2017 and 49/2017; that with a view to convert civil litigation into criminal cases, the respondents 7 to 10 conspired with the respondents 11 to 15 and got the

petitioner arrested on 07-6-2017 and sent to judicial remand; that on 12-6-2017, the Police took the petitioner into their custody from Central Prison and was brought to the Central Crime Station; that the respondents 7 to 10 took the petitioner to Raj Bhavan road on 15-6-2017 at around 2 p.m.; that at Raj Bhavan road, the vehicle was stopped and some persons were summoned on phone; that after 3 to 4 minutes, the respondents 16 and 17 came near the vehicle and showed the material brought by them; that the material brought by them looked like rubber stamps; that the persons who brought the material then got into the car and the car proceeded to the petitioner's office; that the 7th respondent asked the petitioner to open the lock, but the petitioner did not have the keys as he was in judicial custody; that the 7th respondent called the 9th respondent and told him to bring someone from Nampally Station Road to break open the lock; that in the meantime, the 7th respondent asked the 10th respondent to break the glass of the window in the backside of the petitioner's office; that thereafter, the 7th respondent instructed the 10th respondent to keep the packet containing material such as rubber stamps inside the room through the broken window; that the 10th respondent followed the instructions; that thereafter, the 9th respondent brought a person to break open the lock of the office; that thereafter, the respondents 9 and 10 went inside and took possession of the packet containing certain files and rubber

stamps; that the 9th respondent was then asked to take photographs of the petitioner along with all persons present inside the office; that when the petitioner questioned them, the 7th respondent informed him that he is acting under the orders of the 9th respondent; that during the whole operation, the 7th respondent was receiving repeated phone calls on his mobile phone; that the 7th respondent showed to the petitioner the numbers of the respondents 8 and 14 and expressed regret for doing such illegal things; that the 7th respondent also told the petitioner that if he paid a sum of Rs.50,00,000/-, the 7th respondent will help the petitioner by ensuring that the panchas of the panchanama viz., respondents 16 and 17 will not come to Court at the time of trial; that thereafter, the 7th respondent directed the 10th respondent to purchase a new lock for the office; that after putting a new lock on the petitioner's office, all persons moved to the Central Crime Station; that the respondents were not aware of the fact that the whole illegal acts performed by the respondents were recorded in the CCTV cameras; that after the petitioner came out on bail, he got the CCTV camera recording and gave the same to the higher officials of the Police Department; that since no action was taken, the petitioner filed a private complaint before the XIV Additional Chief Metropolitan Magistrate along with a DVD and photographs; that the XIV Additional Chief Metropolitan Magistrate passed an order in C.C.Sr.

No.662/2018 on 05-02-2018 directing the Station House Officer, Panjagutta, to take action under Section 156(3) of the Code of Criminal Procedure; that thereafter, the petitioner went to Panjagutta Police Station and requested the Station House Officer to register the FIR as per the directions of the XIV Additional Chief Metropolitan Magistrate; that the 6th respondent refused to register the crime; that thereafter, the Police from Central Crime Station came along with anti social elements to the petitioner's house and threatened him to withdraw the complaint against the officers; that they also threatened the petitioner that he will be implicated in multiple FIRs and may also be detained preventively; and that therefore, left with no alternative, the petitioner was approaching this Court.

4. The 5th respondent, who is the Commissioner of Police, Hyderabad City, has filed a counter affidavit contending, *inter alia*, that various criminal complaints came to be registered against the writ petitioner in different police stations and that all these complaints were transferred to the Central Crime Station. The Commissioner of Police has provided the details of the criminal complaints filed against the petitioner, in the form of a tabular column, which reads as follows:

Sl. No.	Crime No.	Date of Registration	PS where registered	Date of transfer to CCS and Crime No.	Complainant Name
1.	187/2016 u/S.420, 466 & 471	15-8-2016	Asif Nagar	8-11-2016 (235/2016)	Ali Mohammed, S/o.Mirza Qhudratullah,

	IPC				Aged 53 years, Occ: Business, R/o.H.No.22-4-431/1, Kotla Ali Jha, Hyderabad
2.	137/2017 u/S.420, 468 & 471 IPC	07-02-2017	Banjara Hills	14-2-2017 (35/2017)	Smt. Chandrakala, Tahsildar, Shaikpet Mandal, Hyderabad
3.	100/2017 u/S.420, 468 & 471 IPC	03-4-2011	Abids	15-3-2017 (49/2017)	Sri M.Ravinder Reddy S/o Narayana Reddy, Aged 56 years, Spl. Officer and Competent Authority, Urban Land Ceiling, Nampally, Hyderabad
4.	27/2017 u/S.447, 420, 468, 471, 120-B, 506 IPC r/w 34 IPC	07-02-2017	Central Crime Station	Registered after preliminary enquiry	M.Radha Krishna Murthy S/o M.Venkateshwar Rao, Aged 73 years, R/o Plot No.279, Alekya Marie gold, Road No.6, Kakatiya Hills, Madhapur, Hyderabad
5.	90/2017 u/S.419, 420, 468, 471 IPC r/w 34 IPC	09-6-2017	Central Crime Station	Registered after preliminary enquiry	Sri K.Malleswara Rao S/o Late Venkaiah, Aged 68 years, Occ: Business, R/o H.No.3-3-76 to 79/1, Kingsway, Secunderabad
6.	105/2017 u/S.419, 420, 466, 467, 468, 471, 427 & 380 IPC	17-7-2017	Charminar	31-7-2017 (125/2017)	Sri Venkateshwara Reddy, District Judge, on OD as Registrar (Judicial), High Court of Judicature at Hyderabad

5. Apart from mentioning the details of the complaints now pending investigation against the writ petitioner, the Commissioner of Police has also given in paragraph-16 of the counter affidavit, the details of about 6 writ petitions allegedly filed by the writ petitioner on behalf of fictitious non-existent persons. The details of 7 more writ petitions filed by the petitioner in his capacity as counsel for certain third parties are also furnished in paragraph-16 of the counter

affidavit. It is stated in the counter affidavit that as per the directions of the Registry of this Court, efforts were made by the Police to serve notices on persons in whose name certain writ petitions were filed by the petitioner. But notices could not be served as there were no such persons in the addresses given by the petitioner. Therefore, the Police requested the petitioner to produce his clients. He failed to produce the petitioners in those writ petitions. However, one person by name R.Srinivas, who was arrested in connection with Crime No.235/2016, is stated to have confessed that the petitioners in 6 writ petitions filed by the petitioner herein were non-existent and that he along with the petitioner and others projected an existing person as a non-existing person in a land grabbing case and that the petitioner had obtained even the death certificate in the name of a non-existent person.

6. As per the counter affidavit filed by the Commissioner of Police, all the cases where the petitioner herein filed writ petitions in the names of non-existent persons were heard by a learned Judge of this Court. By a common order dated 04-7-2017, the writ petitions were dismissed. Even while dismissing the writ petitions, the learned Judge of this Court directed the Registrar (Judicial) to lodge a complaint with the Police for investigation. But later, it came to light that in some of the writ petitions, the original bundles went missing. Therefore, the investigation by the Police was directed to

include persons responsible for the misplacement of the case files also.

7. It is further stated in the counter affidavit of the Commissioner of Police that pursuant to the order passed by the learned Judge in W.P.No.22561 of 2008 batch of cases, the Registrar (Judicial) lodged a complaint in Charminar Police Station for alleged offences under Sections 419, 420, 466, 467, 468, 471, 427 and 380 IPC in Crime No.105/2017. Therefore, it is claimed in the counter affidavit filed by the Commissioner of Police that all acts done by the Police including the arrest, search and seizure were done after the registration of the FIR, as part of the investigation following due procedure.

8. It is also claimed in the counter affidavit that the Magistrate erred in referring the complaint of the petitioner under Section 156(3) Cr.P.C., without the previous sanction of the Government and that under Section 88(3) of the Hyderabad City Police Act, the officers enjoy some immunity. The stand taken by the Commissioner of Police is that the writ petitioner has been filing complaints against Police Officers only to prevent them from discharging their lawful duties.

9. The counter affidavit filed by the 7th respondent, who is the Assistant Commissioner of Police, is also almost on identical lines. Therefore, we are not repeating the contents of the counter affidavit of the 7th respondent all over again.

10. In the light of the pleadings reproduced in a nutshell as above, the contention of the learned counsel for the petitioner is that once the Magistrate issues a direction to the Police to make an investigation and file a report under Section 156(3) Cr.P.C., the concerned Police Officer is obliged to register the FIR and proceed with the investigation. But in this case, the Police did not register any FIR. Hence, the learned counsel for the petitioner repeatedly argued that the only question raised in this writ petition is as to whether the superior police Officers are also bound by the Code of Criminal Procedure or not.

11. The sheet anchor of the case of the petitioner is the directives issued by the Constitution Bench of the Supreme Court in ***Lalita Kumari v. Government of U.P.***¹, and the Advisory issued by the Government of India, Ministry of Home Affairs on 12-10-2015. According to the learned counsel for the petitioner, the provisions of the Code of Criminal Procedure are to be followed by both Courts as well as Police Officers and that once an investigation is ordered under Section 156(3) Cr.P.C., a FIR should first be registered. The failure of the Police to register a FIR and the indifference of the Court to the failure of the Police, are contrary to the law laid down by the Supreme Court in *Lalita Kumari*. Apart from the decision of the Constitution Bench of the Supreme Court in *Lalita Kumari*, the learned counsel for the petitioner also

¹ (2014) 2 SCC 1

places reliance upon an Advisory issued by the Government of India, Ministry of Home Affairs, dated 12-10-2015.

12. We have carefully considered the submissions of the learned counsel for the petitioner. The decision of the Constitution Bench of the Supreme Court in *Lalita Kumari* was a culmination of a series of orders passed over a period of about five years. In fact, it started with certain directions issued by a 2-member Bench of the Supreme Court in *Lalita Kumari v. Government of U.P.* [(2008) 7 SCC 164]. When the matter came up once again, reliance was placed upon certain conflicting decisions, some of which took the view that the officer-in-charge of a police station was entitled to hold some sort of a preliminary enquiry before registering the complaint and some others holding a contra view. Therefore, by an order reported in (2008) 14 SCC 337, the matter was referred to a Larger Bench. A 3-member Bench, after considering the seriousness of the issues raised, by an order reported in (2012) 4 SCC 1, referred the issue to the Constitution Bench. As seen from paragraph-1 of the judgment of the Constitution Bench, the issue that invited the attention of the Constitution Bench was whether the Police Officer is bound to register a First Information Report upon receiving any information relating to the commission of a cognizable offence under Section 154 of the Code of Criminal Procedure or the Police Officer has the power to conduct a preliminary enquiry in

order to test the veracity of such information before registering a FIR.

13. In paragraph-111 of its decision, the Supreme Court formulated the principle of law to the following effect:

“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.

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.”

14. On the basis of the principles enunciated in Clauses

(i) and (iv) of paragraph-111 of the decision of the Constitution Bench, it is contended by the learned counsel for the petitioner that the moment a Magistrate referred the matter under Section 156(3) Cr.P.C., the Police have no option except to register the FIR and that the failure of the Station House Officer to register a FIR, is in violation of the law laid down by the Constitution Bench.

15. But the case on hand is not so simple as to invoke the mandate issued by the Constitution Bench in *Lalita Kumari*. As seen from the counter affidavit, the petitioner himself is an accused in at least 6 criminal complaints, 3 of which were lodged by public servants. While Crime No.137/2017 for alleged offences under Sections 420, 468 and 471 IPC was registered at the instance of the Tahsildar, Shaikpet Mandal, Hyderabad, Crime No.100/2017 was registered for alleged offences under Sections 420, 468 and 471 IPC at the instance of the Special Officer-cum-Competent

Authority, Urban Land Ceiling, Nampally, Hyderabad and Crime No.105/2017 was registered for alleged offences under Sections 419, 420, 466, 467, 468, 471, 427 read with 380 IPC at the instance of the Registrar (Judicial) of this Court. In fact, the complaint lodged by the Registrar (Judicial) of this Court was pursuant to a direction issued by a learned Judge of this Court in a writ petition, in which the writ petitioners were found to be non-existent persons, but the petitioner herein acted as their counsel and failed to produce them when called upon to do so. It is in this background of facts that the ratio laid down in *Lalita Kumari* has to be understood.

16. The complaint filed by the petitioner on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.Sr.No.662/2018 refers to certain incidents that took place on 15-6-2017, after the petitioner was taken into police custody from judicial custody in connection with Crime Nos.235/2016, 27/2017, 35/2017 and 49/2017 on the file of the Central Crime Station, Hyderabad. What allegedly happened on 15-6-2017 after the petitioner was taken into police custody constitutes the sum and substance of the criminal complaint that the petitioner filed on the file of the XIV Additional Chief Metropolitan Magistrate against 11 named individuals. In this complaint, the petitioner has shown the Assistant Commissioner of Police, Deputy Commissioner of Police, Sub Inspector (Div.D) and a

Constable, all at the Central Crime Station as accused Nos.1 to 4.

17. As we have pointed out earlier, 3 out of 6 criminal complaints pending investigation against the petitioner were lodged by public servants, one of whom was none other than the Registrar (Judicial) of this Court. The FIR registered on the basis of the complaint given by the Registrar (Judicial) of this Court in Crime No.105/2017 for alleged offences under Sections 419, 420, 466, 467, 468, 471, 477, 427 and 380 IPC was actually pursuant to an order passed by a learned Judge of this Court on 04-7-2017 in a batch of writ petitions. The facts leading to the registration of the complaint given by the Registrar (Judicial) of this Court, as disclosed in the complaint, read as follows:

“The facts of the case as per the order of the Hon’ble High Court are that one Advocate by name Sri B.Sailesh Saxena on behalf of 1) Iqbal Khan S/o late Moinuddun Islam Khan 2) Nijamiuddin Islam Khan S/o Nizamuddin Islam Khan 3) Habeen Islam Khan S/o late Qutubuddin Islam Khan 4) Iftar Islam Khan S/o Khaleeluddin Islam Khan filed W.P.Nos.22561 & 27590/2008, 1155, 1156, 1666 & 1674/2009 (hereinafter referred to as First Batch of cases) against the then composite Govt. of A.P. and others as mentioned in the cause title of the respective W.P. praying to quash G.O.Ms.No.328, Revenue (UC.V), dated 12-3-2008, G.O.Ms.No.303, Revenue No.747, dated 18-6-2008 and G.O.Ms.No.221, Revenue (UC.IV), dated 22-02-2008 respectively whereunder the Govt. has taken possession of huge extent of land declared surplus under the provisions of the Urban Land Ceiling Act. Questioning the very same GOs (mentioned in the above WPs) Sri B.Sailesh Saxena, Advocate, filed another batch of 6 writ petitions, on behalf of 1) M/s. Jai Hanuman Estate

2) M.H. Sailaja and 3) G.Deepak Reddy vide W.P. Nos.28647, 28648, 28649, 28650, 28651 & 28652/2014 (hereinafter referred to as the second batch of cases) pleading that they have obtained a decree for specific performance of agreement of sale executed by the petitioner in the first batch of cases. I am to further state that during pendency of these cases, the first petitioner in the first batch of cases reportedly died and one person by name Shakeel Islam Khan claiming to his legal representative, filed W.P.M.P.No.12913/2014 in W.P.No.22561/2008 to come on record and the same was allowed by order dated 22-6-2017. Some of the respondents in W.P. No.22561/2008 filed W.P.M.P.No.11235/2017 contended that the person who filed the first batch of 6 writ petitions, including the person who came on record as legal representative of first petitioner, are non-existent and that they are fictitious and sought for directions of the Registry to send the notices to them to appear before the Court on 04-7-2017 along with their identity cards. As direct notices were sent by the Registry and they returned unserved in respect of petitioner Nos.2 to 4 in respect of the first batch of writ petitions with an endorsement "address not found" while in respect of petitioner No.5 who came on record as legal representative of the first petitioner, the notice was returned with an endorsement "house vacated" – Respondent No.6 in W.P.No.22561/2008 brought to the notice of the Hon'ble Court that an Affidavit is filed by petitioner No.3 in the second batch of cases in C.R.P.No.1826/2016 stating that petitioner No.5 came on record in the first batch of cases of legal representative of petitioner No.1 is not his son. Therefore, the Hon'ble Court on 04-7-2017 passed order recalling the order dated 20-6-2017, bringing petitioner No.5 as legal representative of petitioner No.1 in the first batch of cases. I am further state that as per the order of the Hon'ble Court, Sri B.Sailesh Saxena, who filed the first batch and second batch of cases, on behalf of the petitioners therein filed W.P.No.2293/2017 questioning the action of police in registering FIR No.235/2016 and interfering with his professional duties. One Sri M.Shiva Bhusan, claiming to be GPA holder of Iqbal Islam Khan, who is petitioner No.1

in the first batch of cases and died during the pendency of the case, filed W.P.No.2359/2017, questioning the action of the police in compelling him to give statement that he himself of Iqbal Ismal Khan. The factual matrix of the case, from the common order dated 04-7-2017 of the Hon'ble Court (copy enclosed), reveals that the batch of writ petitions were filed by non-existent persons and the petitioner in the second batch of writ petitions are claiming to have obtained decree of specific performance of agreement of sale from such non-existent persons, with a view to grab huge extent of land declared surplus under the provisions of the Urban Land Ceiling Act. The Hon'ble Court also found that in W.P.Nos.2256/2008, 1155 & 1156/2006 the original bundles are found missing and the investigation of the police shall include the persons responsible for misplacement of the original case also. Therefore, this report is filed by the Registrar (Judicial) of the High Court of Judicature, at Hyderabad as directed with a request to take appropriate action in accordance with law."

18. It is relevant to note that the factual basis for the criminal complaint lodged by the writ petitioner herein against the unofficial respondents are the events that took place on 15-6-2017. The FIR at the instance of the Registrar (Judicial) was filed on 31-7-2017, in pursuance of the direction issued by this Court on 04-7-2017. In other words, one of the 6 FIRs lodged against the petitioner was subsequent to the events that took place on 15-6-2017.

19. If the registration of multiple FIRs are done with a view to harass the petitioner, the complaint registered pursuant to the directions of this Court would also fall under the same category. While the petitioner may have any amount of grievance against the Investigating Officers, he cannot have

a grievance against a judicial order pursuant to which a responsible official of this Court has lodged a complaint. Therefore, it is impossible to believe that a few Police Officers have conspired to fix him up, when it is a matter of record that a complaint came to be lodged by the Registrar (Judicial) of this Court pursuant to the directions issued in a judicial order. At the most, the petitioner can complain of circumstances conspiring against him and not persons conspiring against him.

20. It is also relevant to note that all the 6 criminal complaints filed against the petitioner are now under investigation by the Assistant Commissioner of Police, Central Crime Station. The petitioner has impleaded the Assistant Commissioner of Police, Central Crime Station, by name as the 7th respondent, making serious allegations against him. At this stage, it is not possible to get into the veracity of the complaint made by the petitioner against the 7th respondent.

21. But the registration of a complaint against the 7th respondent at this stage, at the instance of the petitioner, would result in the immediate consequence of paralysing the investigation as well as the Investigating Officer. A complaint about the manner in which the investigation into a crime is being carried out, can at the most enable a person accused to seek transfer of investigation, but not to file a FIR against the Investigating Officer.

22. The overt and covert acts attributed by the petitioner against the Police Officers and the *de facto* complainants are that all of them are planting and fabricating evidence against the petitioner in the criminal complaints lodged against him. These allegations actually constitute the defence of the petitioner to the criminal complaints lodged against him. The defence of an accused in a criminal case cannot become the subject matter of another criminal complaint against the prosecution. If the evidence on which the prosecution relies to prove the guilt of an accused in a criminal case is fabricated, the accused should first get a finding recorded to the said effect from the Trial Court in that case. It is only thereafter that a complaint of fabrication of evidence can be made by the accused in a criminal case against the Police Officers and the *de facto* complainant.

23. What the petitioner is now attempting to do is to seek an investigation into his allegation that the evidence collected by the Investigating Officer in the criminal complaints filed against him is fabricated. This is nothing but an attempt at deflecting and derailing the course of investigation into the complaints lodged against the petitioner.

24. Section 102 (1) of the Code of Criminal Procedure, 1973 empowers any police officer to seize any property (i) which may be alleged or suspected to have been stolen or (ii)

which may be found under circumstances which create suspicion of the commission of any offence.

25. Similarly, Section 27 of the Indian Evidence Act, 1872 carves out an exception to the rule in Section 26 of the Act. Therefore, the discovery of any material or information in consequence of the information received from a person accused of any offence assumes relevance even if such a person is in the custody of a police officer.

26. Therefore, the materials such as rubber stamps etc., claimed by the police (according to the version of the petitioner) to have been recovered from the premises of the petitioner constitute evidence in the criminal complaints now pending investigation against the petitioner. The question whether this evidence was fabricated by the police or planted by the police in the premises of the petitioner, should be decided only by the trial Court where a final report is filed and charges are framed. It is that trial Court in which the material allegedly recovered from the premises of the petitioner by the police, should be put to scrutiny. But what the petitioner wants is the registration of a FIR on a complaint that the said material was not recovered in the course of investigation, but planted by the police in his office premises. Ordering the registration of a FIR on the said complaint would tantamount to putting the evidence in one criminal case, to test in another criminal complaint, even

before the material is marked as exhibit or material object in the case in relation to which such evidence was collected.

27. A case of this nature is not contemplated to be covered by the ratio in *Lalita Kumari*. The decision in *Lalita Kumari* is intended to clear the confusion about the power of the Police under Section 154 Cr.P.C. *Lalita Kumari* did not contemplate a situation where the accused in a criminal case lodges a complaint against the Investigating Officer, even during the course of investigation, on the allegation that he was collecting false evidence. The false and fabricated nature of the evidence collected by an Investigating Officer in the course of investigation has first to be tested by the Court in which it is produced. An accused cannot use the decision in *Lalita Kumari* to pre-empt the very collection of evidence against him in the course of investigation.

28. Let us assume for a minute that a FIR is registered on the complaint given by the petitioner against the unofficial respondents. Once it is done, the evidence collected by the Investigating Officer will have to be proved as genuine in the case filed by the petitioner, before it can be used as evidence in the criminal cases filed against the petitioner. The evidence for the prosecution in a particular case cannot be first subjected to scrutiny in another criminal case.

29. The object of the petitioner filing a criminal complaint appears to be to first put to test the evidence so far collected by the Police Officers, before they can be used in the criminal complaints against him. The decision in *Lalita Kumari* did not license such a practice. Therefore, the contention on the basis of *Lalita Kumari* does not merit acceptance.

30. The reliance placed upon the Advisory issued by the Ministry of Home Affairs, Union of India, is also of no avail. The Advisory issued by the Ministry of Home Affairs, Union of India, is nothing but a reiteration of the directives contained in *Lalita Kumari*. Therefore, what applies to *Lalita Kumari* applies equally to the Advisory issued by the Union of India.

31. Coming to the last issue that stems from the order passed by the XIV Additional Chief Metropolitan Magistrate, it may be useful to extract the order dated 05-02-2018 passed by the Magistrate in C.C.SR.No.662 of 2018. It reads as follows:

“Heard and perused the records and sworn affidavit of complainant.

The counsel and complainant relied on number of citations by showing that the permission to prosecute the accused is not necessary further on perusal of fact, circumstances and averments of the complaint the investigation is required, so that the sworn statements are not recorded and the complaint is forwarded to SHO, Panjagutta P.S. under Section 156(3) Cr.P.C for enquiry or investigation and for report.”

32. It appears from the order extracted above that the learned XIV Additional Chief Metropolitan Magistrate did not even apply his mind to the fact that the petitioner is seeking to weave a complaint around the material collected by the Police as evidence in the course of investigation of several complaints against the petitioner. The fact that the material and evidence collected in the course of investigation into a criminal complaint, cannot become the subject matter of another complaint especially at the instance of the accused, even before such material is tested for its evidentiary value, was not even considered by the Additional Chief Metropolitan Magistrate.

33. Though we are not testing the correctness of the order passed by the Additional Chief Metropolitan Magistrate, we are sure of the extent of our jurisdiction under Article 226 of the Constitution of India. A Writ of *mandamus* can be issued only to compel the performance of a statutory duty. What the petitioner is seeking by way of a Writ of *mandamus* is to direct the Investigating Officer to first put himself in the dock along with his material, before they can be relied upon in the criminal complaints filed against the petitioner. Hence, the writ petition is thoroughly misconceived and appears to be an abuse of the process of law and a counterblast to the series of criminal complaints in which a person belonging to

the so-called “noble profession” got involved. Therefore, the writ petition is dismissed.

The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

08th June, 2018.

Ak

Note:-

L.R. Copy to be marked.

(B/o)

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.4023 of 2018
[per VRS, J.]



08th June, 2018.
(Ak)