HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHAVA RAO

WRIT APPEAL NO.506 OF 2019

J U D G M E N T
(Per Sanjay Kumar, J)

1. The petitioner in W.P.No.11613 of 2016 is in appeal aggrieved by the disposal of his writ petition, *vide* order dated 29.04.2019, granting him liberty to work out his remedies under the provisions of the Code of Criminal Procedure, 1973 (*for brevity*, 'the Code').

2. The grievance of the appellant was that the police authorities were not taking necessary action upon his representations dated 09.05.2013, 21.05.2013, 28.10.2014, 27.11.2015, 27.01.2016 and 18.03.2016, whereby he had sought initiation of criminal action against respondents 11 to 21 in the writ petition and in this appeal. By the order under appeal, the learned single Judge observed that when a report was lodged with the police disclosing the commission of cognizable offences but no action is taken thereupon, the party aggrieved would be entitled to file a complaint under Section 200 of the Code. Opining that as an efficacious remedy was available under the Code, the learned Judge held that it would not be appropriate to direct the police to register a criminal case and issue a First Information Report (FIR). The writ petition was accordingly disposed of granting liberty to the appellant to work out his remedies.

3. As we are not inclined to go into the merits of the allegations made by the appellant against the unofficial respondents and all that we are concerned with at this stage is only the action/inaction of the police authorities on the complaints made by the appellant, we do not deem it necessary to put the unofficial respondents on notice or afford them an opportunity of hearing. Needless to state, registration of a FIR upon

information being received as to commission of cognizable offences would not require either the prior consent of or intimation to the alleged perpetrators of the said cognizable offences. The unofficial respondents therefore have no role to play at the pre-FIR registration stage. Further, as we do not propose to enter into the merits of the matter and it is for the police authorities concerned to take appropriate action, if warranted, the unofficial respondents need not be given an opportunity of hearing at this stage.

4. At the outset, we may note that the observation of the learned Judge that it would not be appropriate to direct the police to register a criminal case when a complaint is lodged with them as to the commission of a cognizance offence is not in keeping with the following conclusions of a Constitution Bench in LALITA KUMARI V/s. GOVT. OF U.P.[1]:

> '120. In view of the aforesaid discussion, we hold:
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> 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
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> 120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
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> 120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
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> 120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

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[1] (2014) 2 SCC 1

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Dairy/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.'

5. To that extent, the conclusion of the learned Judge that where the police refuse to register a FIR on the strength of a complaint made as to commission of a cognizable offence, the only remedy for such a complainant is to take recourse to Section 200 of the Code cannot be countenanced. The police are bound to abide by the law laid down by the Supreme Court in LALITA KUMARI[1] as set out *supra*.

6. Coming to the case on hand, the gist of the complaints made by the appellant to the police was that respondents 11 to 21 were running an illegal cable network by impersonation as if they were the registered

holders of Bharani Cable Network at Bheleyanaik Thanda though they had no registration certificate in their names. Thereby, they were taking over and trespassing into his business. He alleged commission of offences under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Indian Penal Code and the Cable Television Networks (Regulation) Act, 1995. The appellant conceded that the Circle Inspector of Police, Huzurnagar, conducted an investigation and submitted Report dated 16.04.2015, wherein he stated that an agreement dated 16.10.2007 was entered into between the appellant and respondent 11, whereby respondent 11 started running a Cable Network business in the name of Bharani Cable Network, which was earlier registered in the name of the appellant.

7. It appears that the appellant made fresh complaints dated 27.11.2015, 27.01.2016 and 18.03.2016, wherein he asserted that he had never entered into any agreement on 16.10.2007 and that it was created by respondent 11 for the purpose of running the Cable Network business illegally. In his complaint dated 27.01.2016, the appellant pointed out that the so called agreement was executed on a stamp paper said to have been purchased by respondent 11 on 16.10.2007 and was notarized by one D.Narayan Reddy, respondent 14 herein. The appellant pointed out that respondent 14 was not a registered notary as on 16.10.2007 and therefore, the said agreement was clearly a false and fabricated one, warranting action being taken against those involved in its creation. He asserted that respondent 14 was registered as a notary only in 2011. In his last complaint dated 18.03.2016, the appellant again reiterated that respondent 14 had no authority to notarize the alleged agreement dated 16.10.2007 as he was not a registered notary as on that date.

8. In the affidavit filed in support of the writ petition, the appellant raised a further ground to the effect that the stamp paper on which the alleged agreement dated 16.10.2007 was executed, bearing series No.17AA625506, was stated to have been sold to respondent 11 by one Vallem Ram Reddy, Stamp Vendor, but as per the information furnished by the Treasury Office, Huzurnagar, the said stamp paper was supplied to another Stamp Vendor, V.Srinivas, and not to Vallem Ram Reddy. Significantly, these two aspects were not pointed out by the appellant in his earlier complaints, which culminated in the report dated 16.04.2015 of the Circle Inspector of Police, Huzurnagar.

9. Needless to state, these allegations, if proved, would establish commission of offences warranting initiation of criminal proceedings and the police necessarily had to swing into action. The learned Government Pleader for Home, State of Telangana, was therefore directed to produce the original record to enable this Court to verify whether the later complaints of the appellant evoked any response from the police authorities concerned. The produced record shows that the Superintendent of Police, Nalgonda, forwarded the representation dated 27.01.2016 of the appellant to the Circle Inspector of Police, Huzurnagar, for enquiry and report, under letter dated 14.03.2016. Thereupon, the Circle Inspector of Police submitted his report dated 07.06.2016 narrating the details of the investigation undertaken by him and concluding that there was no merit in the complaint lodged by the appellant.

10. Significantly, though the complaint dated 27.01.2016 made by the appellant specifically raised the issue of respondent 14 not being a registered notary as on 16.10.2007 and citing the same as proof of the alleged notarized agreement executed on the stamp paper on 16.10.2007

being a false and fabricated one, the Circle Inspector of Police, Huzurnagar, did not even advert to that aspect. The Circle Inspector of Police, Huzurnagar, Nalgonda District, thereafter addressed letter dated 15.10.2016 to the appellant stating that the contents of his complaint only indicated a dispute as to a civil matter and therefore, no action was warranted on the criminal side.

11. In the light of the law laid down in LALITA KUMARI[1], it is not open to the police authorities to gloss over the duty cast upon them when any information is received which discloses commission of a cognizable offence. As pointed out by the Supreme Court, registration of a FIR is mandatory in such circumstances. The allegation of the appellant that the so called notary, respondent 14 herein, who is alleged to have notarized the agreement dated 16.10.2007 was not even a registered notary as on that date required to be looked into, as it clearly impacted the genuineness of the said agreement, if proved to be true. However, the police never looked into that aspect, be it for whatever reason. Now, the appellant cites one more factor in support of his allegation that the agreement dated 16.10.2007 is a fabricated one. He alleges that the said stamp paper was sold to respondent 11 by a Stamp Vendor who was never supplied that series of stamp papers. This aspect would also have impact upon the genuineness of the agreement dated 16.10.2007, apart from attracting provisions of law relating to misuse of stamp papers. Neither of these aspects was ever examined by the police.

12. However, we may note that the appellant did not raise the later issue with regard to sale of the stamp paper in any of his complaints. This being the situation, we are of the opinion that it would suffice at this stage to permit the appellant to make a fresh complaint citing these

grounds in support of his allegation that the agreement dated 16.10.2007 is a false and fabricated one. In the event such a complaint is made, the police authorities concerned shall abide by the law laid down by the Supreme Court in LALITA KUMARI[1] and take appropriate action in accordance with law.

13. The Writ Appeal is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE P.KESHAVA RAO

30th AUGUST, 2019

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