

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.2194 of 2016

ORDER :

The petitioner has filed the present writ petition for a *Writ of Mandamus*, to direct the respondents No.2 and 3 – the Deputy Superintendent of Police, Parvathipuram and Station House Officer, Salur Town Police Station of Vizianagaram District, respectively, to register a criminal case, pursuant to the complaint dated 14.08.2015 submitted by the petitioner, with regard to demolition of two toilet rooms constructed in the Primary School, Neyyalaveedi Salur, Vizianagaram District, with the Sarva Siksha Abhiyan (S.S.A.) funds.

2. The brief facts of the case are that a news item dated -nil- was published in Sakshi stating that the toilets constructed in a school with public money are being demolished without inaugurating them. There are four compartments, of them two for the use of urinals, and two for use of lavatories. These constructions were made with the S.S.A. funds, by a contractor, namely Subbana of Tirupati. The Mandal Educational Officer, Salur has supervised the said construction, and on 06.08.2015 gave instructions for demolition of them. Accordingly, some residents of 10th Ward have demolished all the four lavatories. The petitioner being Councillor of 10th Ward lodged a complaint to the police for demolition of Government property as illegal. He gave a complaint dated 14.08.2015 to the Station House Officer, Salur Town Police Station, but the same was not registered by the S.H.O., as the complaint is not competent to give

complaint. However, the 3rd respondent has received the complaint from the petitioner and issued a receipt bearing No.207/2015, dated 14.08.2015, acknowledging the complaint. The other reason stated was that it was a non-cognizable offence and so the 3rd respondent advised the petitioner to approach the appropriate Forum for redressal of his grievance.

3. The learned Government Pleader (Home) submits that in respect of the demolition of said toilet rooms, the Commissioner, Municipality, Salur has issued a Memo vide Roc.No.1510/2015-C2, dated 19.08.2015 to the 6th respondent, Headmaster of the said School, directing him to submit his explanation for demolition of toilets. Accordingly, the 6th respondent submitted his explanation to the Municipal Commissioner, stating that the funds allotted under S.S.A. Scheme, for the year 2009 and 2010, for the construction of two urinals, and two toilets without providing running water facility. As there was no compound wall for the school, the residents near the school spoiled the toilets, and they require repairs. In view of the Scheme of Swatcha Bharath, the concerned authorities were enquiring the Headmaster, whether the toilets constructed are being used or not, and he informed them that they are unfit for use. The petitioner informed him over phone that in the place of old toilets, new toilets were proposed to be constructed, but he asked the contractor to stop the work of demolition. The Mandal Educational Officer has forwarded the explanation of 6th respondent to the Municipal Commissioner, S.S.A. Vizianagaram.

4. The learned Government Pleader (Home) further submits that on receipt of the explanation from the 6th respondent, the Municipal Commissioner has to enquire into the matter, and may give complaint to the police.

5. On consideration of the arguments and on perusal of the counter filed by the 3rd respondent, reveals that as the case is non-cognizable in nature, police did not register the complaint, and the petitioner was not competent authority as the matter pertains to Municipal Administration. In fact, in non-cognizable offences, as per the Code of Criminal Procedure, the police have to obtain permission from the concerned Magistrate for investigation of a non-cognizable offence. Section 155 Cr.P.C. deals with the information as to non-cognizable cases and investigation of such cases, which reads as under:

“Section 155: Information as to non-cognizable cases and investigation of such cases.—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

6. In the instant case, the police did not register the complaint at all. On the other hand, the police states that the offence is a non-cognizable offence and, therefore, the police cannot investigate the same. In fact, as per Section 155(2) Cr.P.C., no police officer shall investigate a non-cognizable case without the order of the Magistrate having power to try or commit the case for trial. As a matter of fact, on receipt of the complaint from the petitioner, when the police came to a conclusion that it is a non-cognizable case, the police ought to have obtained an order of a Magistrate to try such case. Instead of obtaining permission under Section 155(2) Cr.P.C., the police have not registered the case at all on the ground that it is a non-cognizable case. On the other hand, the police state that as they did not receive a complaint from the Municipal Commissioner, the complaint lodged by the petitioner was not registered.

7. It is obvious that the police concerned have not registered the complaint as per the provisions under Section 154 Cr.P.C. When the complaint was not registered by the police, the petitioner could have approached the higher officials in the Police Department as contemplated under Section 154 Cr.P.C. He could even have filed a private complaint before the concerned Magistrate. However, in view of the fact that the counter clearly states that as the offence is non-cognizable in nature, they did not take cognizance, does not appear to be a proper explanation by the police. Anybody can set the criminal law into motion for taking cognizance of a cognizable or non-cognizable offence. The police ought to

have taken permission to investigate in a non-cognizable offence.

8. The 10th Ward Member, who is a responsible citizen, who has lodged a complaint. Therefore, the concerned police are hereby directed to take appropriate action in the matter on the complaint, if the cause still survives.

9. With these observations, the Writ Petition is disposed of accordingly.

10. The Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dated: 01.05.2018
JR/Msr

GUDISEVA SHYAM PRASAD, J

