THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.35629 of 2018

ORDER :

In this Writ Petition, petitioners seek a *Writ of Mandamus* directing the Additional Director General of Police, Crime Investigation Department, Telangana State (3rd respondent) to investigate into Crime No.115 of 2018 registered with the Station House Officer, Osmania University Police Station, O.U. Campus, Hyderabad (5th respondent) by having the same transferred to his jurisdiction forthwith, and consequently direct the respondents to initiate a thorough investigation; and for other consequential reliefs.

2. The 1st petitioner is the widow and the 2nd petitioner is the daughter of Late Sri R. Venugopal Reddy, former Advocate-General of the erstwhile combined State of Andhra Pradesh.

3. They had filed complaints on 03.08.2017 and 09.11.2017 (Exs.P.1 and P.3) with the 5th respondent against Dr. Chandrasekhar Reddy and Dr. Smt. N. Anuradha (hereinafter referred to as 'the accused'). According to the petitioners, the accused had lent some amount to the 2nd petitioner and got certain documents including blank promissory notes, ledger papers, undated blank signed cheques, etc., and also a document styled as a sale deed executed by the 1st petitioner relating to the immoveable properties owned by the petitioners; that the accused were resorting to *modus operandi* of 'call money'; that the accused tried to trespass into petitioner's residential house in Bangalore and apartments in Hyderabad which are in occupation of tenants; and also sought to get disconnected electricity supply to the said premises; that there were subsequent attacks on the 1st petitioner's house at Tarnaka, Hyderabad by the accused; that the accused are moving hand-in-glove with the local police; and there is threat to the petitioners' life and liberty.

4. Petitioners contend that the accused are sending muscle men to evict the petitioners from their properties; that petitioners are receiving threats that they would be eliminated and would be forcibly dispossessed of their properties; and since the accused have considerable money power and political clout, they want the 3rd respondent to intervene in the matter and take up investigation.

5. Petitioners filed on 3.4.2018, W.P.No.11268 of 2018 challenging the inaction of the 3rd respondent in acting on their complaints dt.03.08.2017 and 09.11.2017; and thereafter Crime No.115 / 2018 under Sections 406, 420, 506 I.P.C., Sections 3 and 4 of Prevention of Money Laundering Act, 2002 read with Section 34 I.P.C. was registered on 6.4.2018. So the said Writ Petition was disposed of 09.04.2018 taking note of the instructions of the Government Pleader for Home that petitioners' complaint were forwarded to the Commissioner of Police, Hyderabad (4th respondent) for taking necessary action and the same was registered as Crime No.115 of 2018 with the 5th respondent.

6. According to the petitioners, a Civil Suit O.S.No.878 of 2017 filed by them is pending before XXV Additional Civil Judge, City Civil Court, Hyderabad; FIR No.576 of 2017 dt.06.12.2017 on the file of MICO Layout Police Station, Bengaluru is under investigation; and an interim order was granted on 15.12.2017 by the Karnataka High Court in WP.No.56715 of 2017 in favour of the petitioners against the accused and the Electricity Department of Bengaluru and others in regard to property of petitioners at Bengaluru.

CONTENTIONS OF PETITIONERS

7. Petitioners contend that petitioners had presented themselves before the Commissioner of Police, Hyderabad (4^{th} respondent) and the 5^{th} respondent on several occasions but no action was forthcoming; in August, 2018, petitioners had given detailed statement along with supporting evidence to 5^{th} respondent but no progress was made; that the 2^{nd} petitioner even met the Assistant Commissioner of Police and an Inspector of Police attached to the 5^{th} respondent Police Station, but they tried to negative the process of investigation; the 2^{nd} petitioner approached the 4^{th} respondent and requested him to transfer the case to the 3^{rd} respondent on the ground of collusion between the accused and police officials of 5^{th} respondent; that police officials of the 5^{th} respondent are ridiculing 2^{nd} petitioner whenever she goes to the 5^{th} respondent Police Station, and are stating that they would call the accused and sort out the issues between the parties; and therefore, it is just and necessary that the investigation be handed over to the

Crime Investigation Department of the State of Telangana (3rd respondent) and have the case investigated by the said Agency.

8. The counsel for the petitioners relied upon the decisions in **Pooja Pal vs. Union of India and others**[1] and and **M.K. Kushalappa vs. K.J. George**[2]. The counsel for the petitioners reiterated the said contentions.

<u>THE COUNTER OF THE RESPONDENT NO.5</u>

9. The 5th respondent alone filed a counter-affidavit.

10. After referring to the registration of Crime No.115 of 2018 with the 5th respondent, it is stated that investigation was taken up; that during the course of investigation, police visited the house of the complainant, but she was not available; that on 16.04.2018, notice under Section 91/160 Cr.P.C. was served upon 1st petitioner through 2nd petitioner, but there was no response; that another notice was sent on 09.05.2018 through R.P.A.D. which was received by the 1st petitioner, but she was not co-operating with the investigation.

11. Reference is made to O.S.no.870 of 2018 which is pending and also to two cases under Section 138 of Negotiable Instruments Act, 1882 filed by the accused against petitioners which are also pending.

12. The 5th respondent contends that 2nd petitioner had filed WP.No.35616 of 2018 also making similar allegations against the 5th respondent and incorporating further allegations against one of the

[1] (2016) 3 S.C.C. 135
[2] LAWS (SC) 2017 9 78

accused Smt. D. Anuradha that the latter submitted fake documents in C.C.No.303 of 2017; but this being in the jurisdiction of the criminal court, only a G.D. entry was made, and the 5th respondent cannot investigate the same.

13. It is stated that fair and impartial investigation is being conducted and no malafides can be attributed to 5th respondent. It is also stated that there is no need to transfer the case to the Crime Investigation Department (3rd respondent) and no circumstances warranting such transfer are made out. The allegations leveled by petitioners against the police officials of 5th respondent P.S. are denied and it is stated that basing on investigation, appropriate report will be filed before the concerned court.

14. The learned Government Pleader for Home reiterated the same and also relied upon the decisions in **K.V. Rajendran v. Superintendent of Police, C.B.C.I.D. South Zone, Chennai and others**[3].

<u>THE CONSIDERATION BY THE COURT</u>

15. In **Pooja Pal** (1 supra), the Supreme Court has held that power is vested in the Constitutional Courts under Article 32 and 226 of the Constitution of India to issue directions to agencies like Central Bureau of Investigation (C.B.I.), but the said power should be exercised with great caution and there are no inflexible guidelines in that regard. It held that such an order cannot be passed as a matter of

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[3] (2013) 12 S.C.C. 480

routine or merely because the party has leveled some allegations against the local police; and such power can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. It held that the residuary jurisdiction of a Court to direct further investigation or re-investigation by any impartial agency has to be essentially invoked if the statutory agency already in-charge of an investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. It observed that the cause of justice has to reign supreme and a Court of Law cannot reduce itself to be a resigned and helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion and that in such situation justice would become a casualty. It held that if investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the Courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of justice; and no inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice. It emphasized that the power of the Constitutional Courts to direct further investigation or re-investigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation. It observed that precaution has to be taken to see that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. This was reiterated in **M.K. Kushalappa** (2 supra), and it was held that prayer for transfer of investigation from State police to C.B.I. can be allowed only in exceptional circumstances where investigation done by the State does not inspire confidence.

16. In **K.V. Rajendran** (3 supra), while reiterating the above principle, the Court added that no opinion should be expressed on merits relating to any transaction against any individual. But on the facts of the said case, the Court did not grant the relief of transferring investigation from the State investigating agency to the CBI on the ground that fifteen years had elapsed since the occurrence of the incident, that the officials against whom the petitioner made complaint might have been transferred to other places and also since the petitioner had not approached the High Court for transfer of the case to C.B.I. within reasonable time.

17. Before I consider application of above principles to the instant case, I would like to refer to the decision of the Constitution Bench of the Supreme Court in **Lalitha Kumari vs. Government of U.P.**[4] The Supreme Court declared therein that :

> ***"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.*
>
> ***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.*
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> ***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:*
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> *(a) Matrimonial disputes/family disputes*
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> *(b) Commercial offences*
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> *(c) Medical negligence cases*

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[4] (2014) 2 S.C.C. 1

(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 Diary/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."*

18. From the facts narrated above, it is clear that petitioners made complaint dt.03.08.2017 and also another complaint dt.09.11.2017 to 3rd respondent alleging commission of criminal acts by the accused. When no action was taken by 3rd respondent they filed on 03.04.2018, WP.No.11268 of 2018 before the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and Crime No.115/2018 was thereafter registered on 06.04.2018 by the 5th respondent.

19. Thus, notwithstanding the fact that **Lalita Kumari (4 supra)** declared that prompt registration of F.I.R. is necessary if the complaint discloses commission of a cognizable offence, there was eight months' delay from 03.08.2017 in registering Crime by 5th respondent on 06.04.2018 (being the F.I.R. No.115 of 2018 under Sections 406, 420, 506 I.P.C., Sections 3 and 4 of Prevention of Money Laundering Act, 2002 read with Section 34 I.P.C. against the accused).

20. It is important to note that the 1st petitioner is aged 78 years and the 2nd petitioner is her daughter and they have alleged criminal intimidation including threats to their life and property as well as commission of other offences by the accused. They have even alleged that police officials of the 5th respondent are ridiculing 2nd petitioner whenever she goes to the 5th respondent Police Station, and are stating that they would call the accused and sort out the issues between the parties; that there is allegedly collusion between the police officials attached to 5th respondent Police Station and the accused and that they are compelling them to settle the matter with the accused.

21. In the counter-affidavit filed, no doubt the 5th respondent has denied the allegations leveled against the police officials of the 5th respondent and stated that fair and impartial investigation is being done and appropriate report will be filed with the concerned court.

22. The 5th respondent, in the counter, has only referred to certain notices issued to 1st petitioner in April, 2018 and May, 2018 but did not say anything about the contention of petitioners that detailed statement of the 1st petitioner was recorded by the 5th respondent in the last week of August, 2018. So, the stand of 5th respondent that petitioners are not co-operating with the investigation cannot be believed.

23. The manner in which the respondents delayed even registration of the F.I.R. compelling the petitioners to approach this Court, and the fact that though almost nine months have elapsed after registering the F.I.R., no final report has been filed, suggests that the 5th respondent's investigation is ineffective and he is not discharging his functions under the Criminal Procedure Code fairly, impartially and meaningfully with due haste and promptitude.

24. I therefore deem it appropriate to transfer the investigation into Crime No.115 / 2018 registered with the 5th respondent to the 3rd respondent, also a State Agency, in order to provide credibility and to instill confidence in the investigation of the said alleged crime.

25. As regards the other portion of the relief sought by petitioners i.e., to protect their possession and enjoyment of properties belonging to them, since the petitioners have already approached the XXV Additional Civil Judge, City Civil Court, Hyderabad by filing O.S.No.870 of 2017 against the accused, petitioners are given liberty to seek appropriate interim relief / final relief therein.

26. The Writ Petition is accordingly allowed in part; the 3rd respondent shall investigate into Crime No.115 / 2018 registered with the 5th respondent and take appropriate action in accordance with law as expeditiously as possible. It is made clear that this Court has not expressed any opinion on the contents of the F.I.R. / Crime No.115 of 2018. No order as to costs.

27. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.01.2019
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