

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.18202 of 2013

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for respondent Nos.1 and 2.

The present writ petition came to be filed questioning the action of the 2nd respondent in not registering the crime pursuant to the complaint dated 31.05.2013 filed by the petitioner against the 3rd respondent.

The case of the petitioner is that he is the absolute owner and possessor of the property bearing door No.76-12-24 comprising of 506.66 square yards in R.S.No.84 at Kolla Forum road, Bhavanipuram, Vijayawada. He purchased the said property under registered sale deed dated 30.12.2006. However, one V. Rajeswari and four others started interfering with his peaceful possession and enjoyment of the above said property. In those circumstances, he was constrained to file O.S.No.658 of 2006 for injunction simplicitor against the said Rajeswari and four others on the file of the III Additional Senior Civil Judge, Vijayawada. The said suit was decreed on 08.12.2006. However, the 3rd respondent, who is the husband of the said Rajeswari, with the assistance of anti-social elements, started interfering with his peaceful possession over the subject property. Therefore, he lodged a

complaint before the 2nd respondent enclosing all the relevant documents. Since the 2nd respondent failed to register any crime or initiated any action, the present writ petition is filed.

Learned counsel for the petitioner contended that respondent No.2 is duty bound to register a crime when once the complaint discloses commission of a cognizable offence. In fact, the complaint discloses commission of a *Prima facie* offence against respondent No.3. However, no action has been taken.

Per contra, the learned Government Pleader appearing for respondent Nos.1 and 2 contended that the writ petition is not maintainable, since the petitioner has got a remedy under Section 190 read with Section 200 Cr.P.C., against the inaction on the part of respondent No.2 in registering a crime.

Having heard both the counsel and from a perusal of the material on record, the admitted facts are that pursuant to the complaint lodged by the petitioner, respondent No.2 failed to register any crime, though commission of *prima facie* case is made out. In this regard, Chapter XII of the Code of Criminal Procedure, 1973, contemplates information to the police and their powers to investigate. Sections 154 and 156 Cr.P.C., relate to the information in cognizable cases and the powers of the police officers to investigate cognizable cases. When information is brought before the police about commission of any alleged offence, which is cognizable, the concerned police officer is duty bound to register the crime.

However, when the police officer fails to register a crime, the aggrieved party can resort to the provisions of Chapter XV of the Code and lodge a complaint before the concerned Magistrate.

In **Aleque Padamsee and others vs. Union of India and others**¹, the Apex Court had considered the similar issue and held as under:

“6. “4. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused.

These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd) v. Union of India* ((1996) 11 SCC 582). It was specifically observed that a writ petition in such cases is not to be entertained. The above position was again highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra* [(2004) 7 SCC 768], *Minu Kumari and another v. State of Bihar and others* ((2006) 4 SCC 359) and *Hari Singh v. State of U.P.* (2006 (5) SCC 733).

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. 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* case (supra) and reiterated in *Gangadhar* case (supra) 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* case (supra), *Gangadhar* case (supra), *Hari Singh* case (supra),

¹ (2007) 6 SCC 171

Minu Kumari case (supra) and *Ramesh Kumari* case (supra), we find that the view expressed in *Ramesh Kumari* 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* 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* case (supra), *Gangadhar* case (supra), *Minu Kumari* case (supra) and *Hari Singh* case (supra). The view expressed in *Ramesh Kumari* case (supra) was re- iterated in *Lallan Chaudhary and others v. State of Bihar* (AIR 2006 SC 3376). 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* case (supra), *Gangadhar* case (supra), *Hari Singh* case (supra) and *Minu Kumari* 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 Section 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.02.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions:

- (1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.
- (2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.
- (3) So far as non-grant of sanction aspect is concerned, it is for the government concerned to deal with the prayer. The government concerned would do well to deal with the matter within three months from the date of receipt of this order.
- (4) We make it clear that we have not expressed any opinion on the merits of the case.”

In **Hari Singh vs. State of U.P.**², the Apex Court held

as under:

“When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take

² (2006) 5 SCC 733

cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India* ((1996) 11 SCC 582). It was specifically observed that a writ petition in such cases is not to be entertained.”

The above said proposition was also considered in **Divine Retreat Centre vs. State of Kerala and others**³ and held that wherever there is inaction on the part of the police to act on the complaint and follow the procedure under Chapter XII of the Code, it is for the aggrieved party to file a complaint under Section 190 read with Section 200 Cr.P.C. before the Magistrate.

The grievance of the petitioner is that respondent No.2 is not taking any action pursuant to the complaint lodged by him particularly in registering a crime. In such a situation, the petitioner has got every right to invoke the powers under Section 190 read with Section 200 Cr.P.C., and file a complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to look into the complaint in compliance with the procedure contemplated in Chapter XV of the Code. Therefore, the course left open to the petitioner is to approach the concerned

³ (2008) 3 SCC 542

Magistrate by invoking the provisions of Chapter XV of the Code. The petitioner cannot straight away file the writ petition without invoking the provisions of Sections 190 and 200 Cr.P.C. In that view of the matter, this Court is of the opinion that the writ petition, as filed, is not maintainable.

Accordingly, the writ petition is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 31.10.2018.
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