

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.2654 & 2717 OF 2019

Date: 14.03.2019

Writ Petition No.2654 of 2019:

Between:

K.Satyanarayana Rao, s/o. late Raja Omapathi Raom
Aged 66 years, occu: Business, r/o. H.No.8-2-287/3/A,
Road No.14, Banjara Hills, Hyderabad.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary,
Home Department, Secretariat Buildings, Hyderabad
and others.

.....Respondents



The Court made the following:

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COMMON ORDER:

Heard learned counsel for petitioners and the learned Government Pleader for Home for respondents.

2. In these two writ petitions, the grievance of the petitioners is against delay in completing the investigation in Crime Nos.46 and 47 of 2018, respectively, registered on 14.06.2018 in Domakonda Police Station, Kamareddy District. In view of the same, these writ petitions are disposed of by this common order.

3. According to petitioner in W.P.No.2654 of 2019, he and his brother-K.Rajeshwar Rao inherited the property of late Raja Omapathi Rao and are exclusive owners and possessors of the property located in the inner fort wall at Domakonda Fort of Domakonda village. According to petitioner, it consists of vacant land, several buildings known as 'Addala Bungalow' and outhouses located next to 'Addala Bungalow' and outhouse in front of 'Addala Bungalow'.

4. Petitioner in W.P.No.2717 of 2019 claims that he owns property bearing Nos.8-31, 8-29, 8-5, 8-4, 8-3, 8-2, 8-6, 8-8, 8-23, and 8-27 located inside Domakonda Fort.

5. Petitioners contend that their close relative Smt. Lavanya Kamineni installed close Circuit Cameras and engaged Security Guards and put up barricades preventing the petitioners and their family members from entering into their properties. Petitioners further allege that on 12.06.2018 they were informed that their

locks were broken, caution notices put up by petitioners were removed and trespassed in to their property. On 13.06.2018, both petitioners lodged complaints in Domakonda Police Station. Based on the said complaints, Crime Nos.46 and 47 of 2018 were registered on 14.06.2018, respectively.

5. Petitioners allege that actions of 4th respondent are illegal and liable for prosecution under Sections 109, 448, 511 and 427 of IPC. Though such a serious crime was committed by 4th respondent, the Police have not conducted proper investigation, except registering the crimes, broken locks and damaged caution notices were not seized. Petitioners allege that as 4th respondent is influential person, the Police are not taking any action against them deliberately and inaction is willful and *mala fide*. Petitioners further allege that Crime No.48 of 2018 is also registered against the 4th respondent, but there is no progress in the said crime also.

6. Learned counsel for petitioners would submit that as there is inordinate delay in conducting investigation, grave prejudice is caused to the petitioners. The 4th respondent illegally trespassed and damaged the property belonging to petitioners and their right to life and liberty is affected on account of illegal actions of Police in conducting proper investigation. As held by the Supreme Court in **Lalita Kumari v. Government of Uttar Pradesh and others**¹, once cognizable offence is made out, crime has to be registered and expeditiously investigation has to be conducted and completed, whereas even after 8 months there is no progress in the investigation and the same is illegal.

¹ (2014) 23 SCC 1

7. The 3rd respondent - Station House Officer filed counter affidavits in both writ petitions. He denies the allegations leveled by the petitioners. According to the 3rd respondent, during the course of investigation, he has examined and recorded the statements of complainants as LW.1, incorporated in Part-II CD and further examined and recorded the statements of LWs.2 and 3, who corroborated with the FIR contents, conducted scene of offence panchanama, and has taken photographs of scene of offence. He would submit that notice under Section 91 of Cr.P.C., was served to the Security Guard of the petitioners, who refused to acknowledge the same.

8. Based on the averments in the counter-affidavits, learned Government Pleader would submit that prompt action was taken and there is no deliberate delay in conducting investigation. The delay in concluding investigation is on account of action of Security Personnel of petitioners in refusing to receive the notice issued under Section 91 of Cr.P.C., dated 15.06.2018 and petitioners not responding to the notices issued. This is the cause for delay in the investigation. At any rate, he would submit, petitioners have effective remedies available under Cr.P.C., against delay in investigation and writ petitions are not maintainable.

9. On the issue of maintainability of writ petition against inaction on the part of Police in conducting investigation, and scope of jurisdiction of writ Court in such matters, learned counsel for petitioners made elaborate submissions and placed reliance on the following decisions:

- i) **Union of India & others v. Sushil Kumar Modi and others**²;
- ii) **Kunga Nima Lepcha and others v. State of Sikkim and others**³;
- iii) **Manohar Lal Sharma v. Principal Secretary and others**⁴;
- iv) **Central Bureau of Investigation through S.P., Jaipur v. State of Rajasthan and another**⁵;
- v) **T.T.Antony v. State of Kerala and others**⁶;
- vi) **Centre for Public Interest Litigation and others v. Union of India and others**⁷;
- vii) **Lalita Kumari v. Government of Uttar Pradesh and others**⁸;
- viii) Supreme Court order in **Mahendra Lal Das v. State of Bihar and others** [Appeal (crl.) No.1038 of 2001];
- ix) Supreme Court order in **Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and others** (Criminal Appeal No.1171 of 2016);
- x) **Sakiri Vasu v. State of Uttar Pradesh and others**⁹;
- xi) **Sudhir Bhaskar Rao Tambe v. Hemant yashwant Dhage and others**¹⁰.

10. The issues for consideration are 1) whether Writ Petitions are maintainable without availing statutory remedies ? and 2) whether delay in completing the investigation is justified ?

11. In W.P.No.38397 of 2018 and batch, two issues were raised by petitioners: 1) not registering the crime even though cognizable offence was reported; and 2) delay in conducting investigation. On elaborate consideration of precedent decisions cited at the bar

² 1997 (2) Supreme 108

³ (2010) 4 SCC 513

⁴ (2014) 2 SCC 532

⁵ (2001) 3 SCC 333

⁶ (2001) 6 SCC 181

⁷ (2011) 1 SCC 560

⁸ (2014) 2 SCC 1

⁹ (2008) 2 SCC 409

¹⁰ (2016) 6 SCC 277

including the decisions relied by the learned counsel for the petitioners herein, this Court opined that aggrieved person has to avail appropriate remedy provided in Code of Criminal Procedure, and cannot directly invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

12. Be that as it may, having regard to the peculiar facts of these cases, as averred by the Station House Officer in his counter-affidavits, it cannot be said that there is inordinate delay by the Police in conducting investigation as contended by the petitioners. According to the Police, on 15.06.2018 itself they issued notices under Section 91 of Cr.P.C., calling upon the petitioners to place before the Police the requisite documents and material to carry on investigation, but so far the material is not placed before the Investigating Officer.

13. Copies of notices under Section 91 of Cr.P.C., are served on the counsel for petitioners. Learned counsel for petitioners pointed out that notices dated 15.06.2018 were not served on petitioner earlier, and notices gave only two days time to produce the evidence either material or documentary, and all this would show that action of Police is deliberate. Alternatively, he would submit that if reasonable time of one week is granted, petitioners would respond to the notices.

14. The Court is not entering into the dispute as to whether notices were served and petitioners failed to respond.

15. While holding that ordinarily writ petitions on the allegation that there is delay in conducting investigation is not maintainable,

and aggrieved person has to take recourse to Code of Criminal Procedure, having regard to the fact that notices under Section 91 of Cr.P.C., were already issued, petitioners are granted liberty to respond to the said notices within one week from the date of receipt of copy of the order. If petitioners respond to the notices issued under Section 91 of Cr.P.C., within the time granted, the 3rd respondent – Station House Officer shall consider the same and complete the investigation expeditiously. Accordingly Writ Petitions are disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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