
(2013) 12 AP CK 0108

In the Andhra Pradesh High Court

Case No : Writ Petition No. 33917 of 2013

T.V.G. Chandrasekhar

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 23-12-2013

Acts Referred:

Citation : (2014) 2 ALD(Cri) 6 : (2014) 1 ALD(Cri) 507

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

Bench : Single Bench

Advocate : P.S.P. Suresh Kumar, for the Appellant;

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—The word "incorrigible" is perhaps an inadequate expression to describe the conduct of the Station House Officers of the Police Stations in the State of Andhra Pradesh. The officer in-chargeL. Kota Police Station, Vizianagaram District, is no exception in this regard, for, despite the law declared by the Apex Court in unequivocal terms as far back as the year 1992 in State of Haryana and others Vs. Ch. Bhajan Lal and others, and being reiterated from time to time, with the recent Judgment being Lalitha Kumari v. Government of Uttar Pradesh*, FIRs are not being registered promptly on the complaints given to the Police disclosing commission of cognizable offences. The complaint dated 27-6-2011 made by the petitioner to respondent No. 4-Station House Officer (SHO) is kept in cold storage. Having made a long wait for more than two years, the petitioner at last approached this Court by way of the present Writ Petition. This case came up before this Court, first time on 26-11-2013 and underwent four adjournments till 17-12-2013. On that day, when this Court has expressed its dismay at the inaction of the Station House Officer in registering the FIR, the learned Assistant Government Pleader for Home has requested for a short adjournment. On the following day to which the case was posted, this Court has prima facie opined that the contents of the representation made by the petitioner to respondent No. 2 on 27-6-2011 disclosed commission of a

cognizable offence pertaining to Section 379 IPC and passed an order directing respondent Nos. 3 and 4 to be personally present before this Court to explain the reasons for their not registering the FIR despite the law laid down by the Apex Court and this Court. Accordingly, respondent Nos. 3 and 4 have been personally present.

2. At the hearing, all that the learned Assistant Government Pleader submitted is that since respondent Nos. 3 and 4 have taken charge of their respective offices as the Inspector of Police and the Sub-Inspector of Police on 5-11-2013 and 11-11-2013, respectively, they were not aware of the complaint lodged by the petitioner. The learned Assistant Government Pleader however stated that after the case was adjourned on 18-12-2013, on the same day, respondent No. 4 registered the FIR. She has therefore requested for closing the Writ Petition.

3. The Writ Petitions of this nature galore. Neither respondent Nos. 3 and 4, nor the learned Assistant Government Pleader representing them, would dispute that the well settled legal position is that if the complaint received by them disclosed commission of a cognizable offence, it is imperative for the SHO to register the FIR as envisaged u/s 154 Cr.P.C. in Bhajan Lal (supra), the Supreme Court held at paras 32 and 33, as under:

.... An overall reading of the codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

4. Dealing with a similar situation, in *Sammata Lakshman v. Government of Andhra Pradesh* 2010(3) ALT (CrI) 93 (AP), while repelling the plea advanced on behalf of the State that the Police cannot straightaway register an FIR without making a preliminary enquiry into the truth or otherwise of the allegations, I made a thorough analysis of the provisions of Section 154 Cr.P.C. with reference to the law laid down by the Supreme Court in *Bhajan Lal* (supra) and held as under:

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

refusal to register a case pertaining to commission of a cognizable offence constitutes an offence u/s 217 IPC (Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture).

...

...

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

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

(Emphasis added)

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

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

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the general Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

(Emphasis added)

6. I am, indeed, unable to comprehend as to why the Police in the State have been turning a blind eye to the above well settled legal position and forcing the innocent citizens to resort to invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The experience of this Court

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

7. This Court feels that it is high time that the Director General of Police, Andhra Pradesh, takes stern measures against the SHOs responsible for not registering the FIRs where the complaints disclosed commission of cognizable offences. The Director General of Police is directed to forthwith issue a circular to all the SHOs in the State wherein he shall incorporate the guidelines for registration of the cases in consonance with the provisions of Section 154 Cr.P.C. as explained by the Supreme Court in Bhajan Lal (supra) and Lalitha Kumari (supra) and by this Court Sammeta Laxman (supra). The guidelines must include the criminal action to be taken against the erring SHOs u/s 217 Cr.P.C. as prescribed in the Police Manual besides the disciplinary measures that must be taken against the Police Officers who act in violation of the provisions of Section 154 Cr.P.C. by keeping the complaints disclosing commission of cognizable offences, pending without registering the same. The Director General of Police shall ensure that a copy of this Judgment is enclosed to the guidelines and circulated to all the Station House Officers, Superintendents of Police, Deputy Inspectors General of Police and Inspectors General of Police, in the State, dealing with law and order. The guidelines so framed shall be sent to the Registrar (Judicial), Andhra Pradesh High Court, Hyderabad, for being placed before this Court within one month from the date of receipt of this order.

8. This leaves me to consider as to how to redress the grievance of the petitioner as regards the loss of time and money he would have inevitably spent on this needless litigation. As I find no justification whatsoever for respondent No. 4 for keeping the complaint pending for nearly 2 1/2 years, respondent No. 2 is directed to pay the petitioner costs of Rs. 20,000/- within one month from the date of receipt of this order. Respondent No. 2 is further directed to identify the SHO who is responsible for non-registration of the complaint filed by the petitioner and initiate appropriate proceedings against him as per the Police Manual and recover from him the costs paid by him to the petitioner.

9. Subject to the above directions, the Writ Petition is allowed. As a sequel to the disposal of the Writ Petition, W.P.M.P. No. 42211/2013 filed for interim relief is disposed of as infructuous.

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