

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF JANUARY, 2014

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

WRIT PETITION NO.46402/2011 (GM-POLICE)

BETWEEN:

K.S.CHANDRASHEKAR,
S/O.SURYANARAYANA SETTY,
AGED ABOUT 48 YEARS,
TEXTILE PARTS BUSINESS,
NO.5 (OLD NO.516),
GROUND-FLOOR,
JUMMA MASJID ROAD,
BANGALORE-560 002.

... PETITIONER

(BY SRI V.K.NARAYANA SWAMY, ADV.)

AND:

1. THE STATE OF KARNATAKA,
BY ITS SECRETARY TO HOME
DEPARTMENT (POLICE),
VIDHANA SOUDHA,
BANGALORE.
2. THE DEPUTY COMMISSIONER
OF POLICE (CENTRAL OFFICE),
CUBBONPARK POLICE STATION,
ANNEXEN BANGALORE-560 001.
3. THE INSPECTOR OF POLICE (SHO),
HALSOOR GATE POLICE STATION,
CUBBONPET MAIN ROAD,
BBMP CIRCLE,
BANGALORE-560 002.

4. SRI RAJASHEKAR @ SHETTY RAJA,
S/O.SURYANARAYANA SETTY,
AGED ABOUT 50 YEARS,
GROUND-FLOOR, NO.5 (OLD NO.516),
JUMMA MASJID ROAD,
BANGALORE-2.

... RESPONDENTS

(BY SRI A.ANANDA, ADV. FOR R4,
SRI VIJAYAKUMAR A. PATIL, HCGP FOR R1-R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R1 TO 3 TO ENTERTAIN ANY COMPLAINT MADE BY THE PETITIONER AGAINST THE R4 FOR ANY OFFENCES PUNISHABLE UNDER THE KARNATAKA POLICE ACT AND THE IPC BY FILING NECESSARY FIR AS PER LAW.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP, THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The petitioner is before this Court seeking for issue of mandamus to direct respondents No.1 to 3 to entertain the complaint said to have been made by the petitioner against the fourth respondent. The petitioner is also seeking for necessary police protection to the petitioner and his family and to prevent criminal intimidation and offensive action by the fourth respondent.

2. The case of the petitioner is that he is a permanent resident of a portion of the premises bearing

No.5 (Old No.516), Jumma Masjid Road, Bangalore. The manner in which the right to the property is being enjoyed by the petitioner is stated and reference is also made to the civil litigation between the family members. The grievance in the instant petition is that the fourth respondent who is the brother of the petitioner has been repeatedly intimidating the family of the petitioner as also assaulting the petitioner for which the petitioner is stated to have taken medical treatment. In that regard, the petitioner claims that the complaints as mentioned in Para 3 of the petition though having been made has not evoked any response from the third respondent and as such appropriate mandamus be issued to the respondents.

3. The fourth respondent though has not filed written objections, would however putforth their contentions denying the allegations made by the petitioner alleging misdemeanor on his part. The learned Government Advocate would point out that from the very

nature of the complaint on which the petitioner has relied on, there is absolutely no material to point out that any cognizable offence has been committed by the fourth respondent and as such, the direction as sought for is liable to be rejected.

4. Though such contentions have been urged, what is necessary to be noticed is that the petitioner and the fourth respondent are brothers. Notwithstanding the said relationship, if in fact any criminal acts are committed by the fourth respondent, certainly the police authorities are required to take action if an appropriate complaint indicating the commission of the cognizable offence is made. The law is well settled that if such registration of complaint is not made, not only this Court can issue mandamus to direct the police to look into the complaint and thereafter come to a conclusion. At the same time, it cannot also be lost sight that the complainant has also the remedy of filing an appropriate

private complaint as proved under Section 200 of the Criminal Procedure Code.

5. On taking note of these aspects of the matter, the question for consideration is whether in the instant facts this Court should exercise its discretion to issue a mandamus in the nature as sought in a situation as it stands. Though, detailed reference with regard to the allegations and counter allegations need not be gone into, keeping in view the nature of the complaint which has been made and also the documents that has been produced, at this juncture, I am of the opinion, since further factual determinations would have to be made, the need for issue of mandamus would not arise. If, insofar as the incidents that have alleged to have been taken place, it would still be open for the petitioner to file an appropriate private complaint and seek action if permissible as otherwise it is stale at this stage to direct the police.

6. Further, if any future incidents occur, certainly it would be open for the petitioner to file a specific complaint with regard to the nature of the offence said to have been committed by the fourth respondent and if such complaint indicating the details of the same is made, certainly the police authorities would look into the same and take further action. In that regard also, it would be open for the petitioner to file a private complaint, if no action is taken.

7. However, with regard to the second prayer made in the petition that there is intimidation from the fourth respondent and protection be granted to the petitioner, taking note of the fact that the instant petition was filed as far back in the year 2011, a direction in that regard at this stage would not be necessary. However, if there is any complaint of a similar nature and if there is apprehension about the safety of his or his family members' life, it would certainly open to the petitioner to file a fresh request before the police authorities in that

regard. If such request is made, the third respondent will assess the threat perception and thereafter, come to a conclusion on that regard in accordance with law.

With the said liberty to the petitioners, the instant petition stands disposed of.

**Sd/-
JUDGE**

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