

HONOURABLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION NOs.38702 of 2018 & 919 of 2019

Date: 14.03.2019

W.P.No.38702 of 2018:

Between:

Kambam Sreedhar Babu, S/o. Venkaiah,
Aged about 48 years, occu:Agriculture,
R/o. Mankhal village, Maheshwaram Mandal,
Ranga Reddy District.

....Petitioner

and

The Station House Officer, Pahadisharief
Police Station, Rachakonda Commissionerate,
Ranga Reddy District and others.

.....Respondents

The Court made the following:



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COMMON ORDER:

W.P.No.37844 of 2018 is filed aggrieved by registering separate FIR Nos.224/2017, 341/2017, 86/2018, 66/2018 and 168/2018 against petitioner based on the complaint made by the respondent nos.5 and 6, instead of merging the complaints and to conduct investigation as part of investigation in FIR No.224 of 2017 and sought for direction to conduct investigation in FIR No.224 of 2017.

2. While said W.P.No.37844 of 2018 is pending, petitioner filed W.P.No.38702 of 2018 contending that opening of suspect sheet/ history sheet against petitioner by relying upon the Police Standing Order No.595, 596 and 600 even though the crimes registered against him do not concern disturbance of public peace and tranquility is illegal and unconstitutional. On 29.10.2018, this Court ordered notice before admission in W.P.No.38702 of 2018 with direction to list the writ petition after six weeks.

3. While so, petitioner filed W.P.No.919 of 2019 challenging the order dated 06.09.2018, where under permission was granted by the Assistant Commissioner of Police, Vanasthalipuram Division, L.B.Nagar Zone to open suspect sheet/ history sheet.

4. When W.P.No.919 of 2019 was taken up for consideration, learned Government Pleader informed the Court that aggrieved by opening of suspect sheet, petitioner earlier filed W.P.No.38702 of 2018 and this Writ Petition on the same issue is not maintainable. He has also pointed out that petitioner has not disclosed filing of

earlier writ petition and the same would amount to suppression of fact. When learned counsel for petitioner was asked to respond to the said contention, learned counsel expressed surprise on petitioner filing writ petition earlier on the same issue and sought for adjournment to seek instructions. Accordingly, Writ Petition No.919 of 2019 was adjourned to 31.01.2019 with direction to list along with W.P.Nos.37844 and 38702 of 2018.

5. On 31.01.2019, learned counsel appearing for the petitioner in W.P.No.919 of 2019 informed the Court that having come to know that petitioner filed W.P.no.38702 of 2018 on the same issue and the said fact was not informed by the petitioner, she revoked Vakalat and petitioner was accordingly informed. Recording the said statement, notice was issued to the petitioner-Sri Kambam Sreedhar Babu to appear before the Court on 14.02.2019. Petitioner appeared. On behalf of petitioner, appearance is entered by counsel Sri Praveen Kumar Challa in all three writ petitions. Petitioner also filed application to dispense with his appearance in I.A.No.2 of 2019 in WP No.919 of 2019. He also filed I.A.No.1 of 2019 in W.P.No.38702 of 2018 to withdraw W.P.No.38702 of 2018.

6. In W.P.No.38702 of 2018, petitioner averred that due to registration of crimes against petitioner, the Station House Officer of Pahadishareef Police Station addressed letter dated 06.09.2018 to the Assistant Commissioner of Police seeking permission to open suspect sheet for conducting surveillance on his moments and on the same day, the Assistant Commissioner of Police permitted the Station House Officer to open suspect sheet. Petitioner further alleges that Police are coming to his house, insisting him to come

to Police Station for furnishing photo and thumb impressions to place the same in the Notice Board. Petitioner further alleges that all the crimes are registered against him at the instance of one Mr. Goutham Siddharthudu concerning *inter se* civil disputes and that civil Court has to adjudicate on ownership of subject land and the complainant cannot make a grievance against the petitioner even before the competent civil Court adjudicates on the rival claims. He would contend that as crimes do not disclose disturbance of public piece and tranquility, the Police Standing Order Nos.595, 596 and 600 are not attracted. The averments also would disclose that petitioner earlier filed W.P.No.33767 of 2018 alleging that there are attempts to open suspect sheet. When the said writ petition came up for consideration, learned Government Pleader informed the Court that suspect sheet was already opened. In view of the same, W.P.No.33767 of 2018 was dismissed with liberty to the petitioner to question the opening of suspect sheet. Accordingly, W.P.No.38702 of 2018 is filed. Strangely, averments in this writ petition were silent on petitioner filing W.P.No.37844 of 2018, though filed through the same counsel. Similarly, in W.P.No.37844 of 2018, there is no whisper on filing of earlier writ petition and opening of suspect sheet.

7. Through different counsel, petitioner filed W.P.No.919 of 2019. In this writ petition, petitioner again narrates the *inter se* dispute and registration of crimes. In paragraph-4 of the affidavit filed in support of writ petition, petitioner mentioned filing of W.P.No.37844 of 2018 praying to merge the complaints and to conduct investigation as part of FIR No.224 of 2017. The affidavit

is blissfully silent on filing of W.P.Nos.33767 of 2018 and 38702 of 2018.

8. As briefly noted above, petitioner suppressed the factum of filing W.P.Nos.33767 of 2018 and 38702 of 2018 in W.P.No.919 of 2019 though the cause of action and issue raised is same, i.e., opening of suspect sheet/history sheet. But for the learned Government Pleader appraising this Court that petitioner filed another writ petition on the same issue, the factum of petitioner filing three earlier writ petitions, which are inter connected, and particularly filing W.P.No.38702 of 2018 on the same issue would not have come to light.

9. The question for consideration is whether the suppression was deliberate and willful ?, and if so whether petitioner is entitled to maintain the writ petition ?

10. In I.A.No.1 of 2019 in W.P.No.38702 of 2018, petitioner states as under:

“6. It is submitted that subsequently the counsel on record due to establishment of separate High Court at Amaravati shifted to Amaravati. That at that point of time I requested the counsel to return the file bundles. That as he is in Amaravati the counsel instructed his colleague to give NOC and file. As such I received only one NOC of W.P.No.37844 of 2018 along with case bundle from the counsel on record. That with the same file I approached the new counsel. Then counsel instructed me to challenge the opening of suspect sheet. As such another WP No.919 of 2019 is filed challenging permitting to open suspect sheet against me.”

11. The reasons assigned in the above paragraph would show that the *post facto* petitioner is seeking to take advantage of counsel appearing for him in two earlier writ petitions shifting to

Amaravati in State of Andhra Pradesh to cover up his deliberate act. In paragraph-7 petitioner avers that he was not aware of filing of W.P.No.38702 of 2018. He would therefore justify filing of W.P.No.919 of 2019.

12. During the course of hearing, learned counsel for petitioner sought to contend that petitioner is an illiterate and was not aware of consequences of filing multiple writ petitions on the same issue and also sought to contend that there was a miscommunication between his earlier counsel Sri P.Nagendra Reddy and the counsel who appeared in W.P.No.919 of 2019 and it was not intentional.

13. The averments in these writ petitions would go to show that there is raging dispute between him and some other persons in respect of land in Sy.Nos.443, 446, 489, 490 and 491 of Mankhal village, Maheshwaram Mandal, Ranga Reddy district covering an area of Acs.60.34 guntas. Petitioner earlier filed O.S.No.33 of 2018 praying to grant decree of cancellation of registered sale deeds. He also appears to have filed criminal cases against dishonour of cheques. Some other persons filed O.S.No.408 of 2018 seeking perpetual injunction against the petitioner. It appears, the Court of III Additional District and Sessions Judge, Ranga Reddy allowed I.A.No.389 of 2018 in O.S.No.408 of 2018 for interim injunction. Aggrieved thereby, petitioner filed CMA No.1010 of 2018 in this Court. Against him, several complaints are filed. The substance of the complaint, according to the petitioner, was excavating the mud from the land in the above mentioned survey numbers for the purpose of brick kiln industry and allegation of trespass.

14. Reading of the averments in three writ petitions would disclose that petitioner has been prosecuting litigation against his opponents and has been knocking the doors of this Court also by filing several writ petitions. It is also appropriate to note that in paragraph-6 of the affidavit filed in support of W.P.No.37844 of 2018, petitioner leveled allegations against the unofficial respondents, arrayed as respondents 5 and 6, that they suppressed the fact of pending O.S.No.33 of 2018 while filing criminal complaints and alleges that police ought not to have registered crimes when civil litigation is pending. His verification statement in the writ petitions would disclose that he understood the contents of the affidavits drafted in English, and verified as true. It is thus clear that petitioner is well aware of his rights and remedies and diligent in prosecuting his grievances. Thus, the contention of learned counsel for petitioner by referring to the averments in paragraph-8 of the affidavit filed in support of I.A.No.1 of 2019 in W.P.No.38702 of 2018 that petitioner is illiterate and was not able to understand the complications on filing more than one writ petition on the same issue cannot be appreciated. The statement of petitioner that counsel who moved out to Amaravati in State of Andhra Pradesh did not return two files filed by him, but only one case bundle was returned is unsupported by any material. Furthermore, not returning case file of W.P.No.38702 of 2019 has no relevance to non disclosure of filing said writ petition and instituting fresh writ petition on the same cause of action.

15. It is appropriate to note that petitioner filed W.P.No.33767 of 2018 apprehending opening of rowdy sheet/suspect sheet. This

writ petition was dismissed on 22.10.2018, granting liberty to avail appropriate remedy. Immediately, petitioner filed W.P.no.38702 of 2019 challenging opening of suspect sheet. Thus, it is beyond comprehension that petitioner was not aware of filing of W.P.No.38702 of 2018 when he filed W.P.No.919 of 2019. In his over anxiety to get relief against suspect sheet, petitioner changed his Lawyer and filed W.P.No.919 of 2019. Statement made in I.A.No.1 of 2019 in W.P.No.38702 of 2018 is not *bone fide* and is an after thought to get over his overt act.

16. The brief analysis of the facts noted above would disclose that petitioner was not acting *bona fide* when he instituted Writ Petition No.919 of 2019 and consciously prosecuted both writ petitions on the same issue. He has suppressed the material facts which are germane to maintainability of the writ petition. No person can simultaneously prosecute two writ petitions on the same cause of action and for the same reliefs. The cause of action to invoke extraordinary jurisdiction of High Court under Article 226 of the Constitution is the opening of rowdy sheet.

17. Remedy under Article 226 of the Constitution is an extraordinary remedy available to every aggrieved person. In exercise of this power, writ Court stretches its hand to reach out wherever injustice is caused and in whatever manner injustice is meted out. The remedy under Article 226 is equitable and discretionary. The writ Court has no bounds in issuing prerogative writs except self imposed restraint. To exercise such extraordinary remedy, the Court expects the person coming before it to be fair and frank in stating the facts which constitute cause of action to

ventilate his grievance, leaving it to Court to decide whether relief can be granted and if so, what relief. Thus, the minimum that is required by petitioner, knocking the doors of the High Court under Article 226 of the Constitution, is to state the true and correct facts and project the grievance.

18. Court would be disinclined to lean in favour of a petitioner to grant equitable relief who does not disclose the true facts, tries to mislead the Court or suppress true facts deliberately in order to gain undue advantage while invoking the writ Court to exercise extraordinary jurisdiction under Article 226 of the Constitution.

19. In **K.D.Sharma v. Steel Authority of India Limited and others**¹, Supreme Court observed that the party invoking extraordinary jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “**hide and seek**” or to “**pick and choose**” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts” (paragraph 38).

19.1. It would be relevant to reproduce paragraphs 33, 34 to 39

K.D.Sharma (supra), which read thus:

“33. The learned counsel for SAIL is also right in urging that the appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor was he informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in review and confirmed by this Court. The true facts, however, were just contrary to what was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorised Ramesh of Rithwik Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of

¹ (2008)12 SCC 481

bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do with Tender Notice 5 and the contract thereunder had been given to the appellant herein and he had completed the work. Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly.

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs. (1917) 1 KB 486* in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and **the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.**”

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.”** The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* Viscount Reading, C.J. observed: (KB pp. 495-96)

“... Where an ex parte application has been made to this Court for a rule nisi or other process, **if the Court comes to the**

conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. ***But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.***"

38. The above principles have been accepted in our legal system also. As per settled law, **the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible.** The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* is kept in mind, **an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.** If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court. *(emphasis supplied)*

19.2. In **Prestige Lights Limited v. SBI**², the Supreme Court observed that "*in exercising power under Article 226 of the Constitution of India the High Court is not just a 'Court of Appeal'*",

² (2007) 8 SCC 449

but it is also a ‘Court of Equity’ and a person who invokes the High Court’s jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. The High Court would be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution if there is suppression of material facts or if the facts are twisted.”

19.3. In **Dalip Singh v. State of Uttar Pradesh**³, Supreme Court observed,

“1. For many centuries Indian society cherished two basic values of life i.e. “satya’ (truth_ and “ahimsa” (non-violence), Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and **it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”**

(emphasis supplied)

19.4. It is apt to consider the further observations made in the decision of the King's Bench Division in **THE KING v. THE GENERAL COMMISSIONERS FOR THE PURPOSES OF THE INCOME TAX ACTS FOR THE DISTRICT OF KENSINGTON. Ex parte PRINCESS EDMOND DE POLIGNAC**⁴, which decision is

³ (2010) 2 SCC 114

⁴ (1917) K.B. 486

treated in India as an authority for the proposition on good faith required by a person applying for a writ.

“55.2. WARRINGTON L.J., observed,

“It is perfectly well settled that a person who makes an *ex parte* application to the Court — that is to say, in the absence of the person who will be affected by that which the Court is asked to do — **is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him.**”
(emphasis supplied)

20. I am of the considered opinion that when these Writ Petitions are instituted hands of the petitioner were tainted. There is not only suppression of relevant facts but clear attempt to mislead the Court in his over anxiety to secure relief from the Court. He sought to shift the blame to previous counsel to cover up his mistake. Petitioner is not entitled to file two Writ Petitions on the same issue and for same relief. Petitioner failed to stand the test of *bona fides* in seeking equitable remedy under Article 226 of the Constitution of India.

21. The W.P.Nos.38702 of 2018 and 919 of 2019 are dismissed with costs of 10,000/- (Rupees ten thousand only). With the consent of learned Government Pleader for Home, it is ordered that the costs shall be paid to High Court Legal Services Authority, to be utilized for creating awareness against use of plastic in the premises of the High Court and cleanliness. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 14.03.2019
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