



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO.692 OF 2022

- 1) Smt. Urmila w/o Prakash Gupta,
Aged 62 years, Occu.: Retired RBI
Employee, R/o Plot No.54, Kachimet,
Near, Postal Colony, Amravati Road,
Nagpur.

.... Petitioner(s)

// VERSUS //

- 1) The State of Maharashtra, Through:
Police Station Officer, Police Station
Ambazari, District Nagpur.
- 2) The Commissioner of Police, Police
Headquarters, Civil Lines, Nagpur,
District Nagpur.

.... Respondent(s)

Mr. Aakash Gupta, Advocate for the Petitioner/s
Mr. H.D. Futane, AGP for the Respondent Nos.1 and 2/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**

**RESERVED ON : 24.07.2024.
PRONOUNCED ON : 02.08.2024**

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. Heard Mr. Aakash Gupta, learned Advocate for the
petitioner and the learned APP for the State.

2. **Rule.** Rule is made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties.

3. The petitioner, by invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India, with inherent powers under Section 482 of the CrPC, seeks following reliefs:

“(i) Allow the petition, thereby directing the respondents to comply with the guidelines issued in the judgment delivered in the case of Lalita Kumari -vs- State of Uttar Pradesh reported in (2014) 2 SCC 1 and inquire in the complaint at Annexure-A accordingly;

(ii) Direct the respondent no.2 to conduct a disciplinary enquiry into the misconduct of the officers of the respondent no.1 responsible for shielding the proposed accused and effectively negating the mandate of the law laid down by the Hon'ble Apex Court;

(iii) Direct the respondent no.2 to transfer the investigation to any other independent officer and supervise the investigation either personally or through another Senior Police Officer;

(iv) and (v) ...”

4. The learned Advocate for the petitioner, after stating the facts of the case which led to the petitioner to file a complaint before Ambazari Police Station, Nagpur, submits that the police have not

adhered to the guidelines issued in *Lalita Kumari -vs- State of U.P.* [(2014) 2 SCC 1]. The said complaint on the face of it discloses the cognizable offence. The complainant had disclosed that her brother late Tulshiram Nanukuprasad Gupta had executed a Will in her favour on 16.05.2016 and it was the registered Will, registered with the office of Joint Sub-Registrar, Class-II, Nagpur City in the presence of two witnesses. The deceased had bequeathed the immovable property, bearing Duplex House No.206/1, G-3, Himalaya Paradise Building, GPO Square Civil Lines Nagpur to the petitioner. Various dispositions in respect of movable and immovable property were also made in the said Will. After the death of Tulsiram, the said Duplex House property was mutated in the name of the petitioner on 08.01.2019 on the basis of the said Will. The relatives were having knowledge about execution of the said Will, however, it appears that the proposed accused Yogesh Dhanraj Gupta, who is a nephew of the petitioner as well as the deceased Tulsiram, got the Will forged in his favour on 04.09.2018 in respect of the said Duplex House. In fact, Tulsiram was not fit person to execute the said Will due of his

medical condition on that day and there is absolutely no mention about earlier Will left by the deceased Tulsiram. Further, there are suspicious circumstances in which the Will came to be notarized before the Notary Public as it would not have been possible because of the medical condition of the deceased Tulsiram to appear before Notary Public on that day. Therefore, when forgery has been done, the complaint could not have been literally thrown in the waste paper-box or cold storage by the police under the pretext that a civil dispute is pending. When the complaint on the face of it discloses the cognizable offence, the FIR ought to have been registered. There is an utter failure on the part of the concerned Police Officer to record the FIR and carry out the investigation in view of the *Lalita Kumari* (supra), a disciplinary inquiry deserves to be initiated against the erring Police Officers.

5. The learned APP, after relying on the affidavit of V.M. Matre, PSI, Ambazari, Nagpur City, submits that after the complaint was lodged a preliminary inquiry was done. It was found that probate proceedings were pending with 15th Jt. Civil Judge Senior Division

and Addl. C.J.M., Nagpur, bearing Probate Proceedings No.5291 of 2018 and therefore, it was observed that the dispute is of civil nature and the complainant was asked to take up appropriate proceedings.

6. At the outset, we would like to say that it cannot be said that the civil dispute has no angle of a criminal side. In other words, a transaction can give rise to a civil dispute as well as a criminal dispute. When the complaint is filed with the police station, then the police have to say, whether the contents thereof are disclosing the cognizable offence or not. If they are disclosing the cognizable offence, then it is incumbent upon the police to register the FIR in view of *Lalita Kumari* (supra).

7. We may not approve short-cut adopted by the Ambazari, Police Station for not taking cognizance of the complaint on the point that some civil disputes are pending. We make it clear itself that we are not opining at this stage that the complaint that was filed by the petitioner with the Ambazari Police Station was certainly disclosing the cognizable offence. A preliminary inquiry

made permissible under ***Lalita Kumari*** (supra) was not limited to the extent of Civil proceedings. We had an occasion to go through the file as the learned APP was directed to make it available. It appears that the statements of the proposed accused and the Notary public are only taken and then the conclusion has been arrived at, which cannot be said to be the complete preliminary inquiry. The said inquiry could not have been for more than 7 days as per ***Lalita Kumari*** (supra). What is on record before us is the complaint filed by the petitioner before the police station and the copy of the registered Will stated to be executed by Tulsiram Nankuprasad Gupta in favour of the petitioner and some other persons also. It is a registered Will, and therefore, attaches some value, which can be said to be more than a document which is registered with Notary Public. The petitioner has also filed Discharge Summary of Tulsiram, showing that he was admitted in hospital on 28.08.2018 and was discharged on 05.09.2018 and then, it is said that on 04.09.2018 the Will was registered with the Notary Public, which is now stated to be forged one. Now it is to be noted that the petitioner is not directly praying that directions be given to register

FIR, however, prayer clause (i) shows that the respondents be directed to comply with the guidelines issued in the judgment in *Lalita Kumari* (supra). We are unable to get which directions have not been followed or expected to be followed. If it is that, upon the cognizable offence transpiring from the complaint, it should be registered as FIR; then the petitioner is indirectly praying for directions to register FIR, which the petitioner cannot ask directly in view of *M. Subramaniam Vs. S. Janaki* [(2020 16 SCC 728)]. Relying upon *Sakiri Vasu Vs. State of U.P.* (2008)2 SCC 409 and *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and others* (2016) 6 SCC 277, it was reiterated that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3), Cr.P.C. It was further observed in *Sakiri Vasu* (supra) that If such an application under Section 156(3), Cr.P.C. is made and the Magistrate is, *prima facie*, satisfied, he can direct the F.I.R. to be registered, or if it has already been

registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the Investigating Officer, so that a proper investigation is done in the matter.

8. The case before the Hon'ble Supreme Court was pursuant to the order passed by Hon'ble Madurai Bench at Madras High Court, directing the Inspector of Police to register a case i.e. First Information Report on the basis of complaint and after investigation file the Final Report in accordance with law. The Hon'ble Supreme Court, by taking into consideration above two decisions, set aside the directions given by the High Court for registration of FIR and investigation and therefore, in such circumstance, we cannot grant prayer clauses (i) and (iii) in the present petition.

9. As regards the prayer clause (ii), to direct the respondent No.2 to conduct a disciplinary inquiry into the misconduct of the Officers of the respondent No.1 responsible for shielding the proposed accused, is concerned, it is to be noted that there is no

evidence that the Officers of the respondent No.1 were responsible for shielding the proposed accused. Upon the complaint that was filed by the petitioner, some preliminary inquiry was made and then it was concluded that in view of pendency of the civil proceedings, the petitioner should approach the Civil Court. It may be a wrong decision by the concerned Officer for not taking cognizance of cognizable offence, if it was transpiring from the face of the complaint. Every wrong decision cannot lead us to infer that the said decision is taken with *mala fide* intention.

10. Therefore, we do not find this to be a fit case where we should give such kind of direction in absence of concrete evidence. No doubt in ***Lalita Kumari*** (supra) it has been stated that failure to register the FIR, when it is disclosing cognizable offence, would lead to disciplinary inquiry has been mentioned, but then the present petition could be at a premature stage, as we are not considering or giving opinion that the complaint filed by the petitioner on 07.10.2021 before Police Station Ambazari, is disclosing cognizable offence. As aforesaid in ***Sakiri Vasu*** (supra),

the petitioner ought to have approached a Magistrate under Section 156(3) CrPC. The petitioner is relying on ***Lalita Kumari*** (supra) for every purpose which prescribes period of seven days to register FIR. The complaint that was filed by the petitioner before Ambazari Police Station was on 07.10.2021 and the communication was made by the Police Station, Ambazari on 17.01.2022, refusing to register FIR. There is no explanation in the petition as to why after seven days from 07.10.2021, the petitioner had not approached the concerned Magistrate under Section 156(3) of CrPC for direction to register FIR. Even till today, the application under Section 156(3) of the CrPC has not been filed and therefore, without expressing any opinion on merits, and whether or not the complaint dated 07.10.2021 is disclosing any criminal offence of cognizable nature, as stated in ***M. Subramaniam*** (supra), this Court clarifies that a civil dispute should not be given the colour of a criminal offence and at the same time, mere pendency of the civil proceeding is not a good ground and justification for not registering FIR and investigate the matter, if a criminal offence has been committed.

11. Further we adopt the same recourse as was adopted in ***M. Subramaniam*** (supra), while dismissing the petition by observing that this order should not be an impediment in the way of the petitioner to file appropriate proceedings before Magistrate.

12. With these directions, the present writ petition stands **dismissed**.

Rule stands discharged. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]