

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.14246 of 2017

ORDER :

The petitioner is one Kajgam Veeresham S/o.Krishna Murthy of Shadnagar, Ranga Reddy District. The respondents 12 in number of the writ petition are (1) State, represented by Principal Secretary, Home Department, Hyderabad, (2) The Director General of Police, State of Telangana, (3) Commissioner of Police, Cyberabad, (4) The Joint Commissioner of Police, Cyberabad, (5) The Deputy Commissioner of Police, Shadnagar, (6) The Assistant Commissioner of Police, Shadnagar, (7) The Station House Officer, Shadnagar Police Station, (8) Narayan Singh, Sub Inspector of Police, Shadnagar, (9) K.Sridhar, brother of the petitioner, of Shadnagar, (10) K.Venkatesh, another brother of the petitioner, of Shadnagar, (11) K. Sridhar @ Raju of Shadnagar and (12) K.Srinivas of Shadnagar.

2. The prayer in the writ petition is as follows:

“..... to issue any appropriate, Writ, order or direction more in the nature of Writ of Mandamus:

(a) direct the Respondents more particularly Respondents 2 to 4 to monitor the case and to see that a case is registered against the Respondents 8 to 12 basing on the complaint dated 1-4-2017 filed by the petitioner and also get the investigation caused into the offences committed by them through any other police other than the police, Shadnagar under the supervision of Respondents 3 and 4;

(b) Declare the action of the Respondents in not registering the case on the complaint filed by the petitioner on 1-4-2017 against the Respondents 8 to 12 who had taken away the Rice and Broken Rice in one Lorry bearing No.AP 02 TA 9995 and 2 DCM vehicles bearing Nos.AP 22 W 3345 and AP 22 X 1899 illegally with the active help of

the Respondent No.8 by assaulting the Petitioner's sons namely Sateesh and Sreenath as illegal, arbitrary and violative of Article 14 of Constitution of India and contrary to the provisions of Criminal Procedure Code and also the judgment rendered by the Honble Apex Court in Lalitha Kumari Vs. Government of Uttar Pradesh reported in (2014) 2 SCC 1.

(c) To direct the Hon'ble Judicial Magistrate of First Class, Shadnagar to cause enquiry into the allegations made by the petitioner against the Respondent No.7 with regard to his inaction in taking action on the complaint filed by the petitioner dated 1-4-2017 with regard to the offences committed by the Respondents 8 to 12 and submit report to this Hon'ble Court and pass such further or other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

3. The supporting affidavit in nut shell speaks that he is the proprietor of M/s.Sri Murali Krishna Binny Modern Rice Mill, (for short 'rice mill') at Door No.6-1, Keshampet Road, Shadnagar Mandal, and also owner and possessor of said premises, which he purchased in the year 1979 with own funds and also obtained permissions for the rice mill that was established in 1981 and has been running the same and that his brothers, respondent Nos.9 and 10 of the writ petition, who are nothing to do with the rice mill and property of the rice mill, developed an evil eye against it to usurp resorted to file false cases vide crimes registered on complaints of respondent No.9-K.Sridhar, viz.,

- (1) Crime No.443 of 2015, under Sections 447 and 427 IPC, dated 28.08.2014.
- (2) Crime No.247 of 2015, under Sections 447, 427 and 506 IPC, dated 19.05.2015.
- (3) Crime No.107 of 2016, under Sections 341, 323 and 506 IPC, dated 10.03.2016.

- (4) Crime No.475 of 2016, under Sections 405, 409 and 420 IPC, dated 21.09.2016.

The other brother, respondent No.10-K.Venkatesh filed a complaint against him in Crime No.119 of 2017, dated 04.03.2017, registered for the offences under Sections 448, 504 and 506 read with 34 IPC besides the police registered Crime No.138 of 2017, dated 15.03.2017, *suo moto* under Section 107 Cr.P.C. against K.Veeresham, the petitioner, and his sons supra. It is further averred that on 27.02.2017, he and his sons while in the rice mill, respondent No.10-Venkatesh with ten unsocial elements entered the rice mill, started quarrelling with them and beat them and damaged the furniture and some documents of the rice mill and that if the petitioner was not going to register the rice mill in the name of respondent Nos.9 and 10, they would kill him, that he made a complaint on that day to respondent No.7-Station House Officer, Shadnagar Police Station, against respondent No.10 and others and when the petitioner approached respondent No.7 with regard to the action on his complaint, respondent No.7 got the date corrected as 06.03.2017 and obtained signature below the correction and registered on that day Crime No.122 of 2017 at 6.00 p.m. for the offences punishable under Sections 448, 323 and 506 IPC against respondent No.9 and others. Respondent No.9, on knowing about the complaint of the petitioner, filed complaint before respondent No.7 on 04.03.2017 itself mentioning the date as 02.03.2017 and Crime No.119 of 2017 was registered on 04.03.2017. Respondent No.9 mentioned though he has given complaint on 28.02.2017, the police not registered any case at the instance of the petitioner, and it is to

help respondent No.9 and to serve the same as a counter blast, the Station House Officer, Shadnagar, not registered the complaint of the petitioner, dated 27.02.2017 but on 06.03.2017 by altering the date. Respondent Nos.9 and 10 are interfering with rice mill business and O.S.No.44 of 2015 before the VIII Additional Sessions Judge, Mahabubnagar, pending, where in I.A.No.425 of 2015 temporary injunction pending disposal of the suit was sought and it was dismissed on 05.12.2016 and respondent Nos.9 and 10 filed another suit O.S.No.49 of 2015 for partition claiming 1/7th share in the rice mill and appurtenant properties supra among other properties and he is contesting the same by filing written statement, that respondent Nos.9 and 10 filed I.A.No.438 of 2015 for temporary injunction against the petitioner herein from alienating or creating mortgage or gifting away the property and it was allowed on 05.12.2016 and he filed C.M.A.No.308 of 2017 against said I.A.No.438 of 2017 and C.M.A.No.331 of 2017 against the dismissal of his petition I.A.No.425 of 2015. On 01.04.2017 over mobile phone, he came to know through his sons Satish and Srinath that taking advantage of dismissal of the injunction petition in I.A.No.425 of 2015 supra, respondent Nos.9 and 10 with respondent Nos.8, 11 and 12 and Police Personnel of Shadnagar Police Station, with the active help and support of respondent No.8 surprised at the rice mill on 01.04.2017 at about 10.00 a.m. while his son Srinath was talking to one Ali, Kirana shop owner of nearby rice mill, respondent Nos.9 and 10 came to the rice mill along with respondent No.8 and Assistant Sub-Inspector of Police in a police jeep with two more constables on two wheeler, respondent No.10-Venkatesh called Sikh people

viz., Nanak Singh, Shair Singh, who are opposite residents to the rice mill and cause broke open the lock of the rice mill in the presence of police and made security guards to go out of the premises of the rice mill and it was also informed to his son Srinath and that even he made hue and cry in opposing their highhanded actions, police constables forcibly pushed him into auto to drop him out of that area despite he resisted respondent No.8 assaulted Srinath and also abused him, meantime Satish when came there, police physically lifted him also into the jeep and after the telephone call he came to Shadnagar by 12'o clock noon went to the Police Station, Shadnagar, when enquired respondent No.8 why he has taken the custody of his sons, respondent No.8 directed the petitioner not to go to the rice mill saying he got directions from the Commissioner of Police/respondent No.3 to prevent the petitioner and his family members from entering into the rice mill and also warned that if they go to rice mill they have to face penal consequences and respondent Nos.9 and 10 said to have been entitled to run the rice mill and not the petitioner and his sons and when he telephoned to his son Ramnath to go to rice mill and find out what happens, Ramnath went there and informed of respondent Nos.9 and 10 and their supporters-respondent Nos.11 and 12 were at the rice mill and threatened Ramnath not to enter the rice mill premises and that the stocks lying in the rice mill were loaded into the lorry and two DCM vans referred supra with the active support of respondent Nos.8, 10 and 11 in taking away the stocks and Ramnath followed the said vehicles and recorded video of his cell phone of the vehicles in which stocks of rice and broken rice loaded at rice mill,

which evidence is available to produce during investigation by him for the rice and broken rice taken away by them unloaded in three places at poultry form, Chetanpalli, (ii) house of one Sudarshan Reddy of Lingareddyguda and (iii) at the rice mill of Kotra Sridhar @ Raju (respondent No.11), which paddy in fact purchased from the ryots by the petitioner and milled and the stock registers also show the same and it is about worth Rs.8 lakhs which they have taken away and the rice mill is already under mortgage with State Bank of Hyderabad covered by cash credit facility on the stocks in the rice mill, from which the Banker declared the account as NPA, which made him to approach to Debts Recovery Tribunal against the Bank and initiated proceedings. It is the core of the allegations in relation to the alleged report to the police and not taken action concerned.

4. Counters filed by respondent Nos.9 and 10 together, respondent No.11 separately and respondent No.7-the then Station House Officer of 2017-2018, by name, S.Srinivasa Chary, Inspector of Police, filed counter affidavit on behalf of the Station House Officer, Shadnagar-respondent No.7 while admitting at para 4 of received the petition sent by the petitioner on 01.04.2017 by the Deputy Commissioner of Police (respondent No.5) by post stating that on 01.04.2017 at about 10.00 a.m. as usual his sons Satish and Srinath while attending works in the rice mill, his brothers/respondent Nos.9 and 10 with unsocial elements trespassed into the rice mill with local police support and attacked them, beat them, picked up quarrel and they abused and also beat, for they questioned the Sub-Inspector of Police of Shadnagar by then, J.Narayan Singh (R.8), and his constables abused and

forcibly taken them in jeep. It also speaks of even the injunction order pending over the said rice mill, the supporting of police, they forcibly loaded the rice and broken rice in the three vehicles supra and took them, but police neither stopped nor taken any action. The counter of respondent No.7-Station House Officer further speaks from para 5 that the Deputy Commissioner of Police (respondent No.5) forwarded to the Assistant Commissioner of Police on 05.04.2017 to enquire into and submit report and the Assistant Commissioner of Police (respondent No.6) in turn instructed the Station House Officer, Shadnagar Police Station, the IPS Probationer (officer trainee) to enquire into the petition and submit detailed enquiry report and the Assistant Commissioner of Police memo was dated 13.04.2017. What is further stated therefrom at para 6 is respondent Nos.9 and 10 against whom the allegations made by the writ petitioner including in his complaint, dated 01.04.2017, also lodged a counter complaint on 02.04.2017 with the Assistant Commissioner of Police, Shadnagar, that was also endorsed to the IPS Probationer (Officer trainee) Station House Officer, Shadnagar to enquire and submit detailed enquiry report and endorsement was dated 03.04.2017. It is mentioned in para 7 that the Station House Officer, Shadnagar enquired into both the petitions and enquired reveals of the petitioner elder to his two other brothers ie., respondent Nos.9 and 10 was looking after the day-to-day affairs of the joint family property not partitioned and family established two rice mills with names Venkata Datta Rice Mill, Ellikatta, maintained by respondent No.10 and Sri Murali Krishna Binny Rice Mill maintained by respondent Nos.9 and 10 since long and

because of differences between the brothers in relation to the said family properties and alleged mismanagement in the affairs of the firm business both approached civil Court covered by O.S.No.49 of 2015 and since then both groups are quarrelling by lodging complaints against each other covered by Crime Nos.247 of 2015, 443 of 2015, 107 of 2016 and 119 of 2017 supra those alleged against K.Amarnath, Satish, Srinath and Ramnath and Crime Nos.106 and 122 among those registered against K.Sridhar and Venkatesh and in view of the facts and to keep order law and order, peace and tranquility proceedings under Section 107 Cr.P.C. in Crime No.138 of 2017 initiated against the petitioner and his sons and produced before Tahasildar on 15.03.2017. It is further submitted in para 8 that Sridhar and Venkatesh (R.10 and R.9) are maintaining Murali Krishna Binny Rice Mill and Veeresham is maintaining Venkata Datta Parboiled Rice Mill. No doubt, some what different to what was averred in para 7 supra. It is ultimately stated in para 8 that allegations of the petitioner against Sridhar and Venkatesh are false because the alleged accused maintaining said rice mills since wrong and that too it is a joint property and there is already a suit for partition pending in civil court and the report was with this submitted to the Assistant Commissioner of Police, Shadnagar, and in view of the above no action was taken on the complaint of the petitioner as well as that of respondent Nos.9 and 10 respectively and the writ petition is filed suppressing the same and that the dispute is purely of civil in nature.

5. The counter affidavits of respondent Nos.9 and 10 are on merits regarding the rice mill is part of the joint family property and there are civil

disputes and the dispute is civil in nature in saying as rightly concluded by the Trainee Station House Officer, Shadnagar, referred supra. It is also denied in para 8 of their counter regarding the alleged manner of incident by saying it is otherwise and they are the victims as per their complaint dated 2/4.03.2017.

6. So far as respondent No.11's counter concerned, it is his allegation that there is no stock received by him as alleged and he is a common friend to all the three brothers, who are sons of Krishna Murthy, and in their family dispute, he cannot be implicated and he has nothing to do with their disputes and business affairs.

7. This Court is not adjudicating any civil dispute herein to go into further of the contentions of respondent Nos.9 to 12 supra. The core issue from above referred material with respective contentions in deciding the writ petition is any of the official respondent Nos.2 to 8 justified in not registering a crime or atleast any General Diary entry on the report of the petitioner admittedly received through the Deputy Commissioner of Police and the Assistant Commissioner of Police by the Station House Officer. Respondent No.8 was the Sub-Inspector of Police attached to the Shadnagar Police Station (respondent No.7) not in dispute at the relevant time. The core issue is on the complaint received whether there is any General Diary entry made and why a crime is not registered once General Diary entry is made. Is it mentioned of any non-cognizable offence and if so is it obtained any permission of the Magistrate as contemplated by Section 155 Cr.P.C. to register a crime or atleast is it the endorsement by any General Diary entry

that there is no any offence made out from the report as any of those are the pre-requisite and mandatory duties of the police and they cannot abdicate their responsibilities contemplated in discharge of their official duties.

8. In this regard, pursuant to the docket order of this Court, dated 03.01.2019, while postponing further hearing of the arguments to 23.01.2019, directed the Station House Officer, Shadnagar (respondent No.7) to produce the General Diary of the months of March and April, 2017. A perusal of the General Diary produced before this Court now confirms the counter averment of respondent No.7 regarding several crimes registered in March and April, 2017. However, surprisingly and admittedly even there is no General Diary entry regarding the complaint of the petitioner even according to the counter of respondent No.7 stated sent it by post by the petitioner to the Deputy Commissioner of Police who in turn addressed to the Assistant Commissioner of Police and who in turn endorsed the Station House Officer that was received by the Station House Officer (respondent No.7) on 13.04.2017, though it is their duty and it is not even a case of there was no any General Diary maintenance practice in the police station to make an entry that too when received from the superior officers even with endorsement to enquire. Enquiry here to mean only to investigate if at all there is a cognizable offence and there is nothing even directed by the Deputy Commissioner of Police or Assistant Commissioner of Police of not to make General Diary entry not to register a crime. Even there is a Constitutional bench expression of the Apex Court in **Lalita Kumari vs.**

Government of Uttar Pradesh and others¹, delivered way back in 12.11.2013 that was within the knowledge of all Station House Officers of the Police Stations from the internal guidelines are also there to bind them and once such is the case, it is their fundamental duty to make a General Diary entry and if at all after making General Diary entry, they have to make an enquiry if at all for verifiable truth of the allegations and then to register a crime once it makes out a cognizable offence. It is not even the counter averment that there is no cognizable offence. It is not even the counter averment that there is no offence made out. Once there is offence made out and once it discloses a cognizable offence of hurt, criminal intimidation and extortion or theft or robbery, it is the fundamental duty for the relevant cognizable offences which include any other non-cognizable offences also once there is a cognizable offence others automatic even from the wording of Section 155 read with 154 Cr.P.C. to make a General Diary entry and register a crime. They cannot show an eyewash that too without General Diary entry without registration of crime to file any report internally by submitting to the Assistant Commissioner of Police as if it is a false averment. Even it is a dispute of civil nature once makes out a cognizable offence though they are not entitled to interfere with civil dispute or not prevented from registration of a crime in a cognizable offence. Having regard to the above, there is a clear abdication of duty by the Station House Officer (respondent No.7) and even report received by the Assistant Commissioner of Police (respondent No.6), he kept quite without even directing to make any General Diary entry or atleast if not to register a crime

¹ (2014) 2 SCC 1

to communicate to the complainant. Procedure was apparently bypassed not even ignorantly then for all purposes knowingly and it is one of the allegations in the writ petition of intentionally. This cannot be countenanced in discharge of public duty by any public servant. No more words are required to deprecate the action of the police officials supra. As it is nothing but abdication of their statutory responsibilities including from the mandate of the Apex Court as law of the land.

9. Having regard to the above, the writ petition is disposed of directing the Station House Officer, Shadnagar (respondent No.7) by now making a General Diary entry and register a crime on the report of the petitioner dated 01.04.2017 supra if at all any cognizable offence and if discloses a non-cognizable offence, by obtaining the permission of the learned Magistrate concerned under section 155 Cr.P.C, and enquire into and file final report either in the form of charge sheet or referred report, as the case may be, and communicate the same to the de facto complainant (petitioner herein) and by giving opportunity to the petitioner as de facto complainant not only to examine and record his statement in writing, but also any of the witnesses he is going to produce and can take aid of the earlier report said to have been submitted by the Station House Officer to the Assistant Commissioner of Police referred supra for nothing shown from the counter of respondent No.7 of any statement so far recorded or borne by record. Further, the Deputy Commissioner of Police, Cyberabad, is directed herewith to monitor the investigation being conducted by the Station House Officer (respondent No.7) within his supervisory power under Section 36 C.P.C.. Needless to

say, that another complaint stated given by respondent Nos.9 and 10, dated 01.04.2017, police to make General Diary entry and register crime if discloses any offence to investigate simultaneously or otherwise.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

7th February 2019

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