

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30th DAY OF DECEMBER 2020

BEFORE

THE HON'BLE Dr.JUSTICE H.B.PRABHAKARA SASTRY

CRIMINAL PETITION NO.100974/2020
c/w CRIMINAL PETITION NO.101043/2020

IN CRL.P. NO.100974/2020

BETWEEN:

PARAMESHWAR NAIK P.T.
AGE: 57 YEARS, OCC: MLA HARAPANAHALLI
R/O: LAKSMIPURA, HARAPANAHALLI,
DIST: BALLARI.

... PETITIONER

(BY SRI. H.S. CHANDRAMOULI, ADV. FOR
SRI. K.L. PATIL AND SRI. S.S.BETURMATH, ADVS.)

AND:

1 . THE STATE OF KARNATAKA
THROUGH HARAPANAHALLI POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA BUILDING, HARWAD.

2 . SRI.B. REVANAGOUDA
AGE: MAJOR, OCC: ADVOCATE,
R/O: ADVOCATES ASSOCIATION,
HARAPANAHALLI-583131, DIST: BALLARI.

.. RESPONDENTS

(BY SRI. PRAVEEN UPPAR, HCGP FOR R1.
SRI. S.H. MITTALKOD AND VINAY S. KOUJALAGI, ADVOCATE FOR
R2)

THIS CRIMINAL PETITION IS FILED U/SEC.482 OF CR.P.C.,PRAYING TO QUASH THE FIR AND COMPLAINT REGISTERED AT HARAPANAHALLI P.S.CRIME NO.128/2020 FOR THE OFFENCE PUNISHABLE UNDER SECS. 420, 465, 466, 468, 471 R/W SEC.34 OF IPC AND SEC. 125 OF RP ACT 1951 AND INITIATION OF INVESTIGATION IN SO FAR AS THIS PETITIONER CONCERNED.

IN CRL.P. NO.101043/2020
BETWEEN:

BHARAT P. S/O P.T. PARAMESHWAR NAIK
AGE: 25 YEARS, OCC: AGRICULTURE,
R/O: LAKSMIPURA, HARAPANAHALLI,
DIST: BALLARI-583131.

..Petitioner

(BY SRI. H.S. CHANDRAMOULI, ADV. FOR
SRI. K.L. PATIL AND SRI. S.S.BETURMATH, ADVS.)

AND:

1 . THE STATE OF KARNATAKA
THROUGH HARAPANAHALLI POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA BUILDING, DHARWAD.

2 . SRI.B. REVANAGOUDA
AGE: MAJOR, OCC: ADVOCATE,
R/O: ADVOCATES ASSOCIATION,
HARAPANAHALLI-583131, DIST: BALLARI.

RESPONDENTS

(BY SRI. PRAVEEN UPPAR, HCGP FOR R1.
SRI. S.H. MITTALKOD AND VINAY S. KOUJALAGI, ADVOCATE FOR
R2)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C., PRAYING TO CALL FOR THE RELEVANT RECORDS AND QUASH THE FIR AND COMPLAINT REGISTERED AT HARAPANAHALLI P.S.CRIME NO.128/2020 FOR THE OFFENCE PUNISHABLE UNDER SEC.420, 465, 466, 468, 471 R/W SEC.34 OF IPC R/W SEC.125(A) REPRESENTATION OF PEOPLES ACT, 1951 & 1988 AND INITIATION OF INVESTIGATION IN SO FAR AS THIS ACCUSED NO.2 PETITIONER CONCERNED.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.12.2020, COMING ON FOR PRONOUNCEMENT OF ORDERS THROUGH PHYSICAL HEARING/VIDEO CONFERENCING HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner in Crl.P.100974/2020 and the petitioner in Crl.P.No.101043/2020 are respectively accused Nos.1 and 2 in Crime No.128/2020 in the first respondent police station for the offence punishable under Sections 420 465, 466, 468 and 471 read with Section 34 of the Indian Penal Code (hereinafter for brevity referred to as the 'IPC') and under Section 125(A) of the Representation of People Act, 1951 and 1988 (hereinafter for brevity referred to as the 'RP Act'). The

petitioners have sought for quashing of the said alleged crime against them.

2. The summary of the case of the prosecution is that one Sri. B. Revanagouda, Advocate and also said to be the President of Advocates' Association, Harapanahalli, has sent notices in the form of complaint to several of the dignitaries and also sent the same complaint to the Superintendent of Police, Davanagere and the Deputy Superintendent of Police, Harapanahalli. In the said complaint, which is dated 02.02.2016, the complainant has stated that, based on an information given to him by his client one Sri.D.Limba Nayak, an advocate, he is complaining that one Sri. Bharat (the petitioner in Crl.P.No.101043/2020) is the son of a Minister by name Parameshwar Naik (the petitioner in Crl.P.No.100974/2020), who was born on 07.11.1994 in Chigateri Hosptial at Davanagere and the said date was also registered with the Registrar of Births, who has issued a certificate in that regard. Even in his School records also, his

date of birth is shown as 07.11.1994. However, to enable him to contest in the election of Gram Panchayat from Laxmipura of Harapanahalli taluk, in order to make him to show that said Bharat was not less than 21 years of age as on the said date to contest the election, accused No.1 influencing the Head Master of the School and also putting him to life threat, got the month of the birth of his son (accused No.2) altered from November to January ('11' to '1') and projected him as 21 years old for contesting the election. In the election, accused No.2 was elected and was also chosen as the Chairman of the Panchayath. When the client of the complainant Sri. D.Limba Naik enquired about the same with the concerned authorities, he was put to life threat. Stating this, the complainant had requested all the addressees in his complaint notices to take appropriate action against the erring persons including the present petitioners.

The said complaint notice is said to have received in the Office of the Superintendent of Police, Davanagere and

registered in GNL-2/LPT/218/2016 and under KGSC No.94160600162 and sent the said complaint to the Deputy Superintendent of Police, Harapanahalli Sub-Division, Harapanahalli. The said Superintendent of Police received the said complaint on 23.02.2016 (in the FIR it is shown as 22.03.2019) and registered the same in HPT/10/Ha.U.V/2016 and initiated inquiry. He also sent the documents collected during inquiry with a report on 01.07.2016 to the Forensic Science Laboratory and received a report from them on 27.07.2020. It is thereafter, on 06.08.2020, recommending to take suitable action in accordance with law, he sent the papers to first respondent police station, who registered the same in their Station Crime No.128/2020 for the alleged offence against the present petitioners arraigning them as accused Nos.1 and 2 and also against the Head Master, Rajasomashekhara English Medium School, Harapanahalli town.

3. Though this matter is listed for admission, with the consent of learned counsel from both side, the same are taken up for final disposal.

4. Heard the arguments from both side.

5. Learned counsel for the petitioner in his argument submitted that the complaint was not registered immediately after its receipt by the police and have caused enormous delay, even though the alleged offence are cognizable in nature which is against the directives given by the Hon'ble Apex Court in its judgment in ***Lalitha Kumari v. Government of Uttar Pradesh and others*** reported in (2014) 2 Supreme Court Cases 1. He further stated, the complainant Sri.B.Revanagouda is not a true complainant because he has stated that he has given the said complaint based on the information given to him by one Sri. D.Limba Naik. Therefore, the police have not identified as to who is the true complainant. He further submitted that, for the alleged violation of the election process, the complainant or anybody

have not initiated any election petition under the relevant provisions of law. He further stated that no allegations is made against accused No.1 in the complaint, further, no details are forthcoming in the complaint about the alleged life threat said to have been given by the accused to the said Sri.Limba Naik.

6. Finally stating that the complaint is vague and does not even make out a prima facie case, the learned counsel prays for allowing the petition as prayed.

7. Learned High Court Government Pleader for respondent No.1 in his argument submitted that the complaint was received by the Superintendent of Police on 04.02.2016 but not on 04.03.2016 as mentioned in the FIR. He also submitted that the Deputy Superintendent of Police received the complaint forwarded to him on 23.02.2016 but not on 23.02.2019 as shown in the FIR. He submits that the delay in registering the complaint, as a crime, is because of the preliminary investigation undertaken by the Deputy

Superintendent of Police. It is only after ascertaining other materials to proceed further, a crime was registered with the first respondent Police station. Though, he stated that the Office of the Superintendent of Police registered the said complaint under No.GNL-2/LPT/218/2016 so also the Office of the Deputy Superintendent of Police also registered the very same complaint in No.HPT/10/Ha.U.V/2016 but fairly conceded that neither of them have registered the complaint, as a crime in the first respondent police station and admittedly, FIR is not registered under Section 154 of Cr.P.C.

8. Learned counsel for respondent No.2 in his argument submitted that there is commission and omission by police including the Superintendent of Police. He submitted that since there is omission and commission on the part of the police, the Superintendent of Police ought not to have sent the complaint to the Deputy Superintendent of Police but he should have sent the same to the Station House Officer of the first respondent police station with a direction to register the

complaint, as a crime for the alleged offence. He further submitted that for the improper handling of the complaint by the Police, the complainant (respondent No.2) should not be made to suffer.

Referring to ***Lalitha Kumari's case (supra)***, he submits that, in such an event, the Court should direct the concerned to take appropriate action against the erring Police officials. He further submitted that the second respondent himself is the complainant and merely because he has referred to the name of one Sri.D.Limba Naik as an informant by that itself it cannot be said that the complaint is vague. In his support he relied on the judgment of Hon'ble Apex Court in ***Kedar Narayan Parida and others v. State of Orissa and another*** reported in (2009) 9 Supreme Court Cases 538 and also to a Division Bench judgment of this Court in the ***State of Karnataka v. Mahesh Kumar and others*** in ***Criminal Appeal No.470/2014(A)*** dated 28.02.2020.

9. In the instant case, among the offences alleged against the present petitioners, Sections 420, 468 and 471 of IPC are cognizable offence. The Hon'ble Apex Court in **Lalitha Kumari's** case (*supra*) at paragraph No.119 and 120 was pleased to observe as below:

" 119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely 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.

Conclusion/Directions:

120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. 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.

120.3. 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.

120.4. 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.

120.5. 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.

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.

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

120.8. 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."

10. From the above observation of the Hon'ble Apex Court, it is clear that where the complaint discloses about commission of a cognizable offence, registration of FIR is mandatory. Once the complaint mentions the commission of cognizable offence, there would be no other option to the recipient of the complaint i.e. the police but to register the FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is

falsely given, whether the information is genuine, whether the information is credible etc.

11. In the instant case, admittedly, the complaint reached the Superintendent of Police, Davanagere on 04.02.2016 and the complaint was alleging certain cognizable offence against the accused. Admittedly, the FIR was registered only on 06.08.2020. In column No.3(c) of the FIR, an explanation is given stating that since the documents collected during enquiry were sent for expert's report to the Forensic Science Laboratory in the year 2016 and the report of the same came on 27.07.2020 after discussing the matter with the Deputy Superintendent of Police and obtaining the direction, FIR was registered. The said reasoning shown in the FIR is not at all convincing and not acceptable for the simple reason that the said column No.3 is meant for reasons to be shown by the complainant for the delay in reporting of the alleged offence but not for the alleged delay caused by the police/Investigating Agency for the delayed registration of FIR.

Apart from the same, even the reason shown is also not a valid reason for immediately not registering the FIR even after the receipt of the complaint with respect to the commission of a cognizable offence.

It cannot be ignored of the fact that the complainant has stated that one of the accused(accused No.1) was a Minister in the State Government. The complaint also alleges that the said Minister has misused his position, has influenced and also threatened the Head Master of the School and got the date of birth of his son(accused No.2) tampered, only to enable his son to contest the Panchayat election. Thus, it appears to be evident that the act of the Police, more particularly, the act of the Superintendent of Police and the Deputy Superintendent of Police are violative of the directions given by the Hon'ble Apex Court in ***Lalitha Kumari's case (supra)***.

12. When the complaint specifically and categorically mentions that the date of birth of accused No.2 was tampered by the accused only to enable accused No.2 to contest the

election for Laxmipura Gram Panchayat and the complainant has also produced copies of the documents in support of his complaint to show that the alleged tampering registered date of birth of accused No.2, as maintained in the school records, then it was necessary for the recipient of the complaint i.e. the Superintendent of Police and the Deputy Superintendent of Police, to whom the complainant had sent the complaint and admittedly when the Superintendent of Police had received the complaint on 04.02.2016, to register the FIR under Section 154 of Cr.P.C. No preliminary enquiry was required to be made by them at that instance. At the stage of registration of FIR what is to be seen is merely whether the information given ex facie discloses the commission of cognizable offence. If after investigation, the information given is found to be false, as held by their Lordships in ***Lalitha Kumari's case (supra)***, there is always an option to prosecute the complainant for filing a false FIR. As such, even though no preliminary enquiry was permissible, in such a situation, like the one on hand, the

Superintendent of Police and the Deputy Superintendent of Police for the reasons best known to them have delayed the registration of FIR for not less than four years six months, by which time, the term of the panchayat might have been nearing to an end.

13. Learned counsel for respondent No.2 in his argument submitted that for the fault of the police, the complainant should not suffer. In his support, he relied upon ***Kedar Narayan Parida's case (supra)*** wherein the Hon'ble Apex Court at paragraph 49 of its judgment was pleased to observe as below:

"49. When any illegality and/or mala fide action on the part of the investigating authorities, either on its own or at the behest of an interested party, is brought to the notice of the High Courts, the High Courts in exercise of their inherent and plenary powers are entitled to intervene to set right the illegality and/or mala fide action on the part of the investigating authorities....."

14. Learned counsel for the second respondent has also relied upon the judgment of a Division Bench of this Court in ***Mahesh Kumar's case (supra)***, where, after relying upon

several of the judgments of the Hon'ble Apex Court and after noticing laches on the part of the Investigating Agency in conducting investigation in criminal matters, various directions/recommendations given/made, and had also directed the Director General and the Inspector General of Police of the State to initiate disciplinary proceedings against the Investigating Officer, who conducted the defective or illegal investigation and take appropriate action against the Investigating Officer, in accordance with law. It had also directed the Director General and the Inspector General of Police to give training to the Investigating Officers within six months to ensure that proper investigation is conducted in heinous offence which takes place. Even in ***Lalitha Kumari's case(supra)*** also at paragraph 120.4, the Hon'ble Apex Court was pleased to observe that, 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.

15. In the instant case, the inaction or intentional non-action on the part of the concerned Superintendent of Police and the Deputy superintendent of Police have defeated the very purpose of lodging a criminal complaint for a cognizable offence. Their inaction or intentional non-action has caused an inordinate delay of four years and six months in registering the complaint by which time many material evidences in existence might have been vanished/destroyed/or made non-available.

16. In the instant case, the inordinate delay in registering the complaint and immediately non-registering the FIR even though the complaint with respect to the commission of cognizable offence was given has naturally defeated the entire purpose of the criminal investigation. Further the complaint does not give any details as to the role alleged to have been played by the present petitioners in the alleged commission of

crime and thus the allegation made against the present petitioners appears to be vague. As such, the continuing the investigation and compelling the present petitioners to face investigation and the trial, provided the same follows subsequently, would be putting the petitioners to unnecessary hardship.

17. In *Kishan singh (D) thorough L .Rs. v. Gurpal Singh and Ors.* reported in *AIR 2010 Supreme Court 3624*, the appellant had challenged the order of quashing the first information report lodged by him for the offence punishable under Sections 420, 423, 467, 468, 471 and 120B of IPC by the Punjab and Haryana High court at Chandigarh in Crl.Misc.No.4136 of 2003. The only question for consideration before their Lordship in the Apex Court was whether the Criminal Proceedings can be quashed by the High Court relying upon a finding of Civil Court on an issue involved in criminal proceedings in respect of the same subject-matter. Though the High Court held that the finding of facts recorded by the

Civil Court in a suit would not have any bearing on criminal case and vice-versa and that FIR cannot be quashed relying on the said proceedings, however, considering that delay in filing the FIR was not explained and the criminal proceedings would amount to the abuse of process of law, it did not interfere with the order passed by the High Court quashing criminal proceedings.

18. In the instant case also, as already observed above, though it shows serious laches, omissions and commissions on the part of the concerned Superintendent of Police and the Deputy Superintendent of Police which has resulted in enormous delay of four years six months in registering the FIR but the criminal proceedings since would result into the abuse of process of law, the same deserves to be quashed as against the present petitioners.

In the light of the above, the Director General and the Inspector General of Police of the State of Karnataka is directed to take appropriate action against the concerned

Superintendent of Police and the Deputy superintendent of Police in accordance with law.

Accordingly, I proceed to pass the following order.

ORDER

Both the Criminal Petitions are allowed. The FIR and complaint registered by the first respondent police in Crime No.128/2020 is quashed, however, confining to the present petitioners.

The Registrar General is directed to send a copy of this order forthwith to the Director General and the Inspector General of Police, State of Karnataka and to the Principal Secretary to the Department of Home, State of Karnataka forthwith for their information and needful in the matter.

**Sd/-
JUDGE**

kmv