
(2014) 04 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34137 of 2013

G.B.C. Raj Gopal

APPELLANT

Vs

The Government of A.P.

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 144, 144A, 145, 145
Penal Code, 1860 (IPC) — Section 166, 323, 354, 447, 448
Police Act, 1861 — Section 44

Citation : (2014) 04 AP CK 0038

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : Mohd. Shafiuddin, Advocate for the Appellant; M. Karunasagar, Sri. R. Raghunandan, Senior Counsel for P. Shreyas Reddy, Sri. D. Srinivas and Government Pleader for Home, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—The action of respondents 3 and 4, in calling and pressurizing the petitioner to subscribe his signature to the already prepared documents without disclosing the contents thereof; in threatening to implicate him in criminal cases if he failed to do so; and in forcing him to yield to the illegal demands of the 5th respondent giving up his right, title share and interest in the devolved properties; is questioned in this Writ Petition as being arbitrary and illegal. The petitioner and the fifth respondent are siblings. The Deputy Commissioner of Police, West Zone, Hyderabad is the 3rd respondent, and the Inspector of Police, Sanjeeva Reddy Nagar P.S. is the 4th respondent. The 3rd respondent is arrayed as respondent No. 6 eo-nominee, and the 4th respondent is arrayed as respondent No. 7 eo-nominee. They shall, hereinafter, be referred to as respondents 3 and 4 respectively.

2. The petitioner, a software engineer and a green card holder, claims to have come to Hyderabad from the U.S.A. on 11.09.2013. It is his case that his sister

(the 5th respondent), who was staying in Malakpet, had approached S.R. Nagar police station claiming to be a resident of Ameerpet; Sri. Ajit Kumar, the Sub-Inspector of Police, S.R. Nagar police station had called him over the telephone at 1.00 p.m. on 14.11.2013, and had asked him to come to the police station; the 4th respondent-Inspector of Police did not show him the complaint lodged by the 5th respondent or divulge its contents; he was taken in a police jeep, from S.R. Nagar police station, to the office of the DCP-West Zone at A.C. Guards; he was directed to make himself available again, at the office of the Deputy Commissioner of Police, West Zone, on 19.11.2013 at 2.45 pm; when he went there on 19.11.2013, the 3rd respondent informed him that a complaint was lodged against him by the 5th respondent with the S.R. Nagar police station; it was not necessary to disclose the contents of the complaint to him, and he should effect a settlement and divide the properties with his sister i.e., the 5th respondent; he informed the 3rd respondent that neither had he committed any offence nor were there any questionable antecedents against him, except the alleged complaint said to have been lodged by the 5th respondent with the S.R. Nagar police station; he could not be asked to make himself available at the office of the 3rd respondent more so for division of properties, between him and the 5th respondent, which was a civil dispute in which the police had no right to interfere; the 5th respondent, who was present in the office of the 3rd respondent, started demanding that he give up his right, interest and share in certain flats and other properties; when he declined, the 3rd respondent asked him to affix his signature on prepared documents and stamp papers; when he demanded to know its contents, the 3rd respondent sternly instructed him to obey orders and do as he was told, otherwise criminal cases would be instituted preventing him from leaving the country to proceed back to the USA; he was subjected to various pressures and turmoils at the hands of the 5th respondent, and her henchmen; as he had offered resistance, the 5th respondent was surreptitiously putting the office of the 3rd respondent to use, meting out threats of implicating him in false criminal cases, in the event he refused to yield to her illegal demands that he give up his share and entitlement in the devolved properties; the 3rd respondent had asked him to leave his office and return at 11.00 am on 23.11.2013 after making up his mind on signing the documents that would be produced on that day; he was asked not to divulge these events to any one outside the office; he did not bring these facts to the notice of higher police authorities fearing a back lash from the 3rd respondent; and the action of respondents 3 and 4 is illegal and unauthorised, and has resulted in violation of his fundamental rights.

3. This Writ Petition was filed in the High Court Registry on 26.11.2013 after a copy thereof was served on the office of the Government Pleader in the High Court. The Writ Petition was listed before this Court on 28.11.2013 and, in view of the serious allegations made against a senior officer in the cadre of Deputy Commissioner of Police, the matter was directed to be listed the next day i.e., 29.11.2013 to enable the Learned Government Pleader for Home to obtain

instructions. On 29.11.2013, the Learned Government Pleader for Home placed before this Court the records including a copy of FIR No. 936 of 2013 dated 27.11.2013 registered with the S.R. Nagar police station, against the petitioner, for offences under Sections 323, 506 and 509 IPC. Section 323 IPC relates to voluntarily causing hurt and is a non-cognizable offence. Section 506 IPC, which relates to criminal intimidation, is also a non-cognizable offence. Section 509 IPC relates to an offence of insulting the modesty of any woman etc, and is a "cognizable offence".

4. In its proceedings dated 29.11.2013, this Court noted that the records placed before it contained a copy of the complaint given by the 5th respondent which did not bear any date, but contained an endorsement of having been received on 27.11.2013 at 22.00 hours. This Court was, prima facie, of the view that, when the Writ Petition was filed on 26.11.2013, the petitioner could not have visualized that a complaint would be lodged against him by his sister on the next day i.e., 27.11.2013 at 22.00 hours that too at S.R. Nagar police station against whose officials he had levelled grave and serious allegations in the Writ affidavit; it defied reason that the 5th respondent should give a complaint late at night at 22.00 hours on 27.11.2013 for an incident which allegedly took place more than a fortnight prior thereto on 10.11.2013, if it were for reasons other than the Writ Petition having been filed before this Court; prima facie, it appeared that a concocted complaint was hurriedly registered on the night of 27.11.2013 as the Writ Petition was to be listed before this Court on 28.11.2013; if, as was sought to be made out by the 4th respondent, such an incident had taken place on 10.11.2013 no efforts were made by respondents 3 and 4 to ascertain why the 5th respondent chose to remain silent for more than a fortnight; and if, on the other hand, an oral complaint was made by the 5th respondent on 10.11.2013, it should have been reduced into writing u/s 154 Cr. P.C. immediately thereafter.

5. The 2nd respondent was directed to cause an enquiry into the incident and submit a report to this Court by 02.12.2013; forthwith transfer investigation of the complaint from S.R. Nagar police station; entrust investigation to any other police officer, not subordinate to the 3rd respondent; and consider whether respondents 3 and 4 should be permitted to remain in active duty pending further enquiry. Interim stay was granted. The records, relating to FIR No. 936 of 2013, were called for from the III Additional Chief Metropolitan Magistrate, Nampally, to whom the said FIR had been forwarded by the SR Nagar police station and the records, placed before it, were directed to be kept in a sealed cover with the High Court Registry.

6. In compliance with the order of this Court dated 29.11.2013, the 2nd respondent-Commissioner of Police had an enquiry caused by the Joint Commissioner of Police. In his enquiry report dated 05.12.2013, the Joint Commissioner of Police has observed that the 5th respondent is a widow and an orphan surviving on rents received from the Flats left behind by her deceased parents at Jaya Residency, Malakpet, Hyderabad; the petitioner, her brother and

sole sibling, lives in the USA; since the death of their father in the year, 2000 they have been unable to reach an understanding over sharing of properties left behind by their deceased parents; they had involved others in their quarrel, with the petitioner's brother-in-law on his side and Sri. Ramanjaneyulu on the side of the 5th respondent; having gained no positive result the 5th respondent, to save her family reputation and avoid lodging a police case against her brother, had approached the 3rd respondent seeking his counseling; she had, subsequently, made 3 to 4 visits to the office of the Deputy Commissioner of Police, West Zone; the 3rd respondent had arranged counseling, for both the parties, at least on two occasions; no amicable solution could, however, be reached as the petitioner disappeared from the office of the DCP West Zone; the 5th respondent changed her mind, and decided to lodge a formal complaint in S.R. Nagar police station on 27.11.2013 mentioning the attack on her at S.R. Nagar Signals on 10.11.2013 at 22.00 hours; on the basis of this complaint, Cr. No. 936 of 2013 was registered at S.R. Nagar Police Station on 27.11.2013 at 20.00 hours; on receipt of the letter of the Government Pleader for Home dated 29.11.2013, communicating the order of this Court, the case was transferred to CCS, Hyderabad on 30.11.2013, before any tangible progress was made in investigation by the S.R. Nagar P.S.; on receipt of a fax message from the Commissioner of Police, Hyderabad on 30.11.2013, the case was re-registered in Central Crime Station as Cr. No. 181 of 2013 under the same sections of law, and investigation is in progress.

7. In its order dated 11.12.2013, this Court noted that the records of the Additional Chief Metropolitan Magistrate disclosed that the complaint was received in his Court at 4.00 p.m., on 28.11.2013 after this Court, by its proceedings dated 28.11.2013, had granted time to the Learned Government Pleader to obtain instructions, and had posted the matter for hearing on 29.11.2013; and the FIR Index Register disclosed the possibility of FIR No. 936 of 2013 being ante-dated. As it was, prima facie, of the view that a false criminal case was manufactured only because the petitioner chose to invoke its jurisdiction, this Court called for a report from the 1st respondent as to what action needed to be taken against respondents 3 and 4 for their high-handed and illegal acts of resorting to settlement of private civil disputes. Respondents 3 and 4 were impleaded as respondents 6 and 7 eo-nominee.

8. In his report to this Court, the first respondent-Principal Secretary, Home stated that, pursuant to the instructions issued by Government vide Memo No. 37993/PSC/A3/13, dt. 23.12.2013 for an enquiry by a Committee, which was constituted for monitoring and enquiry into complaints on Police interference in Civil disputes and recommend action on erring Police personnel, the Director General of Police, by his letter dated 31.12.2013, had furnished the report of the said enquiry committee which disclosed that the parties in W.P. No. 34137 of 2013 were examined and their statements recorded, except that of the petitioner as he had returned to the USA. The Committee was of the view that there was inordinate delay in dispatch of the FIR in Cr. No. 936/2013 to the Court; the FIR

was received in the court at 4.00 PM on 28.11.2013; on perusal of DSR of West Zone for 27.11.2013, which was received by all committee members on 28.11.2013 before 6.00 AM, Cr. No. 936 of 2013 found mention, thereby establishing that Cr. No. 936 of 2013 was registered on 27.11.2013 at 22.00 hours; the Committee perused the petition of R-5 dated 13.11.2013, and had noticed that there had been an attempt to change the place of residence of the petitioner from Jaya Residency to Jaya Nagar by striking off the word "residency" in telugu and adding the word "nagar" in telugu; their enquiries further revealed that there is no "Jaya Nagar" in Ameerpet area; the Committee found fault with the endorsement "CI, SR Nagar - Call both the parties and do justice to the deserved" of the DCP, West Zone upon the petition of R-5, dated 13.11.2013; it also faulted the DCP, West Zone for not registering a case in immediate response to the petition of R-5 and, instead, calling the Writ Petitioner repeatedly to his office to sort out the dispute; when the Committee examined Smt. Rena Chowdary R-5 and Anjaneyulu who was said to be in her company at the time of the purported incident on 10.11.2013 in S.R. Nagar PS limits, they strongly and firmly took the same stand that the incident of 10.11.2013 did take place; the matter is under investigation by the ACP, CCS; since the report of the Committee established the fault of the DCP, West Zone, the Home Department, while agreeing with the same, had forwarded the said report, vide proceedings dated 01.01.2014, to the General Administration (SC. D) Department which deals with the subject matter of initiating suitable disciplinary action against IPS officers; and no overt act or negligence has been established by the committee in its findings against Respondent No. 4, the CI.

9. In his counter-affidavit the 2nd respondent has stated that, in compliance with the order of this Court dated 29.11.2013, he had instructed the Joint Commissioner to conduct a detailed enquiry into the matter and submit a report; the case in Cr. No. 936 of 2013, on the file of the SR Nagar Police Station, was transferred on the evening of 05.12.2013 to the Central Crime Station, Hyderabad for investigation; CCS, Hyderabad is a separate unit, and is not subordinate to the 3rd respondent; on its transfer, the case has been re-registered as Cr. No. 182 of 2013, and investigation has been taken up; the Joint Commissioner of Police, Hyderabad is an officer in the cadre of a Deputy Inspector General of Police, higher in rank than the Deputy Commissioner; he had conducted a detailed enquiry and submitted a report on 05.12.2013; as per the instructions issued by the Government, vide memo No. 37993/PSC/A3 dated 23.12.2013, a committee was constituted to enquire whether police officials had interfered in civil disputes; the said committee consisted of the Commissioner of Police, the Additional Commissioner of Police (Law & order) and the Additional Commissioner of Police (Crimes and SIT). Daily situation reports (DSR) are prepared by police stations in all five zones of Hyderabad; the DSR contains crime reports, law and order issues, FIRs, VIP movements etc; the concerned DCPs have to consolidate the DSR every day with the information received from the police stations and submit the same, (both the soft and the hard copy), to

the Commissioner of Police and other officials by 6.00 AM; the DSR, prepared in the office of the DCP West Zone dated 27.11.2013, was received by the 2nd respondent on 28.11.2013 in the morning itself; this procedure of DSR facilitated him and other higher officials to monitor the day to day affairs in all police stations in the twin cities; the DSR of West Zone for 27.11.2013, which was received before 6.00 A.M. on 28.11.2013, records Cr. No. 936 of 2013; and this establishes that Cr. No. 936 of 2013 was registered on 27.11.2013 itself. The 2nd respondent faults not only the endorsement of the 3rd respondent dated 13.11.2013, as "CI, SR Nagar call to both parties and do justice to the deserved", but also his failure to register the case immediately in response to the petition of the 5th respondent and in calling the petitioner to his office to sort out the dispute. He submits that there was no evidence to show that the 3rd respondent had pressurised the petitioner to come forward to sign on prepared documents; no overt act or negligence was established by the committee in its findings against the fourth respondent; and many a time, he had issued oral and general instructions to all Station House Officers/Assistant Commissioners of Police in Hyderabad City not to interfere in civil disputes and, if any deviation was noticed, disciplinary action would be taken against the concerned individuals.

10. Elaborate submissions were made by Sri. Mohd. Shafiuddin, Learned Counsel for the petitioner; the Learned Government Pleader for Home appearing on behalf of respondents 1 and 2, Sri. R. Raghunandan, Learned Senior Counsel appearing on behalf of the 3rd respondent, Sri. Damalapati Srinivas, Learned Counsel for the 4th respondent and Sri. M. Karunasagar, Learned Counsel for the 5th respondent. It is convenient to examine the contentions, put forth by Counsel on either side, under different heads.

I. Role Of Respondents 3 And 4 In Calling The Petitioner To The S.R. Nagar Police Station, And The Office Of The Dcp, West Zone, Without Even Registering The Complaint, Of The Fifth Respondent, u/s 154 CrPC:

11. Sri. R. Raghunandan, Learned Senior Counsel appearing on behalf of respondent No. 3, would fairly state that respondent No. 5 had met the 3rd respondent at his office on 13th November, 2013; the endorsement made on her complaint, to the Circle Inspector of Police S.R. Nagar police station on 13.11.2013, was by the 3rd respondent; the Sub-Inspector of Police, S.R. Nagar police station was instructed by the 3rd respondent to bring the petitioner to his office on 14th November; and the petitioner was asked to be present in the office of the 3rd respondent both on 14th and 19th November, 2013. Learned Senior Counsel would, however, contend that the 3rd respondent did not force the petitioner to settle the matter with the fifth respondent, or sign any papers; he had only sought to resolve "family disputes", which is permissible in terms of para 120.6 of the judgment of the Supreme Court in Lalita Kumari Vs. Govt. of U.P. and Others, ; the memo issued by the Director General of Police on 25.11.2013 shows that the 3rd respondent was required to undertake "family counseling"; and the petitioner has filed the present Writ Petition only to stall

further proceedings against him.

12. Sri. M. Karunasagar, Learned Counsel for the fifth respondent, would paint the petitioner in poor light. He submits that the petitioner was exploiting his widowed sister and had tried every trick in the book to deprive her of her rightful share of her property; not only did he threaten to kill her if she did not yield to his illegal demands, but he had also assaulted her physically on 10th November, 2013; despite the shabby treatment meted out to her by her brother (the petitioner), the fifth respondent wanted an amicable solution to their inter-se property disputes; and she did not initially wish to lodge a criminal complaint against him as that would tarnish their family reputation.

13. In his counter-affidavit the 3rd respondent submits that the 5th respondent met him at his office on 13.11.2013, and complained that her brother (the writ petitioner) along with his brother-in-law had assaulted her on 10.11.2013 in S.R. Nagar area, when she was coming back from the house of her relatives in the company of her cousin; she had also stated that this assault was a part of the ongoing fight over her father's property in which she had a rightful share; she was highly agitated and feared for her physical safety; despite the petitioner's behaviour towards her, she was not interested in lodging a formal criminal complaint, as the accused was her brother; he had informed her that the proper course would be to approach the concerned SHO i.e., SHO, Sanjeevaedynagar police station, and had endorsed the same on the written representation given by her to him; he had also informed the 4th respondent, and had asked him to look into the matter; the 5th respondent again came to his office on 14.11.2013 and complained that the 4th respondent was not taking any interest in her case, and had insisted that he should look into the matter, failing which she apprehended further physical assault; as the 5th respondent feared for her safety on the one hand, and was not willing to move forward and invoke the criminal law process on the other, he had directed the 4th respondent to locate the petitioner and inform him that he would like to meet him to verify facts before any further process was initiated; thereafter at his office on the same day, when the 5th respondent was also present, he had enquired about the matter with the petitioner who requested for time to set out his side of the case; the petitioner had insisted that he had not assaulted his sister, and had not deprived her of any part of the property; he stated that he would come back on 19.11.2013 with his relatives who would be able to attest to these facts; the 5th respondent informed that she would also be present on 19.11.2013; the petitioner and the 5th respondent came to his office on 19.11.2013; their maternal uncle also accompanied the 5th respondent; the petitioner also brought one of his friends; in the meeting, the petitioner's uncle tried to counsel the petitioner and had asked him to amicably resolve issues; as these issues were getting more complicated, he had requested all the parties to leave his room as other visitors were waiting to meet him; the petitioner left his office premises thereafter, and the matter ended there; the 5th respondent continued to meet him, and had asked him to intervene in the matter, as she apprehended further trouble and

physical danger both to her and her minor daughter; when the 5th respondent met him at his office on 27.11.2013, he instructed the 4th respondent to register a formal complaint, and investigate further into the matter; the 5th respondent had, thereafter, approached the 4th respondent on 27.11.2013 at 8.00 PM; he had not instructed any subordinate officer, including the 4th respondent, to take forcible action or to forcibly bring the petitioner to his office; he had sought to verify facts before commencing the procedure prescribed under the Cr. P.C.; he neither directed the petitioner to settle his property disputes nor did he pressurize him to sign documents or transfer his rights in his father's property in favour of the 5th respondent; his only concern was the physical safety of the 5th respondent; he never called the petitioner to his office after 19.11.2013; the 5th respondent kept coming to his office seeking protection as she felt that she was still under physical threat; he had again instructed the 4th respondent to formally register the complaint, and take up investigation; and the petitioner had filed the Writ Petition only to ensure that his earlier actions, including the assault on his sister, does not result in criminal investigation.

14. In his additional counter-affidavit filed before this Court the 3rd respondent submits that he had interacted with the petitioner and the 5th respondent only to ascertain facts, and give a quietus to the issue arising out of the conduct of the petitioner with the 5th respondent; he had neither pressurized the petitioner to sign on any prepared documents nor had he threatened to involve him in criminal cases, if he failed to do so; he did not instruct the SR Nagar Police Station, or the Sub-Inspector of Police, to bring the petitioner and his sister in a police jeep by force; what he had instructed was to send them to his office; even as per the statement of the petitioner, before the Joint Commissioner on 01.12.2013, the Inspector had asked him to accompany SI Ajay Kumar in the police jeep to his office; he had called the petitioner and the 5th respondent in good faith, and with the bonafide intention of preventing any untoward incident; and he had treated it as a "family dispute", and not a "civil dispute".

15. In his counter-affidavit the fourth respondent states that the 3rd respondent had called him over phone and had informed him that he was sending the 5th respondent along with an endorsed complaint against her brother; the 3rd respondent, while directing him not to register the complaint since it related to a dispute between a brother and sister, had instructed him to produce both parties before him at his office; the 5th respondent was sent to SR Nagar police station, by the 3rd respondent on 13.11.2013, with his endorsement on her telugu complaint as "CI SR Nagar please call both parties and do the justice deserved"; the complaint showed that there was a property dispute between the 5th respondent and the petitioner; the complainant alleged that she had been threatened by her brother, and his brother-in-law; she had requested him to take action against them; after going through the contents of the complaint, he had advised the 5th respondent to approach the competent Civil Court as the allegations in the complaint were civil in nature; in the morning hours of 14.11.2013, he received a phone call from the 3rd respondent instructing him to

call and produce the petitioner before him, as he wanted to counsel both of them in his office; he informed the 3rd respondent that there was no such locality called Jayanagar in the limits of S.R. Nagar police station, at which the alleged incident is said to have taken place; even then the 3rd respondent had asked him to summon and produce the petitioner before him for counseling; in obedience to the directions of the 3rd respondent he had entrusted the task of contacting the petitioner to Sri. D. Ajay Kumar, S.I. of police, and had asked him to produce both the parties before the 3rd respondent; he had simply obeyed the instructions of his superior officer in the fear of facing his wrath; the S.I. of Police had contacted the petitioner over his mobile on 14.11.2013 at 1.00 p.m.; he had asked the petitioner to come to the police station as he was summoned by the 3rd respondent to be present before him, as his sister had given a complaint making allegations against him; at 5.00 p.m. the petitioner and his brother-in-law came to the police station; in accordance with the instructions of the 3rd respondent, the petitioner was taken to the office of the DCP, West Zone by the Sub-Inspector of Police Sri. D. Ajay kumar; he has no knowledge of what transpired thereafter in the office of the 3rd respondent; again on 27.11.2013 the 3rd respondent instructed him over phone to register a case on the complaint of the 5th respondent; he was not present in the police station when the 5th respondent approached at 8.00 p.m.; and Sri. M. Seetaramulu, S.I. of Police, had registered Crime No. 936 of 2013 under Sections 323, 506 and 509 IPC.

16. In her counter-affidavit the fifth respondent submits that on 10.11.2013 at about 10.00 PM, when she was returning from Kukatpally after crossing SR Nagar traffic signals, the petitioner and his brother-in-law had stopped their vehicle; the petitioner's brother-in-law slapped her, and her brother beat her black and blue; when she cried, they left the scene of the offence quickly; they also demanded that she sign on documents relinquishing her share of the property; on 13.11.2013 morning, she and Sri. Ramanjaneyulu went to the 3rd respondent; she submitted a petition regarding the attack on her and the threat to her life from the petitioner and his brother-in-law over property disputes; she had requested the 3rd respondent to elicit the nature of the offence, instead of registering the complaint against his brother; as the disputes related to properties, and to ensure that the police did not interfere in civil disputes, she had requested that the petitioner be called, counselled and restrained from threatening her regarding the property; the 3rd respondent had endorsed the complaint to the 4th respondent; on 14.11.2013, the 4th respondent had sent both of them to the 3rd respondent where they were counselled by the 3rd respondent; the 3rd respondent had only advised both of them to settle their family disputes; there was no threat or coercion by the 3rd respondent; though he was busy in attending to people visiting his office, the meeting was held in his office room; since the dispute was not resolved, they had both requested the 3rd respondent to give them time upto 19.11.2013, and had promised to visit his office again; her maternal uncle had come to Hyderabad at her request, and had visited the office of the 3rd respondent along with her and Sri. Ramanjaneyulu

on 19.11.2013; the petitioner was also present in the office of the 3rd respondent along with Sri. Venkat Reddy; as the 3rd respondent was busy with official work, he did not devote much time; he only asked the petitioner not to threaten her; the 3rd respondent had asked all of them to leave his chambers as he had to attend to some more complainants waiting outside; after coming out of the chambers of the 3rd respondent, the petitioner had again threatened her with dire consequences, and had stated that he would file cases against the police officers who were supporting her; the petitioner's intention in filing the Writ Petition is only to ensure that no police officer helped her against his criminal acts; she and her minor daughter have a threat to their lives at the hands of the petitioner; the petitioner has the active support of a sitting MLA; though she had approached the MLA, and had narrated the injustice done to her, nothing had happened; and this itself showed that the petitioner, by hook or crook, was seeking to deprive her of her valuable and legal property rights.

17. From the counter-affidavit of the 4th respondent it is evident that the 3rd respondent had asked him not to register the complaint of the 5th respondent which he had endorsed on 13.11.2013, and to produce both the petitioner and the 5th respondent before him; in the morning of 14th November, 2013 he received a phone call from the 3rd respondent instructing him to produce the petitioner before him for counseling; he had asked the Sub-Inspector Sri. D. Ajay Kumar to produce both parties before the 3rd respondent; the Sub-Inspector had called the petitioner over mobile and asked him to come to the police station; when the petitioner and his brother-in-law came to the police station at 5.00 P.M. on 14.11.2013 in his car, he was taken by the Sub-Inspector, to the office of the 3rd respondent, in a police jeep. In his statement, before the Joint Commissioner of Police on 01.12.2013 at 03.30 P.M., the petitioner stated that on 19.11.2013 he received a call on his phone number 8096102190 from the office of the D.C.P., West Zone and, in response thereto, he had gone over to the office of the 3rd respondent at 2.45 P.M. where he was detained till 9.30 P.M. The counter-affidavit of the 2nd respondent, and the enquiry report of the Joint Commissioner, show that the petitioner was counselled, in the office of the D.C.P., West Zone, by the 3rd respondent both on 14th and 19th November, 2013 without even registering the complaint of the 5th respondent containing the endorsement of the 3rd respondent dated 13.11.2013.

18. The question which necessitates examination is whether the petitioner could have been, orally and forcibly, summoned to his office by the 3rd respondent even before registration of the complaint u/s 154 CrPC. The first information report is either given in writing or is reduced to writing. The Code contemplates two kinds of FIRs: the duly signed FIR u/s 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR is one which is registered by the police officer himself on the basis of information received, or other than by way of an informant [Section 157(1)]. This information must also be duly recorded, and a copy should be sent to the Magistrate forthwith. (Lalita Kumari Vs. Govt. of U.P. and Others,). The sine qua non for recording an FIR is

that there must be an information, and that information must disclose a cognizable offence. If information disclosing a cognizable offence, satisfying the requirements of Section 154(1) Cr. P.C., is laid before him, the police officer has no option but to enter the substance thereof in the prescribed form i.e., to register a case on the basis of such information. (State of Haryana and others Vs. Ch. Bhajan Lal and others,). In registering an FIR the consent, or otherwise, of the complainant is irrelevant. For "cognizable offences" a duty is cast upon the police to register an FIR, and conduct investigation. The legislative intent of Section 154(1) CrPC is to ensure that the information, relating to the commission of a cognizable offence, is promptly registered and investigated in accordance with law. (Lalita Kumari Vs. Govt. of U.P. and Others,). The context in which the word "shall" appears in Section 154(1) CrPC, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, show that the word "shall", used in Section 154(1), is "mandatory" in character. Section 154(1) of the Code places an unequivocal duty upon the police officer, in charge of a police station, to register an FIR on receipt of information that a cognizable offence has been committed, and does not confer any discretion on him to embark upon a preliminary inquiry prior to the registration of the FIR. (Lalita Kumari Vs. Govt. of U.P. and Others,); Anju Chaudhary Vs. State of U.P. and Another, ; The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, .

19. The requirement of Section 154 Cr. P.C. is only that the report must disclose the commission of a cognizable offence, and that is sufficient to set the investigating machinery in motion. The intention of the legislature, by the insertion of sub-section (3) of Section 154, is to ensure that no information of the commission of a cognizable offence is ignored or is not acted upon. The obligation to register an FIR has inherent advantages. (a) It is the first step to "access to justice" for a victim; (b) It upholds the "rule of law" in as much as the ordinary person brings forth the commission of a cognizable crime to the knowledge of the State; (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law; and (d) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR. The object sought to be achieved by registering the earliest information as an FIR is, inter alia, two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information, received in relation to the commission of a cognizable offence, is recorded so that there cannot be any embellishment, etc. later. The FIR is registered in a book called the FIR book or the FIR register. A copy of each FIR is sent to the superior officers and to the concerned Judicial Magistrate. The signature of the complainant is obtained in the FIR book as and when a complaint is given at the police station. As each FIR has a unique annual number, it is possible for supervisory police officers and the courts, wherever necessary, to exercise strict control and keep track of registration of FIRs. The underpinnings of compulsory registration of the FIR is

not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Any information received u/s 154(1), or otherwise, has to be promptly informed, in the form of a report, to the Magistrate. The commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary. (Lalita Kumari Vs. Govt. of U.P. and Others,).

20. The 3rd respondent has acted amiss in directing the 4th respondent not to register an FIR, on the information furnished in the representation submitted by the 5th respondent on 13.11.2013, on the specious plea that she had requested that the complaint not be registered but the petitioner be "counselled", instead, at the S.R. Nagar police station or the office of the 3rd respondent. Registration of an FIR u/s 154(1) Cr. P.C. is not at the choice of the complainant. Once information, either oral or written, regarding commission of a cognizable offence is brought to the notice of the police officer, he has no option but to register the FIR forthwith. The police officer cannot avoid his duty of registering the offence if a cognizable offence is disclosed. Action must be taken against the erring officer who does not register the FIR if information received by him discloses the commission of a cognizable offence. (Lalita Kumari Vs. Govt. of U.P. and Others,).

II. Investigation of A Cognizable Offence Can Be Undertaken Only After The Complaint Is Registered u/s 154(1) CrPC:

21. Is the exercise of power by the 3rd respondent, in forcing the petitioner to appear before him at his office on 14th and 19th November, 2013, referable to his powers of "investigation" under Sections 156 and 157 Cr. P.C.? Commencement of investigation by a police officer is subject to two conditions, firstly the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1), and secondly the police officer should subjectively satisfy himself that there is sufficient ground for entering on an investigation even before he starts the investigation. Clause (b) of the proviso to Section 157(1) Cr. P.C. postulates that the police officer shall draw his satisfaction only on the material placed before him at that stage, namely, the FIR together with the documents, if any, enclosed therewith, before he enters on an investigation. (State of Haryana and others Vs. Ch. Bhajan Lal and others, . Under Chapter XII of the CrPC, investigation consists generally of the following steps: (1) proceeding to the spot, (2) ascertainment of the facts and circumstances of the case, (3) discovery and arrest of the suspected offender, (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether, on the material collected, there is a case to place the accused before a Magistrate for trial. (H.N. Rishbud and Inder Singh Vs. The State of Delhi, ; The State of

Madhya Pradesh Vs. Mubarak Ali, ; Bhagwant Kishore Joshi 4; Augustine and Others Vs. The State, ; Krishna Lal Gulati Vs. The State,).

22. As the main object of investigation is to bring home the offence to the offender, the essential duties of an Investigating Officer, apart from arresting the offender, is to collect all material necessary for establishing the accusation against the offender. (The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi,). Conducting an investigation into an offence, after registration of the FIR u/s 154 CrPC, is the "procedure established by law". The right of the accused, under Article 21 of the Constitution, is protected if the FIR is registered first, and the investigation is then conducted in accordance with law. (Lalita Kumari Vs. Govt. of U.P. and Others,).

23. A "police station" is defined, u/s 2(s) CrPC, to mean any post or place declared, generally or specially by the State Government, to be a police station, and includes any "local area" specified by the State Government in this behalf. Section 36 Cr. P.C. enables Police officers, superior in rank to an officer in charge of a police station, to exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his Station. Section 154(3) enables a person aggrieved, by a refusal on the part of an officer in-charge of the police station to record the information u/s 154(1), to send the substance of such information to the Superintendent of Police who is empowered either to investigate himself, or direct an investigation to be made by any police officer subordinate to him, if the complaint discloses the commission of a cognizable offence. Even in cases where a cognizable offence has been committed, an investigation can be caused only after the complaint is registered u/s 154(1) Cr. P.C. After registration of the complaint u/s 154(1) CrPC, and during the course of investigation u/s 156 CrPC, a police officer is empowered u/s 41A CrPC to ask the accused to appear before him by way of a notice/order in writing. In the case on hand the complaint of the 5th respondent dated 13.11.2014 was not even registered despite which the 3rd respondent directed the 4th respondent over telephone on 14.11.2013 to send the petitioner to his office, which directions the 4th respondent promptly complied by sending the petitioner, along with the Sub-Inspector of Police Sri. Ajay Kumar, in a police jeep to the office of the 3rd respondent.

24. Without the complaint, given by the 5th respondent on 13.11.2014, being registered u/s 154(1) Cr. P.C. the 3rd respondent could not have investigated, or to have caused an investigation, regarding the commission of cognizable offences. Even if he was satisfied that the complaint given by the 5th respondent on 13.11.2013 disclosed the commission of a cognizable offence, the 3rd respondent was statutorily obligated to have first directed that the complaint be registered u/s 154(1) Cr. P.C. and only then to have caused investigation during the course of which, if need be, he could have issue a written notice to the petitioner, u/s 41A Cr. P.C., to appear before him. An oral direction by a police officer, to the accused or a witness, to appear before him does not have statutory

sanction either u/s 41A or Section 160 CrPC. As registration of an FIR u/s 154(1) Cr. P.C. precedes "investigation" under Sections 156 and 157 Cr. P.C., the 3rd respondent cannot fall back on the powers of "investigation", conferred on a police officer under the Code, to justify his illegal act of calling the petitioner to his office on 14th and 19th November, 2013 as the FIR was registered more than a week thereafter on 27.11.2013.

III. Preliminary Enquiry Before Registration Of The Fir:

25. Sri. R. Raghunandan, Learned Senior Counsel appearing on behalf of the 3rd respondent, would submit that it is only after the judgment of the Supreme Court, in *Lalita Kumari Vs. Govt. of U.P. and Others*, , has the law, regarding registration of complaints for cognizable offences, become clear; prior thereto, it was in doubt whether or not such a complaint could be registered without a preliminary enquiry; and even in the judgment of the Supreme Court, in *Lalita Kumari Vs. Govt. of U.P. and Others*, , a preliminary enquiry is permissible in "family disputes".

26. It is necessary, therefore, to examine whether a "preliminary enquiry" can be conducted before registration of the FIR, and whether the "counseling" exercise undertaken by the 3rd respondent on 14th and 19th November, 2013 partakes the character of a "preliminary enquiry". In *Lalita Kumari Vs. Govt. of U.P. and Others*, , the learned Additional Solicitor General Mr. Sidharth Luthra pointed out to the Supreme Court that throughout the country, in matrimonial, commercial, medical negligence and corruption related offences, there exist provisions for conducting an "inquiry" or a "preliminary inquiry" by the police, without/before registering an FIR u/s 154 CrPC. He relied on various police rules, prevailing in the States of Punjab, Rajasthan, U.P., Madhya Pradesh, Kolkata, Bombay, etc., for conducting an inquiry before registering an FIR, to contend that a preliminary inquiry, before registration of an FIR, should be held permissible; the power to carry out an inquiry or a preliminary inquiry by the police, which precedes registration of an FIR, will eliminate misuse of the process, as registration of FIR serves as an impediment against a person for various important activities like applying for a job or a passport, etc. (para 20 of SCC).

27. It is in this context that the Supreme Court, in *Lalita Kumari Vs. Govt. of U.P. and Others*, , observed that there were instances where the power of the police to register an FIR, and initiate an investigation there into, were misused where a cognizable offence was not made out from the contents of the complaint; Section 498A of the Penal Code, 1860 (in short "IPC") was being misused, and a large number of frivolous reports were being lodged; the anguish expressed by the Supreme Court, in *Preeti Gupta and Another Vs. State of Jharkhand and Another*, , had resulted in the 243rd Report of the Law Commission of India which was submitted on 30.08.2012; the Law Commission, in its report, concluded that, though the offence u/s 498A could be made compoundable, the extent of misuse was not established by empirical data and, thus, could not be a ground to denude the provision of its efficacy (para 35 and 36 of SCC); although

Section 154 CrPC postulated mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where a preliminary inquiry may be required owing to a change in the genesis and novelty of crimes with the passage of time, one such instance was of allegations regarding medical negligence of doctors; it would be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint (para 115 of SCC); while ensuring and protecting the rights of the accused and the complainant, the preliminary inquiry should be time-bound and, in any case, should not exceed 7 days; and the fact of such delay, and the causes of it, must be reflected in the General Diary entry (para 120.7 of SCC). (Lalita Kumari Vs. Govt. of U.P. and Others,).

28. Reference to the terms "preliminary inquiry" and "inquiry" under Sections 159, 202 and 340 of the Code, is to a judicial exercise by the Court, and not by the police. The term "inquiry", u/s 2(g) of the Code, is relatable to a judicial act and not to the steps taken by the police which are either "investigation" after the stage of Section 154 CrPC or a "preliminary inquiry" prior to the registration of an FIR. Other considerations are not relevant at the stage of registration of the FIR such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are issues that have to be verified during investigation of the FIR. At the stage of registration of the FIR, all that is required to be considered is whether the information given, ex facie, discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR. (Lalita Kumari Vs. Govt. of U.P. and Others,).

29. Reliance placed by Sri. R. Raghunandan, Learned Senior Counsel on Para 120.6 of the judgment of the Supreme Court, in Lalita Kumari Vs. Govt. of U.P. and Others, , to contend that the 3rd respondent had the power to cause a preliminary enquiry regarding the "family disputes" between the petitioner and his sister-the fifth respondent, and call the petitioner to the police station in the course of such preliminary enquiry, is misplaced. In Para 120.6 of the judgment, in Lalita Kumari Vs. Govt. of U.P. and Others, , the Supreme Court observed:

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.

30. Reference to "matrimonial disputes/family disputes", in Para 120.6 of the judgment of the Supreme Court in *Lalita Kumari Vs. Govt. of U.P. and Others*, is only that a preliminary enquiry may be made thereinto, and not that a police officer can resort to "counseling" and "settlement" of civil or property disputes, that too in a police station, forcing one or both the parties to appear before him thereat. The observations of the Supreme Court, in *Lalita Kumari Vs. Govt. of U.P. and Others*, that a preliminary enquiry could be conducted in "matrimonial disputes/family disputes", were in the context of false and frivolous complaints being made under Sections 498 and 498A IPC, the Dowry Prohibition Act and in the light of the judgment of the Supreme Court in *Preeti Gupta and Another Vs. State of Jharkhand and Another*. Even in such cases a preliminary enquiry can be caused only to ascertain whether or not the complaint discloses the commission of a cognizable offence; and not to verify the veracity or otherwise of the information received. (*Lalita Kumari Vs. Govt. of U.P. and Others*,). In any event the premises/precincts of a "police station" cannot be converted into a "counseling centre" for resolution of such disputes.

31. The preliminary enquiry which can be made, in relation to "matrimonial disputes/family disputes", is not to verify the veracity or otherwise of the information received, but only to ascertain whether the information reveals any cognizable offence (Para 120.5 of SCC). While information, which discloses the commission of a cognizable offence, is required to be mandatorily registered as an FIR u/s 154 CrPC, and no preliminary enquiry is permissible in such a situation (Para 120.1 of SCC), if the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. (120.2 of SCC).

32. Unlike an "investigation", into the commission of a cognizable offence, which can only be initiated after the complaint is registered u/s 154(1) CrPC, a "preliminary enquiry" is to be caused prior to the registration of the FIR. If the accused, in the complaint registered as an FIR, can be summoned by the investigating officer, during the course of investigation, only by way of a written notice u/s 41A Cr. P.C., it does not stand to reason that a person, against whom an FIR has not even been registered, can be orally and forcibly summoned to the Police Station or to the office of a Senior police officer. Under the guise of a preliminary enquiry, no person can be deprived of his liberty, and compelled to appear at a police station on the oral directions of a police officer without even the complaint being registered, and an investigation commenced, in accordance with the provisions of the CrPC.

IV. Do The A.P. Police Manual And The Circular Memos Issued By His Superiors Empower The Third Respondent To Conduct "counseling Sessions" In His Office?

33. In his counter-affidavit, the 3rd respondent submits that the role of police officers in civil disputes, involving some amount of criminality, has been considered by the office of the Director General of Police; circulars and memorandums have been issued, in relation to these issues, from time to time; the A.P. Police Manual also prescribes guidelines relating to the exercise of power vested in police officials in the discharge of their duties; Sections 36 and 149 Cr. P.C. prescribe certain duties, and functional roles on police officers; in all the stated circulars and memos, as well as the police manual, instructions have been given to police officials not to shy away from acting on these issues when criminality is also involved; Order 322-1 specifically instructs police officials not to shirk their responsibility of protecting persons against injury or trespass, particularly when people complain of threats to their physical safety; the Circular issued by the Director General of Police dated 04.08.2012 also instructs police officials to take preventive action as stipulated under Order 322-1 of the A.P. Police Manual; his endeavour was only to ascertain the true and correct facts, in what appeared to be a family dispute, before any criminal investigation was initiated; and he had only conducted himself in accordance with the A.P. Police Manual, and the instructions issued by the higher authorities from time to time. Reliance is placed by the 3rd respondent on Standing Order No. 322-I of Vol. I of the A.P. Police Manual; the circular memos of the Director General of Police dated 04.08.2012, 17.08.2012, 19.09.2012, 28.12.2012 and 31.12.2012; the memo issued to his office by the Director General of Police dated 25.11.2013 informing him of the poor performance in "family counseling centres" in June, 2013; the memo of the Additional Director General of Police dated 02.02.2013; the minutes of the review meeting held by the Additional Director General of Police (Co-ordination) on 23.05.2013; the memo dated 06.04.2002 issued by the Commissioner of Police regarding registration of cases under Sections 498, 498A and the Dowry Prohibition Act; and the other memos of the Commissioner of Police dated 28.11.2011, 05.02.2013 and 09.01.2014.

34. It is necessary, therefore, to refer to the aforesaid memos and Police Standing Orders, albeit in brief. By the circular memo dated 04.08.2012, the Director General of Police informed the Superintendents of Police that police officers had abdicated their responsibility in all civil disputes, even with ingredients of criminality, on the pretext of instructions from the Chief Office, Hyderabad, and the directions of the High Court of A.P. restricting police from interference with civil disputes; police officers had wrongly interpreted the directions of the High Court, and the instructions of the Chief Office; they had left such issues to be dealt with by musclemen and anti-social elements; Section 149 Cr. P.C. enjoined upon the Police to intervene in all matters where there was apprehension of the commission of a cognisable offence; Standing Order 322(1) made it abundantly clear that Police Officers could not shirk their responsibility of protecting persons against injury or trespass; Standing Order 322(1) sub-clauses A, B, C and D laid down modalities for police action in all civil disputes; the Chief Office had merely directed unscrupulous police officers to refrain from

adjudicating upon the determination of property rights for pecuniary gains; and this was also true of criminal offences, besides civil disputes. All the Superintendents and Commissioners of Police were directed to instruct all police officers, subordinate to them, to take legal action by registering cases; and take preventive action etc., as stipulated under Standing Order No. 322(1) of Vol. 1 of the A.P. Police Manual, in all civil disputes with an element of criminality, warranting police intervention. The Regional Inspector Generals of Police and the Range DIGs were directed to ensure compliance of these instructions to prevent inaction, on the part of the police, being taken undue advantage of by the land mafia, goondas and hired criminals; ensure that no complaints, of police omission and inaction, are reported where action as per law is required; and all police officers should be disabused of the notion that "civil disputes" were outside their purview, and they were not entitled to take action.

35. In his circular memo dated 17.08.2012, the Director General of Police called upon the Superintendents of Police/Commissioners of Police to focus on certain issues for better delivery of services to the people, and to further improve their image. Among the issues, on which focus was required to be placed, included all civil disputes having an element of criminality which were required to be dealt with as per Standing Order No. 322(1) of Volume I-Part I of the A.P. Police Manual. In his circular memo dated 19.12.2012, the Director General of Police referred to the problems, regarding access to police, being a recurring complaint. The Superintendents/Commissioners of Police were informed that a "common grievances day" should be observed on Monday in all districts; they must stay at headquarters/police stations on "Monday", except in an emergency that too with the permission of the immediate senior officers; they should make entries of all such complaints in the complaint register, and take necessary action; and send a consolidated report, every month, in the proforma enclosed. By his memo dated 28.12.2012, the Director General of Police directed the Commissioners/Superintendents of Police to implement certain "people friendly" measures such as free registration of cases, holding a "common grievances day" each Monday, action in civil disputes etc. By his circular memo dated 31.12.2012, the Director General of Police issued instructions regarding the "people friendly" measures taken by police headquarters. All Superintendents of Police/Commissioners of Police were required to conduct a review and, among the measures they were directed to take, included "grievance redressal" within a specified time frame. All Senior Superintendents and Commissioners of Police were requested to effectively implement these measures to make the police a "people friendly organisation".

36. By his Memo dated 02.02.2013, the Additional Director General of Police (Coordination) requested all Commissioners of Police to nominate their representatives for the meeting to be held on 12.02.2013 in his chambers to review the status of implementation of the instructions issued, through various circulars, by the DGP. All officers were directed to come prepared on several issues including the functioning of "family counseling centres". On the issue of

"grievance redressal", the Additional Director General of Police (Co-ordination), in the review meeting held on 23.05.2013, observed that receipt of grievance petitions in Hyderabad City was poor; pendency of petitions in South Zone of Hyderabad City was high, and the Central Zone was low; all officers should improve receipt of petitions from people, dispose them of within fifteen days and, in exceptional cases, within two months; Hyderabad city had done badly in this item of work (i.e., grievance redressal) as compared to other Commissionerates in the State; the Commissioners of Police at Vijayawada and Visakhapatnam should establish "family counseling centres" immediately; and these Centres should be run with eight highly qualified persons such as doctors, psychologists, retired Judges, retired Police Officers, academicians, NGOs etc., including Women Social Workers; functioning of "family counseling centres" should be regularly monitored by the Deputy Commissioners of Police; they should maintain a register with particulars of how many cases were received, how many were disposed of, and how many are pending, with reasons; if need be legal action should be initiated; issues, which were not sorted out, must be sent back to the Police Stations for registration of cases; and there was no need for serving Police Officers/men to involve themselves in the counseling session. All Commissioners of Police were advised to submit a list of members, in the Centres, in the next review meeting; maintain records of "family counseling centres" properly; and to contact the district authorities, dealing with the "mission for elimination of urban poverty", for funds to run these "family counseling centres".

37. In his memo dated 06.04.2002 the Commissioner of Police, after referring to the judgment of the Supreme Court of India in Joginder Kumar Vs. State of U.P. and others, , informed all SHOs, Divisional ACPs, Additional, Joint and Deputy Commissioners of Police that, with a view to avoid adverse criticism, miscarriage of justice and arbitrary deprivation of liberty of an individual, no person (either woman, man or child), should henceforth be arrested in any case registered under Sections 498 or 498A IPC or the Dowry Prohibition Act without obtaining prior written permission from the concerned Deputy Commissioners of Police supervising investigation of the case; the concerned Inspector of Police should send a detailed report for this purpose, duly enclosing the CD file and all relevant documents, clearly placing on record the evidence available against each accused, to the concerned Deputy Commissioners of Police who should properly examine the complicity of each accused, and accord written permission to effect his/her arrest; and these instructions should be scrupulously followed. By his memo dated 28.11.2011, the Commissioner of Police, Hyderabad instructed Station House Officers to take cognizance of each complaint; they could transfer cases, to the concerned police station, if it did not pertain to their jurisdiction; nobody could drive away a complainant on the point of jurisdiction; the petitioners should not be harassed under any circumstances; and, if any such incident came to their notice, disciplinary action should be initiated against the concerned Station House Officers. By his memo dated 05.02.2013, the Commissioner of Police informed all Deputy Commissioners, Joint Commissioners

and Additional Commissioners of the need to go through circulars personally, and ensure strict implementation of all the guidelines by their subordinate officers. By his memo dated 09.01.2014, the Commissioner of Police clarified that when petitioners approach superior officers to explain their grievance, and the facts of the whole story of the petition are not known to the superior officers and endorsements are made for necessary action, the entire facts and circumstances of the case should be examined and action taken only as per the facts and law; if required a report should be sent, regarding the facts, to the superior officer concerned who made the endorsement; action should not be taken which is arbitrary, one sided, or not as per law; any contravention of these instructions would be viewed seriously; and disciplinary action would be taken against the concerned.

38. The circular memos of the Director General of Police dated 04.08.2012 and 17.08.2012, asking police officers not to shirk their responsibilities in civil disputes with an element of criminality, must be read in the light of Standing Order 322-1 of the A.P. Police Manual. Standing Order No. 322-1, which deals with problems arising out of Civil Disputes - Duties of Police, reads as under:

Many persons approach the police for protection on account of threats to their safety due to disputes relating to property. Several complaints are also presented in writing. A good number of complaints pertain to forcible dispossession or possession of properties by use of violence or by hired goondas, or relate to matters providing religious ramifications leading to communal disturbances or where habitual land grabbers or criminal syndicates are involved etc. There are also cases wherein a group of people, when they face an immediate threat, approach the police for relief. While the police should not interfere into the disputes, which are purely of civil nature, they cannot shirk their responsibility of protecting persons against injury or trespass particularly when the people complained against are powerful or hired goondas. The following instructions are, therefore, issued for the guidance of the police officers.

A. Orders of the civil court should be implemented and all assistance should be provided to the Civil Court officials as mentioned in order 321.

B. If any civil dispute is likely to give rise to an imminent breach of peace or disturbance of public order, the police officer shall take recourse to Sections 144 to 148 Cr. P.C. as the case may be (Chapter 38, Volume - II).

C. As per Section 149 CrPC every Police Officer may interpose for the purpose of preventing and shall, to the best of his ability, prevent the commission of any cognizable offence. In application of this provision, police officers shall be guided by instructions given by superior officer of the rank of SP/DCP/CP/DGP.

D. In dealing with these cases the SHO should make a contemporaneous record of every action that he takes in the general diary and in the connected file.

(emphasis supplied)

39. Sections 144 to 148 CrPC, as referred to in Part B of Standing Order 322-I, relate to the powers of a Magistrate to issue orders in urgent cases of nuisance or apprehended danger (Section 144); powers of a District Magistrate to prohibit carrying arms in a procession or a mass drill or a mass training with arms (Section 144A); powers of an Executive Magistrate where disputes concerning land or water is likely to cause breach of peace (Section 145); powers of a Magistrate to attach the subject of dispute and to appoint a receiver (Section 146); powers of an Executive Magistrate in a dispute concerning right of use of land or water (Section 147); and the powers of a District Magistrate to conduct a local enquiry (Section 148).

40. Chapter XI Cr. P.C. contains provisions dealing with preventive action by the police. Section 149 enables every police officer to interpose for the purpose of preventing, and to prevent, the commission of any cognizable offence. Section 151 CrPC allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests are valid for 24 hours. (*Lalita Kumari Vs. Govt. of U.P. and Others*, *S. Masthan Saheb and Another Vs. P.S.R. Anjaneyulu and Others*,). The conditions under which a police officer may arrest a person, without an order from a Magistrate and without a warrant, have been laid down in Section 151 CrPC. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The section, therefore, expressly lays down the requirements for the exercise of the power to arrest without an order from a Magistrate and without a warrant. If these conditions are not fulfilled and a person is arrested u/s 151 CrPC, the arresting authority may be exposed to proceedings under the law. Sub-section (2) lays down the rule that normally a person so arrested shall be detained in custody not for a period exceeding 24 hours. It, therefore, follows that in the absence of anything else, on expiry of 24 hours, he must be released. Section 151 CrPC itself makes provision for the circumstances in which an arrest can be made under that Section and also places a limitation on the period for which a person so arrested may be detained. The guidelines are inbuilt in the provision itself. These statutory guidelines read with the requirements laid down by this Court in *Joginder Kumar Vs. State of U.P. and others*, and *D.K. Basu Vs. State of West Bengal*, provide an assurance that the power shall not be abused and, in case of abuse, the authority concerned shall be adequately punished. (*Ahmed Noormohmed Bhatti Vs. State of Gujarat and Others*,). It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and, perhaps in his own interest, that no arrest is made without arriving at a reasonable satisfaction, after some investigation, regarding the genuineness and the bonafides of a complaint, a reasonable belief both as to the person's complicity and of the need to effect arrest. Denying a person his liberty is a

serious matter. Except in heinous offences, an arrest must be avoided. It would do if a police officer issues notice to the person to attend the Police Station, and not leave the Station without permission. (Joginder Kumar Vs. State of U.P. and others,). The Police Officer, carrying out the arrest of the arrestee, should prepare a memo of arrest at the time of arrest. Such a memo should be attested by atleast one witness, counter-signed by the arrestee and should contain the time and date of the arrest. An entry must be made in the diary, at the place of detention, regarding the arrest of the person which should also disclose the name of the person who has been informed of the arrest and copies of all documents, including the memo of arrest, should be sent to the Magistrate for his record. (D.K. Basu Vs. State of West Bengal,). If a police officer misuses his power of arrest, he can be tried and punished u/s 166 IPC. (Lalita Kumari Vs. Govt. of U.P. and Others,).

41. Even in a civil dispute with an element of criminality, such as in the case of personal injury or trespass, police officers are entitled only to take action against the criminal element of the civil dispute, and not interfere with the civil dispute itself. For instance, if the personal injury in a civil dispute attracts the ingredients of Section 354 IPC, and "trespass" in a civil dispute attracts the provisions of Sections 447 and 448 IPC, then the information or the complaint received must be registered u/s 154(1) Cr. P.C., as they are cognizable offences, and an investigation should only be caused thereafter. Section 41(1)(a) &(b) CrPC enable a police officer to arrest, without an order from a Magistrate and without warrant, any person who has either committed or is alleged or is suspected to have committed a cognizable offence. This power is not to be exercised for the mere asking. Section 41 Cr. P.C. requires a police officer, before arresting any person, to be satisfied that such an arrest is necessary in terms of clauses (a) to (e) of Section 41(1)(b)(ii) Cr. P.C. It also requires him to record, while making such arrest, his reasons therefor in writing. (Sambangi Dhanunjaya Naidu. v. The State of A.P. rep. by its Principal Secretary, Home Department 1). Even in civil disputes with an element of criminality, while the police officer can exercise his powers u/s 41 and 41A CrPC during the course of investigation, he cannot adjudicate or resolve property/civil disputes. The power conferred, on respondents 3 and 4, was only to take action in respect of the allegations of the 5th respondent of a threat to her life from her brother as stated in her complaint dated 13.11.2013; or her being assaulted and intimidated by her brother and his brother-in-law as stated in her complaint dated 27.11.2013; and not to forcibly resolve the property disputes between the petitioner and the 5th respondent.

42. In his statement, made before the Joint Commissioner of Police on 01.12.2013, the 3rd respondent admitted that he had endorsed the complaint, which the 5th respondent gave to him on 13.11.2013, to the 4th respondent and had asked him to call both the parties and do justice; on 14.11.2013 the Inspector of Police, Sanjeeva Reddy Nagar P.S., had sent both the parties to his office where he had counselled them, but still the family matter was not settled; then both the parties sought further time, and decided to visit his office again on

19.11.2013; on 19.11.2013, even though both the parties arrived at his office and received counseling, they still could not resolve their serious differences. In his endeavour to justify his illegal acts of summoning the petitioner to his office, and in "counseling" him to resolve his property disputes with the fifth respondent, the 3rd respondent places reliance on Standing Order 322-1 of the A.P. Police Manual, and the circular memos of the Director General of Police regarding "family counseling centres". The 3rd respondent sought to give an impression that the steps taken by him, in seeking to resolve the property disputes between the petitioner and the 5th respondent at his office on 14th and 19th November, 2013, is a "family counseling" exercise.

43. On being asked why a memo dated 25.11.2013 was issued to the Deputy Commissioner, West Zone, regarding poor performance in "family counseling centres" in June, 2013, Learned Government Pleader for Home placed before this Court a copy of the Circular memo dated 21.02.2013 regarding establishment of "family counseling centres" in all Districts. By the said circular memo dated 21.02.2013, the Director General of Police informed all Commissioners/ Superintendents of Police that the need of the hour was to establish a "family counseling centre", at a centrally located place in the district, to provide easy access to the common people to solve their family issues; the "family counseling centres" should be constituted with experts from different fields, like representatives from Women & Child Welfare department, Municipal Corporation, retired Judges, NGOs, social activists, academics, retired police officers, Women organizations etc; and police officers should only have an advisory role as experts in such "counseling centres", in addition to providing them logistics. All Commissioners and Superintendents of Police were directed to establish "family counseling centres" in the district/towns with immediate effect.

44. The circular memo dated 21.02.2013, issued by the Director General of Police, confers only an advisory role on serving police officers besides providing logistical support to the experts in these "family counseling centres". These "family counseling centres" were required to be established at a centrally located place involving experts in different fields including retired judges, social workers, retired police officers etc. On a reading of the circular memo dated 21.02.2013 it is clear that "police stations" are not meant to be treated as "family counseling centres", and serving police officers should not resort to "family counseling", much less at their office or at a "police station". The minutes, of the review meeting held on 23.05.2013, records the clarification of the Additional Director General of Police (Coordination) that there was no need for serving police officers to involve themselves in counseling sessions. It is evident, therefore, that not only has the 3rd respondent acted illegally and high-handedly in forcing the petitioner to come to the S.R. Nagar police station, and then in a police jeep to his office, but he has also sought to mislead this court that the "counseling sessions" at his office, on 14th and 19th November, 2013, has the sanction of the "A.P. Police Manual - Standing Orders" and the "circular memos" referred to hereinabove.

V. The Police Records Do Not Contain Any Entry Regarding The "counseling Sessions" Conducted By The 3rd Respondent At His Office On 14th And 19th November, 2013:

45. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check is by documenting every action of theirs. A "police station" is required to maintain several records including the Case Diary u/s 172 CrPC; a "General Diary" u/s 44 of the Police Act, etc. which help in documenting every information collected, the spot visited and all other actions and activities of police officers. Under the CrPC, all actions of the police are written and documented. For example, in the case of arrest u/s 41(1)(b) of the Code, the arrest memo along with the grounds should be, mandatorily, in writing; u/s 55 CrPC, if an officer is deputed to make an arrest, then the superior officer should write down and record the offence, etc. for which the person is to be arrested; u/s 91 CrPC, a written order has to be passed, by the officer concerned, to seek documents; u/s 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement; a seizure memo/panchnama has to be drawn for every article seized. (Lalita Kumari Vs. Govt. of U.P. and Others,); and, u/s 41A(1), the police officer shall, in all cases where the arrest of a person is not required u/s 41(1), issue a notice directing the person, against whom a complaint of having committed a cognizable offence has been made, to appear before him.

46. The term "General Diary" (also called as "Station Diary" or "Daily Diary" in some States) is maintained not u/s 154 of the Code, but u/s 44 of the Police Act, 1861 in the States to which it applies, or under the respective provisions of the Police Act(s) applicable to a State or under the Police Manual of a State, as the case may be. (Lalita Kumari1). The General Diary is a record of all important transactions/events taking place in a "police station", including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers, etc. In addition the gist of the FIR, or its substance, is also mentioned simultaneously in the General Diary since registration of FIR also happens to be an important event in the "police station". (Lalita Kumari Vs. Govt. of U.P. and Others,).

47. A copy of the General Diary is not sent to the Judicial Magistrate, having jurisdiction over the police station, though its copy is sent to a superior police officer. It is not possible to keep a strict control of each and every FIR recorded in the General Diary by superior police officers, and/or court, in view of several other details being mentioned therein. There is no requirement of obtaining the signature of the complainant in the General Diary. What is recorded in the General Diary cannot be considered to be the fulfilment of, or compliance with, the requirement of Section 154 CrPC regarding registration of the FIR. However, since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, all information relating to cognizable offences, whether resulting in registration of the 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 therein. (Lalita Kumari Vs. Govt. of U.P. and Others,).

48. The General Diary Register of S.R. Nagar Police Station, from 20.09.2013 till 30.11.2013, has been placed before this Court. The G.D. entry, dated 27.11.2013 at 20.00 hours, records receipt of FIR No. 936 of 2013, for offences under Sections 323, 506 and 509 IPC, and reads as under:-

At this time received a complaint from Smt. Reena Choudary W/o. late Ranjith Kumar, age 34 years, Occ: House wife, R/o. Flat No. 203, Jaya Residency, Asmangadh, New Malakpet, Hyderabad in which she states that on 10.11.2013 at about 22.00 hours, while she along with DVS Ramanjaneyulu were returning from Kukatpally, when they reached at SR Nagar, in the mean time, her brother Garikapati Binod Chand Raj Gopal and his brother-in-law forcibly stopped their vehicle and they threatened her with dire consequence by slapping her. When she shouted they sped away from the spot. Later she mentioned that her brother promised to give her share of property and after the death of her father he failed to do so by keeping property documents with him and she was been threatened by her brother and his associates when she asked about her share in the property. Registered a case in Cr. No. 936/13 U/s. 323, 506, 509 IPC and took up investigation.

49. Curiously the General Diary Register makes no mention of either the representation submitted by the 5th respondent to the 3rd respondent on 13.11.2013, or to the petitioner being brought to the S.R. Nagar police station on 14.11.2013 or his being taken from there in a police jeep to the office of the 3rd respondent. No record also appears to have been maintained regarding the "counseling Sessions" (which the petitioner was forced to participate) held, at the office of the DCP, West Zone, by the 3rd respondent on 14th and 19th November, 2014. But for the intervention of this Court, the "counseling sessions" at the office of the DCP, West Zone on 14th and 19th November, 2013 would have gone unnoticed and unchecked.

VI. Power of Adjudication Of Civil/Property Disputes Is Conferred Only On The Judiciary And Not On Police Officers:

50. Maintenance of peace and public order, prevention of crime and investigation of cognizable offences are functions which Police Officers are, statutorily, obligated to discharge. While Section 154(1) Cr. P.C. confers power, and casts a duty, on the police officer to register a cognizable offence, Section 155 Cr. P.C. enables a police officer to make an entry in the appropriate register, regarding information relating to a non-cognizable offence. He cannot investigate a non-cognizable offence without the order of the Magistrate. As a necessary corollary, any attempt by a police officer to investigate a complaint, which does not contain allegations of the commission of a cognizable offence, without permission from the Magistrate would violate Section 155(2) Cr. P.C. and is, ex facie, illegal. There

is no presumption in law that every rift in human relations would lead to a civil dispute, and a civil dispute is likely to result in clashes resulting in offences against the human body. A Police Officer would not be justified in saying that he/she is examining a complaint which, ex facie, has the trappings of a civil dispute. (S. Masthan Saheb and Another Vs. P.S.R. Anjaneyulu and Others,). Even if a civil dispute has a criminal element, which falls within the ambit of a "cognizable offence", with the potential of a law and order problem posing threat to the society at large, a Police Officer can take up investigation only after registering the complaint u/s 154 Cr. P.C. (J. Lakshmi @ Lakshmamma and Another Vs. Commissioner of Police and Others,).

51. The function of resolving "civil disputes" is entrusted to the judiciary. Police officers lack jurisdiction to interfere in civil/property disputes between two citizens. Even in criminal case, their role is limited to the registration of complaints and causing investigation. The power to adjudge whether or not an accused is guilty of having committed a criminal offence, and to convict and sentence him therefor, is vested exclusively in the judicial branch of the State. Judicial power cannot be exercised by agencies outside the judicial orbit and, where there is no legislative foundation for exercise of judicial power by a forum, it has no legal capacity to entertain requests for adjudication. Judicial power is a facet of sovereign power and can be conferred only by a Statute or by a Statutory instrument. It cannot be assumed suo motu. No authority may exercise adjudicatory powers absent a conferment of such powers by Statutory instruments. The coercive power of the State may not be employed to adjudicate disputes. (M/s. Janathaeem Industries Ltd., rep., by its Public Relations Officer M.S. Ganesan, Vijayawada. v. The District Collector, Krishna district at Vijayawada 2).

52. While the inordinate delay, in resolution of civil disputes before Civil Courts of competent jurisdiction, is undoubtedly a cause of concern that does not justify Police Officers exercising powers, conferred exclusively of the judicial branch of the State, to adjudicate civil disputes. While the need to strengthen judicial institutions, and to reduce the inordinate delay in disposal of Civil Suits, cannot be over-emphasised, the high-handed acts of police officers in seeking to resolve civil disputes, that too in the precincts of a police station, must also be sternly dealt with. Just as Courts would not undertake investigation of criminal offences, as these are matters in the exclusive realm of the investigating agency, the powers conferred and the duties cast upon Police Officers, under the Criminal Procedure Code, is only to register complaints regarding cognizable offences and investigate therein; and not adjudicate even criminal cases, much less resort to settlement of civil disputes.

53. Police officers should not usurp, or even seem to usurp, judicial functions of adjudication or to summon and force persons to resolve their inter-se civil disputes in a particular manner under the guise of "family counseling". In the present case the 3rd respondent has, in effect, donned the robes of a judge in

adjudicating property disputes between the petitioner and the 5th respondent.

VII. Contradictions In The Statements Made By The Fifth Respondent From Time To Time:

54. The contradictions in the complaint of the 5th respondent, on which the 3rd respondent had endorsed on 13.11.2013; her subsequent complaint dated 27.11.2013 which resulted in registration of Crime No. 936 of 2013; and her assertions in the counter-affidavit filed before this Court; must also be noted. In her representation given to the 3rd respondent on 13.11.2013, the 5th respondent alleged that, on her asking him to divide their properties, her brother (the petitioner) and his brother-in-law had threatened to kill her; both of them had also threatened that, if she did not vacate the flat in Jaya Residency, they would kill her; her brother, his brother-in-law Raju and one Sivarao came inside her house and disconnected water supply; and even at Jaya Nagar, where she was staying, the petitioner, his brother-in-law and Sivarao had threatened to kill her. It is relevant to note that the representation of the 5th respondent, on which the 3rd respondent endorsed to the 4th respondent on 13.11.2013 asking him to "do justice", makes no mention of an incident which allegedly took place three days prior thereto on 10.11.2013, though in her complaint dated 27.11.2013 the 5th respondent stated that, on 10.11.2013 at about 2200 hours, while she along with Sri. DVS Ramanjaneyulu were returning from Kukatpally and had reached S.R. Nagar, her brother and his brother-in-law forcibly stopped their vehicle; threatened her with dire consequences, and slapped her; and she was being threatened by her brother and his associates as and when she asked him about her share in the property.

55. In her statement to the Joint Commissioner on 01.12.2013 the 5th respondent, while referring to the incident on 10.11.2013 at 10.00 p.m., only alleged that the petitioner's brother-in-law Sri. Raju had pulled her aside, and had slapped her; and her brother (the petitioner) had threatened her with dire consequences, with regards the property disputes. The statement of the 5th respondent, recorded by the Joint Commissioner of Police on 01.12.2013, makes no mention of her being assaulted by her brother on 10.11.2013. In her counter-affidavit before this Court, the 5th respondent stated that, on 10.11.2013 at 10.00 p.m., the petitioner and his brother-in-law had stopped their vehicle; the petitioner's brother-in-law had slapped her, and her brother had beaten her black and blue.

56. The contradictions, in the statements made from time to time by the 5th respondent, do give an impression that a concocted complaint was hurriedly registered on 27.11.2013, after the petitioner had invoked the jurisdiction of this Court by way of the present Writ Petition on 26.11.2013, and after a copy of the Writ Petition was furnished to the office of the Government Pleader, High Court on the same day, only to avoid being faulted by this Court. As Crime No. 936 of 2013, registered with S.R. Nagar Police Station on 27.11.2013, has, thereafter, been transferred to Central Crime Station, Hyderabad and re-registered as Crime

No. 182 of 2013, I refrain from saying anything more.

57. In his statement, before the Joint Commissioner on 01.12.2013, the 3rd respondent stated that the 5th respondent met him on 13th November, 2013 and had informed him that her brother and his brother-in-law had attacked them on 10.11.2013 at S.R. Nagar traffic signals; and he had endorsed the complaint to the fourth respondent asking him to call both parties and do justice. However the said complaint which the 5th respondent gave him, and on which he had made an endorsement to the 4th respondent on 13.11.2013, makes no mention of any incident having taken place on 10.11.2013, much less at Sanjeeva Reddy Nagar. Neither the 2nd respondent nor the Joint Commissioner of Police who conducted the enquiry have examined why an incident which allegedly took place on 10.11.2013, and forms the basis of registration of Crime No. 936 of 2013 dated 27.11.2013, does not find mention in the 5th respondent's representation given to the 3rd respondent on 13.11.2013, three days after the alleged incident on 10.11.2013. In his counter-affidavit filed before this Court, the 4th respondent states that he was telephonically instructed by the 3rd respondent not to register the complaint of the 5th respondent containing the endorsement of the 3rd respondent on 13.11.2013; and that he was asked by the 3rd respondent over telephone on 14.11.2013 to produce the petitioner before him at the office of the DCP, West Zone. It is disconcerting that, though the 3rd respondent admitted that he endorsed the complaint of the 5th respondent to the 4th respondent on 13.11.2013, the Joint Commissioner of Police should choose not to examine the 4th respondent or record his statement during the course of his enquiry.

VIII. Property Disputes Between The Petitioner And The Fifth Respondent Are Matters To Be Adjudicated By A Competent Civil Court And Should Not Be Examined In Proceedings Under Article 226 Of The Constitution Of India:

58. In her counter-affidavit, the 5th respondent narrates in detail the property disputes between her and her brother (the petitioner); she also claims that her brother forcibly vacated her from the flat where she was residing till August, 2008 and had put her in the house at plot No. 49, Andhra Bank Colony with the intention of occupying all the flats; whenever he came to India he used to harass, abuse and beat her and ask her to sign on some documents to extinguish her legal rights over the properties; she had refused to do so; unable to bear his harassment, she had left his house and was staying in a rented house till May, 2013; since she is entitled for three flats in the complex, she had taken possession of flat Nos. 101 and 102 and had given them on rent since September, 2013; when her brother came to know that she had occupied flat No. 203, and had given flat Nos. 101 and 102 on rent, he had sent his brother-in-law Sri. G. Balraj who beat her, and slapped her minor daughter; and though she gave a police complaint, the 4th respondent stated that it was a civil dispute and could not be entertained. The affidavit details the claim of the 5th respondent to her share of the property. The 5th respondent alleges that the petitioner had suppressed relevant facts with regards property disputes; he had not paid

maintenance and water charges for the five flats in his occupation; he is keeping all the original property documents with him, and did not want to give her legal share; and, as she was demanding her share of the properties, he has been harassing her with the aid and support of his brother-in-law. The 5th respondent narrates in detail her property disputes, and claims that the petitioner is seeking to deprive her of her just share of their ancestral property.

59. As the proper forum for adjudication of the property disputes, between the petitioner and the 5th respondent, is the Civil Court of competent jurisdiction, it would be wholly inappropriate for this Court, in proceedings under Article 226 of the Constitution of India, to examine much less determine the validity of the rival claims, of the petitioner and the 5th respondent, over their ancestral properties. It is made clear that, in case either the petitioner or the fifth respondent invoke the jurisdiction of the competent Civil Court, their respective claims shall be adjudicated on its merits without being influenced by any observations made in this Order.

IX. Other Contentions:

60. It is the case of the 3rd respondent that the statement made by the petitioner before the Joint Commissioner on 01.12.2013 contradicts the allegations made by him in para 15 of the Writ Petition; in his statement the petitioner himself stated that he was not asked to sign any papers or any documents on 19.11.2013; and that no such incident took place is evident from the report of the Joint Commissioner of Police, and the report of the Committee.

61. In his statement, before Jt. CP (Admn.) on 01.12.2013, the petitioner stated that, on 14th of November, 2013 at around 1.00 PM, he received a call from Sri. Ajay Kumar, Sub-Inspector Sanjeeva Reddy Nagar PS who asked him to come to the Police Station in connection with a complaint lodged by his sister; in response thereto, he went to the Police Station in a car; after he met the Sub-Inspector Sri. Ajay Kumar, he was called to the chambers of the Inspector Sri. Prabhakar who informed him that a complaint had been lodged by his sister and asked him to accompany the Sub-Inspector in the police jeep to the office of the DCP, West Zone, which he did; his car followed him to the office of the DCP, West Zone; he spent ten minutes with the 3rd respondent in his chambers where his sister and another were present; the 3rd respondent informed him that, though a complaint was lodged by his sister against him, he was not being treated as an accused; he was offered a chair; he was also informed that the complaint was about his threatening his sister; he was asked by the 3rd respondent to meet him again; on 19.11.2013 he received a call on his phone No. 8096102190 from the office of the Deputy Commissioner of Police, West Zone; when he reached the office at about 2.45 pm he found persons not known to him in the office; his sister later appeared in the office of the DCP West Zone and raised the issue of property, alleging that he was not giving her property; his father had passed away without leaving behind any will; her share of the property had already been given to his sister, at the time of her marriage; whenever he came to India, he was being

subjected to severe mental stress by his sister's tormenting words, asking for her share of the property; he was advised by people in the chambers of the DCP, West Zone to settle the property issue, as soon as possible, in accordance with the wishes of his sister; he was asked to be prepared to sign agreements of settlement to that effect; he was, however, not shown the papers or documents on which to sign; no one had manhandled him and no vulgar language was used; but he was pressurized that, if he did not settle the matter with his sister, he may enter into problems/cases related to property disputes as well as criminal cases out of his sister's complaints that he was harassing her; he left the office at about 9.30 pm; on 25th November, 2013, at about 4.30 P.M., a constable visited the house of his father-in-law at Marredpally, where he had been staying with his family since a few days; he was away and came to know later that the constable had asked for him, in connection with his sister's complaint at Sanjeeva Reddy Nagar PS, and had waited there upto 10 PM.

62. Even before the Joint Commissioner the petitioner stated that he was asked to be prepared to sign agreement of settlement of properties but was not shown the papers or documents on which to sign. He also stated that he was threatened that, if he did not settle the matter with his sister, he may face criminal cases out of his sister's complaint; and he was at the office of the 3rd respondent till 9.30 P.M. on 19th November, 2013. This Writ Petition was filed on 26.11.2013, the day next to 25.11.2013 when a constable is said to have asked for him.

X. Conclusion:

63. In his additional affidavit, the 3rd respondent states that an adverse memo dated 10.12.2013 has already been issued to him by the Commissioner of Police; he was also facing disciplinary action by the Government; several daily newspapers have made adverse reports against him with reference to the observations of the Court repeatedly; these facts were, inadvertently, missed in the earlier counter affidavit; and if this counter affidavit is not taken on record, and considered along with the earlier counter affidavit, he would suffer irreparable loss and injury. The 3rd respondent offers his unconditional apology if he has transgressed his limits in the course of his interaction with the petitioner and the 5th respondent.

64. While the 3rd respondent, in his statement before the Joint Commissioner, admits that both parties (the petitioner and the 5th respondent) received counseling at his office, he does not even state what the exercise of "counseling" involved, and whether it related to resolution of property disputes between the petitioner and the 5th respondent. In the counter-affidavit filed before this Court, the 5th respondent admits that the 3rd respondent had counselled her and her brother regarding settlement of the property disputes. It is clear that the 3rd respondent has not only forced the petitioner to come to his office, but has also resorted to settlement of property disputes under the guise of "family counseling". In asking the 4th respondent not to register the complaint given by the 5th respondent to the 3rd respondent on 13.11.2013, in orally summoning

the petitioner to his office (office of the DCP, West Zone), in forcing him to come to his office on 14th and 19th November, 2013, and in "counseling" him at his office both on 14th and 19th November, 2013, the petitioner's fundamental right of personal liberty, under Article 21 of the Constitution of India, has been violated by the 3rd respondent.

65. No person can be forcibly summoned to a police station except in accordance with law, including the provisions of the CrPC. Exercise of power by police officers, and the mode and manner of its exercise, is circumscribed by the provisions of the CrPC. Conferment of power is only to enable police officers to effectively discharge their statutory/legal obligations. Exercise of power, otherwise than in furtherance of a statutory/legal duty, is an abuse of power. In the present case, not only does the 3rd respondent lack the power to summon the petitioner to the police station, even without registering the complaint and without a written notice asking him to appear, he has also abused his office in carrying on a "counseling session" within the premises of the office of the DCP, West Zone, that too for resolution of a civil dispute regarding division of property between the petitioner and the 5th respondent.

66. The belated and half-hearted apology tendered by the 3rd respondent, with a rider that his apology was if he had transgressed his limits in the course of interacting with the petitioner or the 5th respondent, does not commend acceptance. It is not even the case of the 3rd respondent that the petitioner had voluntarily, and on his own accord, come to the S.R. Nagar Police Station on 14.11.2013 or that he had on his volition and free will, and without being directed by the police officers at S.R. Nagar P.S., come over to the office of the D.C.P., West Zone, to meet the 3rd respondent on 14.11.2013. Neither has the 3rd respondent admitted that his action in telephonically instructing the 4th respondent to direct the petitioner to come to S.R. Nagar Police Station, and to produce him at the office of the DCP, West Zone for counseling on 14th November, 2013 and in directing the petitioner to appear before him on 19th November, 2013 is illegal, nor has he assured this Court that he would refrain from indulging in such acts in future. I see no reason, therefore, to accept the apology of the 3rd respondent which is, evidently, made only to avoid being faulted by this Court. The illegal and high-handed acts of the 3rd respondent, depriving the petitioner of his fundamental right of personal liberty under Article 21 of the Constitution of India, cannot be ignored. The competent authority shall forthwith initiate major penalty proceedings against the 3rd respondent, conduct a departmental enquiry, and take disciplinary action in accordance with law. The entire exercise, culminating in a final order being passed by the competent authority, shall be completed within four months from the date of receipt of a copy of this order. This order shall not preclude the petitioner from claiming damages, for the violation of his fundamental rights by the 3rd respondent, in duly instituted legal proceedings.

67. While the 4th respondent cannot absolve himself of all blame on the specious

plea that he had merely acted on the orders of the 3rd respondent, this Court must also bear in mind that the 4th respondent has, in his counter-affidavit filed before this Court, narrated the sequence of the events but for which the illegal and high-handed acts of the 3rd respondent may not have been established. The 4th respondent must constantly remind himself that his foremost obligation is to uphold the rule of law, notwithstanding the illegal orders of his superiors. It would suffice to "warn" the 4th respondent to desist from indulging in such acts in future.

68. This Court has only examined the illegal and high-handed acts of the 3rd respondent in orally summoning and counseling the petitioner at his office, to settle his property disputes with the 5th respondent, without even registering the complaint of the 5th respondent u/s 154(1) CrPC; and has not touched upon the property disputes between the petitioner and the fifth respondent. It is made clear that, while investigation in Crime No. 182 of 2013 may be conducted in accordance with law and a final report submitted u/s 173 CrPC, the 3rd respondent shall not be involved either directly or indirectly in investigation or be consulted in the preparation and finalisation of the final report.

69. The Writ Petition is, accordingly, allowed with exemplary costs of Rs. 10,000/- (Rupees Ten Thousand only). The costs should, ordinarily, have been paid to the petitioner. However, as he is employed in the U.S.A., and the genesis of this dispute is an internecine fight over vast extents of property, it is but appropriate that the cost of Rs. 10,000/- is paid by the 3rd respondent to the Andhra Pradesh State Legal Services Authority, Hyderabad, within four weeks from the date of receipt of a copy of this Order. The miscellaneous petitions, if any pending, are also disposed of.

1 Judgment in W.P. No. 523 of 2014 dated 21.01.2014

2 Judgment in W.P. No. 13391 of 2006 dated 14.07.2006