

HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.472 of 2012

ORDER: (per Hon'ble the Acting Chief Justice C.Praveen Kumar)

1) The present Writ Petition came to be filed challenging the action of the respondents/authorities seeking issuance of writ of mandamus declaring the action of the respondents 1 and 2 in not submitting the investigation report to the High Court as per the directions of the High Court in respect of the complaint dated 14.12.2010, as illegal and improper and incorrect.

2) The facts which lead to filing of the present Writ Petition are as under:-

The petitioner herein filed a suit for eviction of the suit schedule property against the defendants viz., 1) Juharmal 2) Purohit Mangilal (died) 3) Saraswathi Devi Purohit and 4) Purohit Manoj Kumar and also for damages vide O.S.No.1413 of 2004 before the Court of I Additional Junior Civil judge, Kakinada, East Godavari District. The said suit was decreed on 11.08.2010, basing on which he filed E.P.No.262 of 2010 for execution of decree and for recovery of possession of suit schedule property. While the execution proceedings were going on, one Kiran Kumar Jain S/o. Champalal said to be a resident

of Tilak Street, Kakinada filed a memo as a third party in the execution proceedings along with a copy of the interim stay said to have been passed by the High Court of Andhra Pradesh at Hyderabad in W.P.No.16538 of 2010, filed by him seeking stay of execution of the E.P. proceedings. On suspicion the petitioner brought to the notice of the Presiding Officer about the falsity in the said order. He also made an application before the Registrar General, High Court of Judicature at Hyderabad about the falsity of the order. After enquiry, respondents 3 and 4, directed the learned I Additional Junior Civil Judge, Kakinada to seize the entire record pertaining to execution proceedings in E.P.No.262 of 2010 and also directed respondent No.2 to investigate into the matter and submit a report at an early date. The inaction of the second respondent in submitting the final report, led to filing the present writ petition.

3) The first respondent, who is the Superintendent of Police, East Godavari District, filed his counter disputing the averments made in the affidavit filed in support of the Writ Petition. According to him, on receipt of a report from the Principal Junior Civil Judge, Kakinada, a case in Cr.No.170 of 2010 of I Town Law and Order Police Station, Kakinada for the offences punishable under Sections 420, 466, 468 and 471 IPC came to be registered. The said report was registered against Kiran Kumar Jain who is said to have filed a fake order before the said

Court alleged to have been passed by the High Court in W.P.No.16538 of 2010. It is said that the Station House Officer, I Town Police Station, Kakinada, investigated into the matter and during the course of investigation he is said to have examined and recorded the statements of 9 witnesses. The statement of Superintendent of Court shows that on 20.11.2010 an unknown person dropped an order purported to have been issued by the High Court in the name of Kiran Kumar Jain, Tilak street, Kakinada in the complaint box. In this connection, the matter was enquired into and the V.R.O., Kakinada Urban gave a report dated 25.04.2011 stating that there is no person by name of Kiran Kumar Jain, residing in Tilak street at Kakinada. Since there are no CC cameras installed and as none have seen dropping of the fake order in the complaint box, the identity of the said person could not be established. It is said that the Investigating Officer tried to interrogate the plaintiff/deGREE-holder but found that he died in the year 2010 itself. The statements of the son of the plaintiff and also the son of J.Dr., were recorded. As there is no chance to interrogate the plaintiff or the defendant, the legalheirs of decree-holder or Judgment debtor who were examined as L.Ws.5 and 6, did not reveal anything, so as to establish the identify of the accused. In the absence of any evidence, the case was sought to be referred as undetectable and accordingly a final report came to be filed before the Court if III Addl. Judicial Magistrate of First Class,

Kakinada vide S.R.No.3898/2012. It is said that the said final report was returned with remarks that notice to complainant was not served and accordingly directed to resubmit the same after serving notice on the complainant through the Inspector of Police. In view of the delay in serving the notice on the complainant, the matter was not proceeded further by the III Additional Judicial Magistrate of First Class, Kakinada. After receipt of acknowledgment from Junior Civil Judge, Bhimunipatnam, the Inspector of Police, I Town, Kakinada resubmitted the final report on 13.07.2016 vide S.R.No.3468. The Counter further indicates that disciplinary proceedings came to be initiated against the Police Officers, who worked during the said period by appointing the Sub-Divisional Police Officer as Enquiry Officer in respect of 5 charges. The contents of the counter further indicate that the Sub Divisional Officer, Kakinada reopened the case on 16.08.2016 after obtaining the permission from the Court. After conducting the investigation came to a conclusion that Kiran Kumar Jain is a fictitious person and the same came to be filed by some unknown person in his name and then dropped the said order in the complaint box on 20.11.2010.

4) A counter filed by the respondent No.2 stating that though the Hon'ble High Court ordered to conduct investigation on the complaint dated 14.12.2010, the then S.I. of Police,

I-Town Police, Kakinada sought time for four weeks to complete the investigation and inspite of letters addressed by the learned Government Pleader, there is no response from the concerned police officer. Further, on 17.03.2016 the Hon'ble High Court directed the first respondent to conduct investigation and submit report, but, the first respondent did not receive a copy of the order passed by the High Court. On 03.04.2016 the third respondent received the reference cited order through Station House Officer, I Town L & O Police Station, Kakinada and after thorough investigation, the then S.I. of Police, K.Lakshmana Reddy, referred the case as undetectable. Further, after obtaining proceedings from the S.D.P.O., Kakinada, the said K.Lakshmana Reddy prepared a notice to the informant i.e., Smt. V.Syamala Devi, the then Principal Junior Civil Judge, Kakinada, but the said notice was not served as she refused to take the said notice. Since the referred notice was not served, the final report came to be submitted before the Magistrate concerned, which was returned with a direction to serve the Notice and resubmit the same. Subsequently, the said notice was served on the complainant through the District Court, Visakhapatnam. It is further submitted that to fix up the negligence of the officer in not serving the notice and in not filing the counter after four weeks, he appointed the S.D.P.O., Kakinada with instructions to enquire into the matter and submit a report. It is stated that soon after the receipt of

report, necessary disciplinary action will be initiated against the officer concerned.

5) The Registrar General, High Court of Andhra Pradesh representing respondents 3 and 4 filed counter stating that as per the decree, the decree-holder filed E.P.No.262 of 2010 for execution of the decree in O.S.No.1413 of 2004. Subsequently, on 20.11.2010, one third party filed a memo along with a copy of the stay order alleged to have been passed by the High Court of Andhra Pradesh, in W.P.No.16538 of 2010 filed by one Kiran Kumar Jain granting stay of the execution of decree. After receiving notice on the memo, the decree holder filed certified copies of, "status information of the case", from the official website of the High Court of Andhra Pradesh, which disclosed that the order in W.P. does not relate to O.S.No.1413 of 2004. After perusing the same, the trial court verified the official website and confirmed that the version of decree-holder regarding Writ Petition No.16538 of 2010 is incorrect. Basing on the instructions given, the I Additional Junior Civil Judge, Kakinada lodged a report before the Station House Officer, which led to registration of Crime, but however, ultimately a final report came to be filed stating that the crime is undetectable.

6) Pursuant to the direction given by this Court, a report was submitted by the Sub Inspector of Police dated 08.06.2012 in

Cr.No.170 of 2010, in which it is stated that during the course of investigation, the Investigating Officer examined as many as 16 witnesses including the informant and recorded their statements. The efforts made to trace out Kiran Kumar Jain proved futile as there is no such person with that name. The report of V.R.O., Kakinada shows that no person in the name of Kiran Kumar Jain in Tilak street at Kakinada. The final report filed by the Police, referring the case as undetectable would show that there is a civil litigation between Manda Brahmananda Phani Sekhar v. Juharmal and others regarding the vacation of a shop at Big Masjid centre, Kakinada. In the year 1980 Juharmal and his brother started sweet stall in the name and style of Bombay Arya Bhavan in the rented shop of Chitturi Mallikharjunarao and Appalaraju. Subsequently, the owners of the shop offered the shop for sale to Juharmal, who gave advance, based on an oral agreement. But later, the said shop was sold away to Manda Veerabadrarao by Ch.Mallikarjunarao and Appalaraju. As the occupants Juharmala and Mangilal refused to vacate the shop, the said Veerabadrarao got filed a Civil Suit vide O.S.No.1413 of 2004 and got it decreed in favour of his son Brahmananda Phani Sekhar after the death of his father Veerabadrarao. In this regard E.P. is filed. Meanwhile, an Appeal was also filed. While things stood thus, on 20.11.2019, a fake forged order of High Court granting stay of the execution order in O.S.No.1413 of

2004 dated 10.11.2010 was surreptitiously brought on record, though dubious means, by dropping it in the box. It is to be noted that pending suit, the person who initiated the suit namely Manda Veerabhadra Rao and the defendants Mangilal and Juharmal died on different dates. The whereabouts of one Kiran Kumar Jain who is said to have obtained the fake order of stay could not be traced. As the existence of the person, who obtained the stay is doubtful, a final report came to be filed after obtaining the opinion of the Government Pleader.

7) It is to be noted here that the Investigating Officers have not seized the fake document, said to have been produced before the trial court. No explanation is forthcoming as to why the said document was not seized. The fact that a memo was filed by one Kiran Kumar Jain, resident of Tilak street, Kakinada enclosing a copy of order alleged to have been issued by the High Court on 20.11.2010, is not in dispute. A perusal of the Case Diary does not anywhere indicate seizure of either the memo filed by Kiran Kumar or the fake order of the High Court filed along with the Memo. Strangely, these two documents, which are subject matter of dispute would have been the best material for the investigating agency to get some clue as to who, the said Kiran Kumar Jain is. It is not the case of the prosecution agency that the memo was filed by Kiran Kumar Jain in person. Obviously it must have been filed through an

Advocate. Examination of the said Advocate probably would have given some clue to trace out the said Kiran Kumar Jain and it would also indicate as to whether any other person impersonated Kiran Kumar Jain. These are few aspects which the investigating agency failed to delve upon. Without seizing the incriminating material, in the manner required under law, investigation is being conducted basing on a report of the V.R.O., who is said to have disclosed that no person by name Kiran Kumar Jain lives in Tilak street.

8) We feel that investigation is not being conducted in the manner it ought to have been done, more so when the offence is so grave in nature. It appears that the investigating agency proceeded in a light hearted manner, which we are not willing to accept. In order to prevent offences of this nature, we feel that it is a fit case where the matter requires to be investigated by C.B.C.I.D, more so, having regard to the gravity of the offence. It may be true that the extent of punishment even if the culprit is identified, may be less, but still we cannot keep quiet when the orders of the High Court are being forged, prepared and thereafter used before the Judicial Forum. Further, the Apex Court in **State of Punjab v. Central Bureau of Investigation and others**¹ also held that the High Court can direct re-

¹ AIR 2011 SC 2962

investigation even if charge-sheet/challan submitted by local police.

9) Hence, the Writ Petition is disposed of directing the Government of Andhra Pradesh to entrust the investigation in Crime No.170 of 2010 of Kakinada Law & Order Police Station, East Godavari District, to C.B.C.I.D., who shall investigate the matter from all angles and then send a report to the Registrar General of this High Court, who shall keep a track of the case.

10) Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

ACTING CHIEF JUSTICE C. PRAVEEN KUMAR

JUSTICE M. SATYANARAYANA MURTHY

Dated:30.04.2019
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