
(2013) 12 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 35368 of 2013

A.V. Santosh Kumar

APPELLANT

Vs

Sajjid Hussain and Others

RESPONDENT

Date of Decision : 30-12-2013

Acts Referred:

Citation : (2014) 1 ALD(Cri) 768

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Dittakavi Satyavathi, for the Appellant;

Final Decision : Disposed Off

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a mandamus to declare the inaction of the police in registering a F.I.R. on the report given by the petitioner on 16.11.2013, as illegal and arbitrary. I have heard the learned Counsel for the petitioner and the learned Assistant Government Pleader for Home.

2. The petitioner averred that he joined as a shareholder in Delta Cabs Company, by depositing Rs. 1,00,000/- vide State Bank of India cheque No. 247491 towards his share capital, that respondents 1 and 2 are the partners of the said Delta Cabs Company and they have entered into an agreement with the petitioner on 06.05.2012. As respondents 1 and 2 allegedly absconded with the company funds and are not paying interest on the petitioner's capital amount or profit in the business, the petitioner has lodged a report on 11.11.2013 and also on 16.11.2013 against respondents 1 and 2 for offences under Sections 420, 120-B, 406 and 409 I.P.C. As F.I.R. has not been registered even after expiry of more than one month, the petitioner filed this writ petition.

3. This Court has ordered notice to the official respondents through the learned Assistant Government Pleader for Home. The case underwent two adjournments. Today, at the hearing, the learned Assistant Government Pleader for Home, on

instructions, submitted that respondent No. 6 has registered the F.I.R. on 13.12.2013 i.e., after the case was last adjourned on 11.12.2013.

4. To the Court's query made during the hearing on 18.12.2013, on the inordinate delay in registering the F.I.R., the learned Assistant Government Pleader, based on the written instructions, submitted that the reason for the delay in respondent No. 6 registering the F.I.R. is that he has conducted preliminary enquiry into the correctness or otherwise of the allegations made by the petitioner in his report. Indeed, this procedure adopted by respondent No. 6 is not only contrary to the procedure laid down u/s 154 of the Code of Criminal Procedure, 1973 (for short "the Code") and also by a catena of judgments of the Apex Court as well as this Court. The case was therefore adjourned for filing counter-affidavit by respondent No. 6.

5. Respondent No. 6 has accordingly filed a counter affidavit on 19.12.2013 wherein he has inter alia stated as under:

It is respectfully submitted that it is a fact that the petitioner herein has sent a complaint dated 16.11.2013 to the Station House Officer, Narayanaguda Police Station, Hyderabad through post stating that Mr. Sajid Hussain and Mr. Ahmed Hussain who are the partners of DELTA CABS Pvt. Ltd., are absconding with company funds and not paying the interest of the capital amount and profit of the business as per the terms and conditions of the agreement dated 2.6.2012.

It is respectfully submitted that although sincere efforts were being made to trace out the original complaint dated 16.11.2013 sent by the petitioner herein by post, the same could not be traced and hence this respondent did not initiate any action upon it immediately, for which I sincerely tender my unconditional apology to this Hon''ble Court.

6. The petitioner filed rejoinder wherein he has pleaded that he has sent the report to respondent No. 6 on 11.11.2013 and 16.11.2013 by Speed Post and that after seeing the counter affidavit, the petitioner's counsel submitted a representation to the Chief Post Master, General Post Office, Hyderabad, on 19.12.2013 for furnishing delivery particulars of the Speed Post and that the information furnished by the Chief Post Master, General Post Office, Hyderabad, showed that the postal cover was delivered to the address of respondent No. 6 on 12.11.2013. The petitioner filed a copy of the said communication issued by the office of the Chief Post Master, General Post Office, Hyderabad on 21.12.2013. From the abovementioned letter addressed by the Chief Post Master, it is established beyond any cavil of doubt that Narayanaguda Police Station, of which respondent No. 6 is the Sub-Inspector of Police, has received the petitioner's first report dated 11.11.2013 on 12.11.2013 itself.

7. As noted by this Court, on 18.12.2013, the learned Assistant Government Pleader has reported to the Court on instructions that the reason for the delay in registering the F.I.R. by respondent No. 6 was the holding of preliminary enquiry. When this Court has expressed its strong views on the said procedure stated to

have been followed by respondent No. 6 contrary to the well settled legal position, respondent No. 4 has changed the stand in the counter affidavit by vaguely pleading that the report stated to have been sent by the petitioner was misplaced. However, unwittingly, respondent No. 6 has admitted in paragraph No. 3 that the petitioner has sent a complaint dated 16.11.2013. From these severe contradictions in the stand of respondent No. 6, it is evident that he is trying to cover up his conduct of keeping the report pending without registering the crime though its contents disclosed commission of cognizable offence. From the letter addressed by the office of the Chief Post Master, General Post Office, Hyderabad, to the Counsel for the petitioner, referred to above, I have no reason to doubt that respondent No. 6 has received the report as far back as 12.11.2013.

8. u/s 154(1) of the Code, every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Under sub-section (2), a copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

9. In State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court in unequivocal terms held that it is the duty and obligation of the officer-in-charge of a police station to register the F.I.R., if the contents of the information reveal commission of a cognizable offence. It is further held that it is not part of the duty of the police to hold an enquiry, preliminary or otherwise, in order to ascertain the veracity of the truth or otherwise of the contents of the information. It is instructive to reproduce the relevant part of the judgment, at paras 32 and 33, hereunder:

....An overall reading of the codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

10. Dealing with a similar situation, in Sammeta Lakshman Vs. Government of Andhra Pradesh 2010 (3) ALT (Cri.) 93 (AP), while repelling the plea advanced on behalf of the State that the Police cannot straightaway register an FIR without making a preliminary enquiry into the truth or otherwise of the allegations, I made a thorough analysis of the provisions of Section 154 Cr.P.C. with reference to the law laid down by the Supreme Court in Bhajan Lal 1992 Supp. (1) SCC

335 (supra) and held as under:

From the discussion undertaken above, the inescapable conclusions that emerge are that Section 154(1) mandates the police officer in-charge of a police station to register FIR, if he receives information relating to commission of a cognizable offence. He is not vested with any discretion whether to register or not to register a case. Prior enquiry for registration of FIR is a concept alien to the procedure adumbrated under the Code. The police officer cannot hold such an enquiry to ascertain the truth, credibility or otherwise of the allegations contained in the information. After registering the case, the police officer is bound to follow the procedure prescribed u/s 157. As prescribed in the Manual, refusal to register a case pertaining to commission of a cognizable offence constitutes an offence u/s 217 IPC (Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture).

... It requires no reiteration that in a society wedded to the constitutionalism and democratic principles of governance, the legitimate grievances of a common man shall not be allowed to remain a cry in the wilderness. While the executive does not need to be reminded of their basic duties, even when it is done so by the Constitutional Courts when situations impelled them, the former does not appear to be taking the wake up calls, leading to a situation where they are repeating the same illegalities again and again. A trend of late is clearly noticeable that the precedential value of the Courts' verdicts rendered in public law field are treated as confined to the cases in particular in which they are given. Are observations made and findings rendered while disposing of the cases involving issues of general public importance intended to be mere incantations? Certainly not. The higher administrative echelons need to show far greater degree of sensitivity to the views of the Constitutional Courts to prevent repetition of illegalities. They would also do well to realize that their duty does not end with issuing executive instructions or administrative circulars, but extends to ensuring their implementation in letter and spirit.

Whatever Section 154 of the Code envisages is reflected in the Manual referred to above. What troubles the mind of this Court is when the position is so clearly stated in the Manual, where is the room for the police personnel at the ground level to continue to defy the law; that how the superior officers are condoning the faults committed and repeated by their subordinates time and again? Are the higher officials yielding to the temptation of protecting their erring subordinates instead of showing absolute loyalty to the Constitution, the suprema LEX and the Laws operating under its fold? Did no unit head ever find one instance of the Station House Officer failing to register a case and, if so, whether any Station House Officer was prosecuted for the offence u/s 217 IPC?

(Emphasis added)

11. Very recently, the Apex Court, in *Lalitha Kumari Vs. Government of Uttar Pradesh*¹, once again reiterated the legal position.

12. While dealing with a case similar to the one on hand, in T.V.G. Chandrasekhar Vs. State of Andhra Pradesh, represented by its Principal Secretary, Home Department, Secretariat, Hyderabad², I have held as under:

As recent as 12-11-2013, the Apex Court in Lalitha Kumari (1 supra) has reiterated the legal position in no uncertain terms and gave the following directions:

(i) Registration of FIR is mandatory u/s 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case is

should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) 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.

(Emphasis added)

I am, indeed, unable to comprehend as to why the Police in the State have been turning a blind eye to the above well settled legal position and forcing the innocent citizens to resort to invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The experience of this Court reveals that on an average, 5 to 10 cases are being filed everyday with the grievance that the Police have not been registering cases even though the complaints disclose the commission of cognizable offences. This case on hand is only a small illustration of the problem of huge magnitude being faced by the general public of the State. This Court wonders as to how many more Judgments are needed to make the Police force to realise their statutory obligation enjoined on them by Section 154 Cr.P.C. Each time when they are caught on the wrong foot in the Writ Petitions, they seek apologies of the Court and request for closing of the Writ Petitions by stating that the grievance of the petitioners is redressed by registering of the cases. The victims are vexed and this Court is disgusted with this attitude of the Police. It is because of this reason that this Court has felt it appropriate to summon respondent Nos. 3 and 4 to the Court and directed them to explain the reason for their failure to register the FIR, though admittedly, the complaint filed by the petitioner disclosed the commission of a cognizable offence.

13. This Court has given directions to the Director General of Police to take stern measures against the Station House Officers for not registering F.I.Rs. where the complaints disclosed commission of cognizable offences by issuing a Circular.

14. As a result of the indifferent approach of the Police to the law of the land, the victims are faced with the eventuality of approaching this Court by spending huge money as well as their precious time. The present case is a paradigm of the general trend of the Police. The oft-repeated dicta of this Court in cases of this nature has not been bringing any change in the mindset of the police. A situation has come to a pass where every report given to the Police has to be followed by a writ petition under Article 226 of the Constitution of India. This none too happy situation is being brought about by the incorrigible attitude of the Police in failure to discharge their statutory obligation cast on them u/s 154 of the Code. Faced with this situation, this Court finds it proper that respondent No. 6 is saddled with costs for the inordinate delay of 30 days in registering the F.I.R., though

undoubtedly its contents constituted cognizable offence u/s 420 I.P.C. Accordingly, respondent No. 6 shall pay Rs. 500/- (Rupees Five Hundred and only) per day to the petitioner from 12-11-2013 till 12.12.2013 from his personal funds within two weeks from the date of receipt of this order. The payment of these costs shall be entered in the Service Register of respondent No. 6.

15. Subject to the above directions, the Writ Petition is disposed of. As a sequel to the disposal of the Writ Petition, WPMP No. 43947/2013 filed for interim relief is disposed of as infructuous.

1 Writ Petition (Criminal) No. 68/2008, dt. 12-11-2013

2W.P. No. 33917 of 2013, dt. 23-12-2013