

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 34318 of 2014

ORDER:

On 02.04.2014, petitioner lodged a complaint before the second respondent - Superintendent of Police, Adilabad, alleging that on 27.03.2014, one Ganesh and Manoj, Police Constables, Guard at the check post and others assaulted and caused injuries to him. Again, on 03.06.2014, he sent a reminder to the Deputy Superintendent of Police, Bhainsa. His grievance is that in spite of such complaint, there was no action taken by the respondents. In the circumstances, he filed this Writ Petition.

On 21.01.2020, the third respondent filed a counter-affidavit on behalf of respondent Nos.2 to 4. While denying the complaint of the petitioner, he asserted that the Circle-Inspector of Police, Mudhole, enquired the matter in detail and reported that the allegations of the petitioner are incorrect. He also asserted that the petitioner had failed to approach Basar Police Station immediately after occurrence of the incident.

Heard learned counsel for the petitioner.

Learned Government Pleader for Home has drawn the attention of this Court to the common order dated 08.03.2019 in Writ Petition No. 38397 of 2018 and batch and would contend

that this Writ Petition seeking to issue directions to the respondents for registering FIR is not maintainable.

At this point of time, it is not necessary for this Court to express any opinion with respect to the aforementioned common order as this Writ Petition is of 2014.

It is to be noted that in normal circumstances, the procedure prescribed under Section 154 Cr.P.C. has to be adhered to for lodging a complaint before the Superintendent of Police and thereafter, approaching the Magistrate by way of a private complaint. In the facts of the present case, the same course should not be directed to be adopted for the simple reason that admittedly, the complaint was lodged by the petitioner before the Superintendent of Police concerned.

Having regard to the law laid down by the Apex Court in **Lalitha Kumari v. State of Uttar Pradesh**¹, allegations mentioned in the complaint have to be taken into consideration and if they disclose any non-cognizable offence having been committed, the police do not have any discretion of not registering the First Information Report (FIR) and enquiry is to be conducted only after registration of FIR.

¹ (2014) 2 SCC 1

In the present case, it is to be noted that the persons, against whom, the petitioner lodged complaint are the Police Constables but not others. From a perusal of the counter-affidavit, it is evident that the respondents had totally denied the alleged complaint of the petitioner and had given a clean chit to their subordinates. This would *prima facie* show that the respondents, who are superior officers, have tried to shield their subordinates.

It is also to be noted that repeatedly, the Apex Court held that if a Writ Petition is pending since long time, it would be unfair to relegate the parties to avail alternative remedies, if any.

In those circumstances, without expressing any opinion on the merits of the matter, this Writ Petition is disposed of with the direction to the respondents to forthwith register FIR against the alleged individuals, whose names are mentioned in the petitioner's complaint, and cause necessary enquiry in accordance with law.

Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

23rd JANUARY, 2020.

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