

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.12357 of 2018

ORDER:

This writ petition is filed by the petitioners, under Article 226 of the Constitution of India, seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the Respondents 2 to 5 in not taking any action on the complaints made by the petitioners dated 7-4-2018 and 9-4-2018 against the Respondents 6 to 10 is illegal, arbitrary, unconstitutional and violation of the Articles 14, 16, 21 and 300A of the Constitution of India and consequently direct the Respondents 2 to 5 to take action against the respondents 6 to 10 forthwith by implementing the orders of the Hon'ble Court in WP Nos.4356 and 4359 of 2018 and 14-2-2018 and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri Vedula Venkata Ramana*, learned senior counsel appearing for *Sri Mantha Rajendra*, learned counsel appearing for the petitioners; learned Government Pleader for Home (TS) appearing for respondents 1 to 5; and, of *Sri S.Niranjana Reddy*, learned senior counsel appearing for *Sri C.Naresh Reddy*, learned counsel appearing for respondents 6 to 10. I have perused the material record.

3. Counter affidavit of the 10<sup>th</sup> respondent is filed. No counters are filed by the other respondents. Though a counter affidavit has been filed by the 10<sup>th</sup> respondent, no arguments on merits of the matter are submitted and heard. Arguments are advanced on the limited issue of the maintainability of the writ petition and the issue as to whether this Court can grant a direction to the respondents/police officers to take suitable action on the complaints mentioned in the writ petition.

4. Learned senior counsel appearing for the petitioners would submit as follows: ‘There are serious disputes between the petitioner and the unofficial

respondents. Being aggrieved of certain serious acts of the unofficial respondents, the petitioners lodged two reports/ complaints, dated 07.04.2018 & 09.04.2018 with the police officers concerned. But, no action has been taken on the said reports/ complaints by following the due procedure established by law. Therefore, the main grievance of the petitioners is only in that regard. Their grievance stands redressed if the respondents 2 to 5 are directed to take action, in accordance with law, against the respondents 6 to 10 on the aforesaid complaint/report lodged by the petitioners. When once the reports/ complaints lodged disclose cognizable offence, the police officers are obliged to follow the procedure established by law, particularly, the precedential guidance in the decision rendered by the constitution Bench of the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh & Others*<sup>1</sup>. Learned senior counsel also relied upon the following two decisions in support of his contention that the writ petition is maintainable and the petitioners are entitled to seek suitable directions to the police officers in the light of the guidelines given by the Constitutional Bench of the Supreme Court in *Lalita Kumari's case* (1 supra).

1. *Abhinandan Jha v. Dinesh Mishra*<sup>2</sup>
2. *Shri Anandi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others*<sup>3</sup>

4.1 I shall deal with the guidelines laid down in *Lalita Kumari's case* (1 supra) at an appropriate later stage in this order.

4.2 The decision in *Shri Anandi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust and others* (3<sup>rd</sup> supra) is relied upon in support of the following propositions.

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<sup>1</sup> (2014) 2 Supreme Court Cases 1

<sup>2</sup> AIR 1968 Supreme Court 117

<sup>3</sup> AIR 1989 SUPREME COURT 1607

“19. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art.32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “Any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of the positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

20. In *Praga Tools Corporation v. Shri C.A. Imanuel* [ (1969(3) SCR 773: (AIR 1969 SC 1306)], this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the Statutes even though they are not public officials or statutory body. It was observed (at p.778) (of 1969-3 SCR): (At pp.1309-10 of AIR):

‘It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities (See Halsbury’s Laws of England (3<sup>rd</sup> Ed. Vol.II p.52 and onwards).’

4.3 The decision in *Abhinandan Jha v. Dinesh Mishra* (2<sup>nd</sup> supra) was relied upon in support of the following proposition:

“The question can also be considered from another point of view. Supposing the police send a report, viz., a charge sheet, under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under Section 169?. In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The

functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe (sic. Impinge?) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.'

4.4 Learned senior counsel laid emphasis on the Constitution Bench decision stating that the police are bound to follow the guidelines of the Supreme Court and take suitable action by duly adhering to the precedential guidance in the said decision of the Supreme Court.

5. Learned senior counsel appearing for the respondents 6 to 10 strongly contended that the writ petition is not maintainable. In support of the said contentions, he placed reliance on the following decisions.

1. Aleque Padamsee v. Union of India<sup>4</sup>
2. Sakiri Vasu v. State of Uttar Pradesh & Others<sup>5</sup>
3. Priyanka Srivastava v. State of Uttar Pradesh<sup>6</sup>
4. Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage<sup>7</sup>

5.1 In Aleque Padamsee (4<sup>th</sup> supra), the facts are as follows: The accused was alleged to have made speeches likely to disturb the communal harmony. But, no action was taken by the police. Hence, a writ petition, under Article 32 of the Constitution of India, was filed before the Supreme Court. The Supreme Court considered the question as to whether a writ can be issued to the police authorities to register the complaint and held as follows:

"The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences's case (supra) and re-iterated in Gangadhar's case (supra)

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<sup>4</sup> (2007) 6 Supreme Court Cases 171

<sup>5</sup> (2008) 2 Supreme Court Cases 409

<sup>6</sup> (2015) 6 Supreme Court Cases 287

<sup>7</sup> (2016) 6 Supreme Court Cases 277

the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra), Minu Kumari's case (supra) and Ramesh Kumari's case (supra), we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re- iterated in Lallan Chaudhary and Ors. v. State of Bihar MANU/SC/4524/2006 : AIR2006SC3376 . The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code.”

5.2 The decision in Sakiri Vasu (5 supra) was relied upon in support of the following proposition:

“In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.”

5.3 The facts of the decision in Priyanka Srivastava (6 supra) are as follows:

‘The 3<sup>rd</sup> respondent in the cited case filed a criminal complaint under Section 200 CrPC against the officials concerned of the financial institutions for the offences punishable under Sections 163, 193 and 506 IPC, but the same was dismissed. Being aggrieved thereby, respondent no.3 preferred a revision petition. The Revisional Court set aside the said order and remanded the matter to the trial Court. After the remand, the trial Magistrate took cognizance and issued summons to the officials concerned of the financial institution. The officials concerned approached the High Court. The High Court quashed the criminal complaint. In the interregnum period, the borrowers filed an objection under Section 13 (3-A) of the SARFAESI Act, which was rejected. Being aggrieved thereby, Respondent no.3 approached the Debt Recovery Tribunal (DRT). The non-success before the DRT impelled the borrowers to prefer an appeal before the Debts Recovery Appellate Tribunal. In this factual background, allowing the appeal and quashing the proceedings against the officials, the Supreme Court, while issuing directions under Section 156 (3) of the Code, held that the duty case on the Magistrate while exercising power under Section 156(3) CrPC cannot be marginalized and that the power under Section 156(3) CrPC warrants application of judicial mind and that a Court of law is involved and that it is not the police taking steps at the stage of Section 154 CrPC.’ Having regard to the facts enunciated on the point, the Supreme Court also held as follows:

“...it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position

does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.”

5.4 In *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage* (6 supra), the facts and the ratio are as follows: Two appeals have been filed against a common judgment of the High Court of Bombay. By the orders impugned, the Bombay High Court changed the Investigating Officer and appointed a Special Investigating Officer to enquire into the alleged offence. Reiterating the legal position in the decision in *Sakiri Vasu* (5 supra), the Supreme Court had held as follows:

“We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternative remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

6. I have given earnest consideration to the facts & submissions.

7. In *Lalita Kumari v. Government of Uttar Pradesh & Others* (1 supra), the entire legal position was adverted to by the Constitution Bench of the Supreme Court while considering the following facts: ‘Lalita Kumari (minor) through her father, filed writ petition, under Article 32 of the Constitution of India, for issuance of a writ of habeas corpus or directions(s) of like nature against the respondents therein for protection of his minor daughter who has been kidnapped’. In the writ petition, a grievance was expressed that on

11.05.2008, a written report was submitted by the petitioner before the officer in charge of the police station concerned and that he did not take any action on the same and that thereafter, the Superintendent of Police was moved and that an FIR was registered and that even, thereafter steps were not taken either for apprehending the accused or for recovery of the minor girl child.

8.1 After the matter was eventually heard by a Bench of three Judges of the Supreme Court, the matter was referred to the Constitution Bench while concluding as under:

“We have carefully analyzed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue: whether under Section 154 Code of Criminal Procedure, a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary inquiry before registering the FIR.

The learned Counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of Santosh Kumar and Suresh Gupta where preliminary inquiry had been postulated before registering an FIR. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary inquiry before registering the FIR.

The issue which has arisen for consideration in these cases is of great public importance. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned--the courts, the investigating agencies and the citizens.

Consequently, we request the Hon'ble the Chief Justice to refer these matters to a Constitution Bench of at least five Judges of this Court for an authoritative judgment.”

In this backdrop, the Supreme Court speaking through the Constitution Bench summarized the law, in regard to registration of the crime as under:

(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.

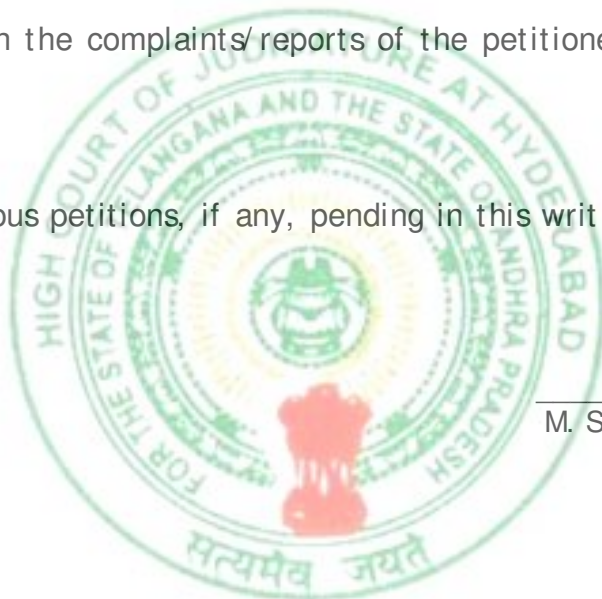
9. In the light of the above settled legal position, the issue before this Court is no longer *res integra*, as it is not open to the police authorities to deviate from the precedential guidance aforementioned. They are obliged to

take appropriate necessary action after receiving a complaint/ report alleging cognizable criminal offence. In the event the offence is a non-cognizable one, the police officers are bound to follow the due procedure laid down under Section 155 of the Criminal Procedure Code, 1973. In any event, the police authorities shall take suitable action by adhering to the precedential guidance in the aforementioned decision of the Supreme Court.

10. In the light of the ratio laid down in the constitution Bench decision of the Supreme Court, which squarely applies to the facts of the case, the writ petition is disposed of, reiterating the aforesaid directions of the Supreme Court and holding that the police officers concerned, in any event, shall take suitable action on the complaints/ reports of the petitioners. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

20<sup>th</sup> April, 2018  
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M. SEETHARAMA MURTI, J