

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.11542 of 2011

ORDER:

The petitioners seek a Writ of Mandamus declaring the action of the respondents in illegally detaining him in their custody from 02.04.2011 to 16.04.2011 except on 04.04.2011 and 06.04.2011 and subjected him to mental torture and threatening him to settle the civil disputes with respondent No.8 as illegal, arbitrary and violation of his right to life and personal liberty as envisaged in *D.K.Basu vs. State of West Bengal*¹ and also violative of Article 21 of the Constitution of India and also declare the inaction of respondent No.3 in acting upon complaint dated 18.04.2011 as illegal and violative of Section 154(2) Cr.P.C.

2a) The petitioner's case is that presently he is working as Sales Executive (Marketing) and previously he worked under respondent No.8 as Supervisor from 2001 to 2008. Respondent No.8 developed grudge against the petitioner, since he legally fought to get his rights and benefits for which the petitioner was subjected to threats and harassment and in that course, he was kidnapped by respondent No.8 with the aid of his Goondas which is the subject matter in Cr.No.34 of 2009 of Nizamabad Rural PS for the offences under Sections 365, 324 r/w 34 IPC against respondent No.8 and others which is pending.

b) Petitioner's further case is that respondent No.8 is politically influenced person and he prevailed upon respondent No.2 who in turn

¹ (1997) 1 SCC 416

directed respondents 5 to 7 to settle the civil dispute in the police station. Petitioner was informed by respondents 5 to 7 that respondent No.8 has built up pressure on them through top Police Officers and thereby, they confined him in the police station from 02.04.2011 to 16.04.2011 except two days i.e. on 04.04.2011 and 06.04.2011 for the purpose of settling the civil disputes by threat and coercion which is illegal, arbitrary and violation of right to life and personal liberty as per the guidelines given by the Apex Court in ***D.K.Basu*** (1 supra). The CI of Police sent police personnel on 02.04.2011 to the petitioner's house and he was forcibly picked up though his family members protested against their atrocious acts for not giving any reason. The police refused to give reasons and placed before the CI who threatened him to settle the matter in respect of property dispute with respondent No.8 but he refused to sign on papers. The petitioner was shifted to DSP Training Centre situated at Jankampet. In the meanwhile, petitioner's wife filed Writ of Habeas Corpus in W.P.No.9859 of 2011 before the High Court which is pending. Since the police got information about the said fact, they terrorized him and shifted from one place to another without informing as to where he was being shifted. The DSP informed him that he got instructions from higher officials and thus he was subjected to mental torture. On 16.04.2011 the petitioner was set free with a condition that he should again come to police station and settle the matter with respondent No.8 otherwise, he would have to face severe consequences. The elders of the locality intervened and came to police

station as well as DSP Training Centre but there was no positive response from the police.

d) The further case of the petitioner is that he approached respondent No.3 with a complaint dated 18.04.2011 complaining about his illegal torture from 02.04.2011 to 16.04.2011 by respondents 5 to 7 as well as respondent No.8 and requested respondent No.3 to register his complaint against them, but he did not acknowledge his complaint. Thereafter, the petitioner sent complaint through Fax and Registered Post dated 18.04.2011. He also lodged complaint before respondents 3 and 4 and also before the District Collector through Registered Post. Respondent No.8 is an influenced person and he filed a false case against him in Cr.No.19 of 2009 which is pending.

Hence the writ petition.

3a) Respondent No.1 filed counter and opposed the writ petition. It is stated that the petitioner herein was involved in two cases. Cr.No.74 of 2011 was registered on 26.02.2011 by the police of Nizamabad Rural PS for the offences under Sections 448, 290, 506 and 504 IPC on the complaint of one Baireni Charan Rao who alleged that on 26.02.2011 the writ petitioner and his brother—Velma Vishanth Reddy came to his house and made galata saying that there were transactions between them and respondent No.8 in respect of Bhainsa Petrol Pump and enquired complainant why he was involving in the matter and without reason, they abused him in filthy language and they threatened him with dire

consequences at the point of knife to kill him. In the meanwhile, complainant's friend—Berappa and others rushed and accused threatened and insulted the complainant in their presence. The police after investigation filed charge sheet before the II Additional Judicial First Class Magistrate, Nizamabad which was taken cognizance and registered as C.C.No.617 of 2012 and ultimately the case was ended in acquittal. The second case is Cr.No.185 of 2011 which was also registered by Police of Nizamabad Rural PS on 25.05.2011 for the offences under Sections 420 and 506 IPC. The said case was registered against the writ petitioner and his brother—Velma Vishanth Reddy. The allegations are that the accused offered to sell the agricultural land Ac.16.17 gts. situated in Mahagaon of Bhainsa Mandal to the complainant for Rs.4,93,000/-. The accused have executed the agreement of sale-cum-General Power of Attorney in favour of complainant on 04.09.2008 by Document No.2823/2008 and delivered possession of the land. In spite of accused receiving total sale consideration and executing document, they gave go-bye to the said transaction and again executed three sale deeds in favour of B.Vishwanath and sold the land and thus cheated the complainant. When the complainant questioned the accused about their acts, the accused threatened the complainant at the point of knife. The investigation was taken up by N.Somanadham, Inspector of Police, Nizamabad Rural PS and during the course of investigation accused were apprehended and they confessed to have committed the crime. Both the accused were produced before the II Additional Judicial First Class Magistrate, Nizamabad and they were

remanded to judicial custody. After completion of investigation charge sheet was filed which was taken cognizance and registered as C.C.No.683 of 2014 which is pending.

b) It is further submitted the affidavit allegations that petitioner was detained from 02.04.2011 to 16.04.2011 except on 04.04.2011 and 06.04.2011 and that he was subjected to mental torture and he was threatened to settle the dispute with respondent No.8 are false and baseless and denied. So far as the allegation that complaint dated 18.04.2011 lodged by the petitioner is concerned, it is submitted that said complaint has been lodged with a *mala fide* intention with a view to frustrate Crime Nos.74 and 185 of 2011 and hence no action was taken on the said complaint. The respondents thus pray to dismiss the writ petition.

4) Heard arguments of Sri V.Raghunath, learned counsel for petitioner and learned Additional Public Prosecutor (TS).

5) Learned counsel for petitioner would argue that at the behest of respondent No.8, respondents 5 to 7 illegally detained the petitioner from 02.04.2011 to 16.04.2011 except on 04.04.2011 and 06.04.2011 and during the said period they have coerced and threatened him to settle the civil disputes pending between the petitioner and respondent No.8 and forced him to sign on the papers but the petitioner did not budge to their coercive threats. The respondents caused so much mental harassment besides violating personal liberty of the petitioner without there being his fault and the atrocious acts of the respondents are illegal, unjust and violative of

Article 21 of the Constitution. He would argue that petitioner submitted complaint on 18.04.2011 to respondent No.3 to take action against respondents 5 to 8 but respondent No.3 did not acknowledge his complaint and take any action. He would further argue that when the complaint discloses a cognizable offence, the police are bound to register crime and investigate the same as per the dictum laid down by the Honourable Apex Court in *Lalita Kumari vs. State of UP and others*². He thus prayed to allow the writ petition.

6) On the other hand, learned A.P.P. would argue that the petitioner was involved in two crimes i.e. Cr.Nos.74 and 185 of 2011 and in Cr.No.74 of 2011 charge sheet was filed before the II Additional Judicial First Class Magistrate, Nizamabad which was taken cognizance and case was registered as C.C.No.617 of 2012 and the said case was ended in acquittal and so far as Cr.No.185 of 2011 is concerned, charge sheet was filed before II Additional Judicial First Class Magistrate, Nizamabad which was taken cognizance and registered as C.C.No.683 of 2014 and the same is pending. Learned A.P.P. would further argue that respondent No.8 has never influenced the respondent police officers and they have not detained the petitioner between 02.04.2011 and 16.04.2011 except on 04.04.2011 and 06.04.2011 as alleged by the petitioner and those allegations are made by the petitioner only to extricate from C.C.No.683 of 2014. He would further argue that in respect of Cr.No.74 of 2011, petitioner's wife filed Writ of Habeas Corpus in W.P.No.9859 of 2011 alleging that he was illegally

² (2014) 2 SCC 1 = AIR 2014 SC 187

detained and the respondents have placed true facts before the Court and the said writ petition was dismissed. Learned A.P.P. would further submit that the petitioner submitted complaint on 18.04.2011 and upon perusing the same no action was taken on it because it was lodged with *mala fide* intention to frustrate Cr.Nos.74 and 185 of 2011 but no cognizable offence as alleged in complaint was committed. He thus prayed to dismiss the writ petition.

7) The point for determination is:

“Whether there are merits in this writ petition to allow?”

8) **POINT**: As can be seen from the pleadings and respective arguments of learned counsel for petitioner and learned A.P.P. it is a matter of allegations and counter allegations. Whereas the petitioner would allege that he has some civil disputes with respondent No.8 who is an influential person and at his behest the police detained him from 02.04.2011 to 16.04.2011 except on 04.04.2011 and 06.04.2011 and threatened him to settle the civil disputes with respondent No.8 and when the petitioner did not agree for their atrocious commands, they shifted him from one place to another and ultimately left him on 16.04.2011 with a threat to settle the issue and thus they caused any amount of mental torture besides violating his personal liberty. On the other hand, counter allegations of the respondents are that the petitioner was involved in two crimes and they never detained and forced him to settle the civil disputes with respondent No.8 as alleged, and the petitioner lodged a complaint with respondent

No.3 with false allegations only to wriggle out of the crimes registered against him. Since there was no truth in his complaint and no cognizable offence was disclosed, no action was taken. Thus, as can be seen, according to respondents, since the complaint was a false one and no cognizable offence was disclosed, they did not take any action.

9) Be that it may, in ***Lalit Kumari***'s case (2 supra) the Apex Court while dealing with a crucial question as to whether the Police Officer is bound to register FIR upon receiving any information relating to commission of a cognizable offence under Section 154 Cr.P.C., 1973 or the Police Officer has power to conduct a preliminary enquiry in order to test the veracity of such information before registering the same, after referring the relevant provisions of law and several decisions, gave the following conclusions:

“Para-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 fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. 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.”*

Thus it is clear, if the information received discloses commission of a cognizable offence, registration of FIR is mandatory and no preliminary enquiry is permissible in such a situation. However, if the information does not disclose cognizable offence but indicates necessity of an enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

10) In the light of above decision, when the case on hand is perused, according to respondents the case does not disclose commission of cognizable offence as the petitioner was involved in two crimes and after investigation charge sheets were filed and the same were taken cognizance by the II Additional Judicial First Class Magistrate, Nizamabad and registered as C.C.Nos.617 of 2013 and 683 of 2014 which were pending and the petitioner was never detained by the respondents illegally and forced him to enter into a compromise in civil disputes with respondent No.8 and the petitioner lodged the complaint only to wriggle out of those two crimes. According to police, the complaint did not disclose any cognizable offence and it was a motivated one. If that is their stand, respondent No.3, to whom the petitioner submitted his complaint, should have sent a communication in writing to the petitioner disclosing the reasons for not taking action against his complaint so as to enable the petitioner to pursue his other legal remedies such as filing private complaint before the concerned Court. The subjective satisfaction of respondent No.3 is not enough and he should give plausible reasons for not taking action against the complaint lodged by the petitioner.

11) Therefore, this writ petition is disposed of directing the 3rd respondent to forward written communication to the petitioner giving reasons as to how the complaint dated 18.04.2011 lodged by the petitioner with him does not disclose any cognizable offence and the reasons for his not taking action within two (2) weeks from the date of receipt of a copy of this order and thereupon, the writ petitioner is at liberty to pursue his legal remedy by filing a private complaint, in which case, the concerned Court upon conducting due enquiry as envisaged under Cr.P.C. may take cognizance of the complaint, if the said court comes to the conclusion that enquiry revealed sufficient ground for proceeding further in the matter.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 24.09.2018
Murthy

U. DURGA PRASAD RAO, J

