

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO.6185 OF 2019

Date: 9.4.2019

Between:

Bhairi Thirumalaesh s/o. late Dr.Bhairy Lingaiah,
Aged about 39 years, Occu: Business,
Vijaya Lakshmi Clinic, r/o. Seetharamnjaneya
Theatre, Siddipet town and district.

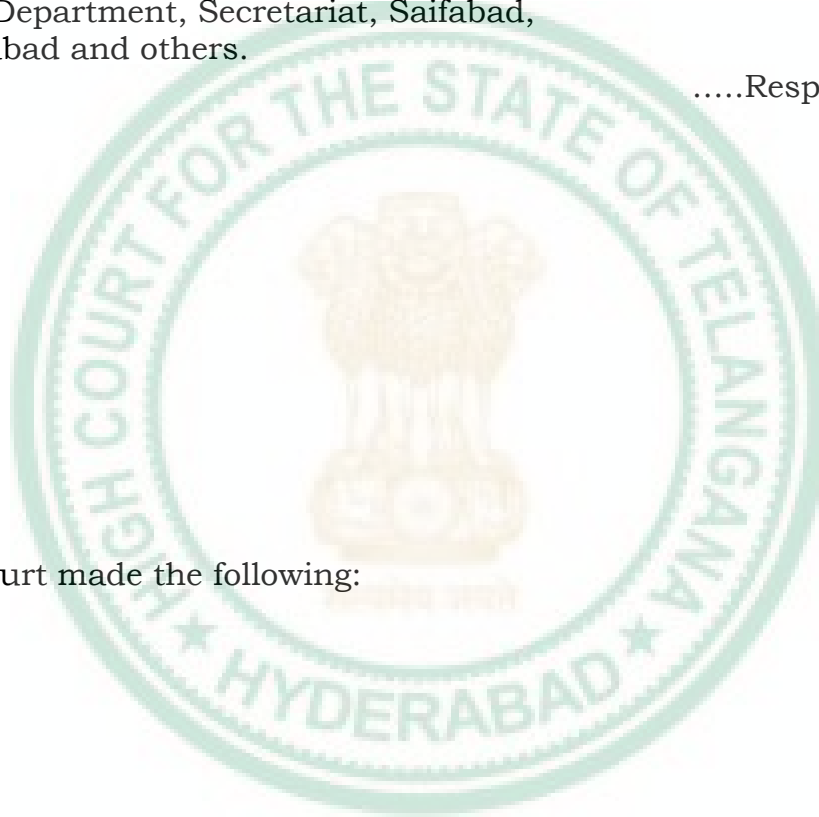
.....Petitioner

And

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

.....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No. 6185 of 2019****ORAL ORDER:**

Heard learned counsel for petitioner and learned Government Pleader for Home.

2. Petitioner claims that on request made by person by name Mark Vijay Kumar, he took small office space in the name of M/s. ADS solutions at Gruhakalpa, Ameerpet, Hyderabad. That Mark Vijay Kumar introduced the petitioner to Mr Bheemeneni Venkat Chowdary, who proposed that petitioner should take up the assignment of providing placement in Dubai for Medical Coding jobs and requested to utilize his office space. Petitioner alleges that said mark Vijay Kumar and B.Venkat Chowdary trapped him in irregular activities carried out by them and cheated him and absconded with his personal money and money paid by candidates, throwing the entire blame on him. In this background facts, petitioner now contends that 6th respondent lodged a complaint in Punjagutta Police station, based on said complaint FIR No. 524 of 2018 was registered on 5.11.2018. He was arrested and later enlarged on bail. 7th respondent lodged a complaint in Siddipet II Town Police Station, based on said complaint FIR No. 17 of 2019 was registered on 2.2.2019. Petitioner alleges that nature of grievances and allegations made by both complainants is one and the same i.e., huge amount is collected from them with an assurance of providing employment in Dubai, secure employment visa to Dubai, but cheated them. In the writ petition, petitioner prays to direct the respondents 1 and 2 to issue appropriate directions, instructions to all Police

authorities not to register further FIRs against petitioner in relation to the allegation of cheating in the name of Medical Coder jobs in Dubai and to direct the 5th respondent to treat FIR No.17 of 2019 as statement under Section 162 of Cr.P.C., in FIR No.524 of 2018.

3. Learned counsel for petitioner submits that once FIR No. 524 of 2018 was already registered on the same issue, the subsequent complaint is not maintainable and subsequent complaint ought to have been treated as statement under Section 162 Criminal Procedure Code and investigation should be conducted only in pursuant to FIR No. 524 of 2018.

4. In support of his contention that subsequent FIR has to be treated as Section 162 statement and investigation should be carried out only by Punjagutta Police in pursuant to FIR No.524 of 2018, learned counsel placed reliance on decision of the learned single Judge in **AKBARUDDIN OWAISI Vs GOVT OF AP**¹.

5. *Per contra*, learned Government Pleader submitted that the complainants are different, their residences are at different places and the crimes are reported in two different police districts, therefore, the crimes cannot be clubbed to conduct investigation by one Station House Officer. He would further submit that nature of complaints lodged by the individuals are also not same and both have different grievances, therefore requires independent investigation. He would submit that the decision in **AKBARUDDIN OWAISI** cannot come to the rescue of the petitioner in view of the decision in **JAKIR HUSSAIN KOSANGI Vs STATE OF AP**²,

¹ 2013 (6) ALT 101

² 2018 (4) ALD 180

wherein Division Bench held that crimes reported in different police stations under different police districts cannot be clubbed as a matter of course. He therefore submits that the claim of petitioner is not valid. He further submits that no direction can be issued by the State or Director General of Police not to register a crime even before crime is reported and no such mandamus can be granted which is contrary to the law as it would be depriving a victim of crime to report such crime.

6. Any criminal act is crime against the society. But in any crime committed by a person/persons it would affect directly or indirectly an individual also. A victim to a crime is entitled to report committing of crime and seek prosecution against perpetrator of the crime. He wants justice to be done to him, and perpetrator of crime be punished. It is an inalienable right and cannot be curtailed in any manner. It is against basic tenants of criminal justice system. No direction can be issued by the Court not to register crime even before crime is reported. In **AKBARUDDIN OWAISI**, heavily relied by learned counsel for petitioner, learned single Judge also held that no such restraint can be imposed.

7. The only issue remains for consideration is whether prayer of the petitioner to treat the complaint filed by 7th respondent registered as FIR No.17 of 2019 in Siddipet II Town Police station be treated as Section 162 Cr.P.C. statement. This issue was elaborately considered by Division Bench of this Court in **JAKIR HUSSAIN KOSANGI**. The petitioners therein sought writ of mandamus to declare action of respondents in allowing

registration of multiple FIRs and conducting investigation into all of them in relation to the same set of facts as unconstitutional. They also prayed as a consequence, a direction to be respondents to tag all subsequent registered FIRs to the first FIR. Heavy reliance was placed on **AKBARUDDIN OWAISI**. Division Bench reviewed the entire case law on the subject and analyzed in detail the decision in **AKBARUDDIN OWAISI** case.

8. It is appropriate to extract paragraphs-55, 58, 59, 60 and 65.

“55. The decision in Akbaruddin Owaisi arose out of a single cause of action, if we may borrow the said expression from the Civil Law. A single speech propagated or published or televised or publicised in different places cannot result in the prosecution of the individual in different Courts since the transmission of a single message cannot tantamount to different acts of crime. We must also point out at this stage that while the learned Judge, in his decision in Akbaruddin Owaisi, took note of T.T. Antony, S. Khushbu and M.F. Hussein, he did not take note of the decisions of the Supreme Court in Narinderjit Singh Sahni, Rajesh Syal and Pramod Kumar Saxena. ***Therefore, we do not think that the decision rendered in a case relating to a single act of crime committed by an individual, which, when propagated or publicised, is taken advantage of by several individuals to witch-hunt the person, cannot apply to a case where innumerable persons are alleged to have been cheated at different places at different points of time. To say that the offences committed against all those persons are punishable under the very same provisions and that therefore there cannot be multiple FIRs would be equivalent to saying that a person committing a series of thefts in several places cannot be made to face separate prosecutions in respect of each act of theft committed against different individuals at different points of time.*** (emphasis supplied)

58. It may be of interest to note that in Akbaruddin Owaisi a forceful argument was made against the prohibition of a second FIR on the ground that if the information provided by the de facto complainants in the second or subsequent FIRs are treated only as a statements under Section 162 of the Code, it may be possible for the State to withdraw the prosecution without the knowledge or objection from the victim, leaving the victim in the lurch. But, the said argument was rejected by the learned Judge in Akbaruddin Owaisi in paragraphs 34 and 35 of the report on the ground that there is no prohibition in the law even for an informant or complainant or an initiator of criminal prosecution to object to the withdrawal of a complaint by the State.

59. But, yet another forceful argument on similar lines arising out of Section 320 of the Code was not projected before the learned Single Judge in Akbaruddin Owaisi. Certain offences enlisted in the table under sub-section (1) of Section 320 can be compounded without the permission of the Court and certain other offences enlisted in the table under sub-section (2) of Section 320 can be compounded with the permission of the Court. Though column No. 3 of the tables under sub-sections (1) and (2) of Section 320 make it clear that only the victim (and not the de facto complainant or informant) can compound the offences with the accused, the registration of single FIR in cases where innumerable persons have been cheated, would lead to the possibility of partial compounding or compounding in installments.

60. Therefore, the decision of the Single Judge of this Court in Akbaruddin Owaisi, which arose out of registration of multiple FIRs in relation to a single speech, can have no application to the cases on hand. Actually there are enough and more indications to this effect in the very judgment itself.

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65. Therefore, the prayer made by the petitioners to treat the earliest complaint registered against them as the First

Information Report and to treat all subsequent complaints as statements under Section 161/162 of the Code, cannot be granted. Similarly, no Court can issue a mandamus directing the Station House Officers of all the police stations within the jurisdiction of the High Court not to register any further FIR, as the same would also tantamount to a restriction upon the victims of such a huge scam from taking recourse to lawful remedies.”

9. In the case on hand, it is not a single incident on which two crimes are registered and petitioner apprehends many more on a single incident of crime. The two complaints alleged that huge money was collected from them at various points of time with an assurance to secure employment in Dubai, but were cheated. Thus, allegation of cheating/duping is personal to them and such cheating was at different places, with different amounts paid by them and on different dates. Even according to petitioner’s assessment there are many more victims and anticipates lodging of similar complaints. Merely because nature of grievance may be same i.e., collecting huge money and not securing employment to them which may attract very same penal provision is no ground to hold that second crime to be treated as statement under Section 162 of Cr.P.C., and investigation be confined to FIR No.524 of 2018 in the Punjagutta Police Station. As cautioned by the Division Bench in **Jakir Hussain Kosangi**, there is every possibility of the victim being denied his right to seek prosecution of perpetrator of crime if for any reason State withdraws the prosecution without knowledge or objection of victim if his complaint is treated as statement under Section 162 of Cr.P.C., and he would not be informed of such decision to enable him to file objection and he would be in loop-line. Further, in the instant case, the second

complainant is a resident of Siddipet District. Petitioner seeks investigation by Punjagutta Police in Crime No.524 of 2018 in Hyderabad City. It may not be possible for him to monitor progress of investigation by Police at a far of place. A victim of crime cannot be put to hardship and cause him further inconvenience in his pursuit to bring the offender to rigours of trial and draw satisfaction of justice done to him if offender is convicted. Further, in a given case, crime can be compounded without the knowledge of such person. Thus, treating the subsequent complaint as statement under Section 162 of Cr.P.C., is fraught with dangerous consequences to victim of a crime and Court cannot countenance such a course.

10. I see no merit in the Writ Petition. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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tvk/kkm

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