

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD

* * * *

WRIT PETITION NO.12849 of 2019

Between:

Allu Srinivasa Rao, S/o A. Krishna Murthy, Age: 49 years, Occ: Private Employee, R/o H.No. 16-31-IXP-59 & 60, 9th Phase, KPHB colony, Hyderabad, presently residing at 1333 Bay, RD, Sharon, MA, 02067, USA).

..... Petitioner

And

State of Telangana represented by its Principal Secretary, Home Department, Secretariat, Hyderabad and four others.

..... Respondents.

DATE OF JUDGMENT PRONOUNCED: 11-05-2020

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

T. VINOD KUMAR, J

***THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

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< **GIST:**

> **HEAD NOTE:**

! **Counsel for Petitioner:** Sri D.V. Rao

^ **Counsel for Respondents:** Sri A. Manoj Kumar, Assistant Government Pleader for Home

? **Cases referred**

- 1 2010(4) CCR 134
- 2 2008(1) LRC 391 (Delhi)
- 3 (2008) 12 SCC 481

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.12849 of 2019

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India, for issuing a writ of *Mandamus* to declare the inaction of the 2nd respondent in taking steps to protect the life of petitioner's son from the 5th respondent i.e., the petitioner's wife, by registering a case against her and issuing a Look-out-Circular (LOC), as illegal, arbitrary and in violation of Articles 14 and 21 of the Constitution of India.

2. This case is listed today 'For Hearing' and is taken up through Video Conferencing.

3. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Home, appearing for respondents 1 and 2.

4. The brief facts of the case are that the petitioner, claims to be residing in the city of New Jersey, United States of America (USA). The petitioner and 5th respondent i.e. Allu Jaya Madhavi, were living in USA as husband and wife. It is claimed that the petitioner and 5th respondent have applied for and obtained divorce from the court in USA. It is further claimed by the petitioner that, the 5th respondent has transferred property purchased by the petitioner in Hyderabad, in favour of her parents by forging the petitioner's signatures and questioning her actions, the petitioner has filed cases before the High Court for the State of Telangana. While that being so, the petitioner claims that the 5th respondent has recently kidnapped the petitioner's son by name, Master Allu Sai Kalyan, who was leaving with him and forcibly brought him to India. Petitioner also claims that the 5th respondent is threatening to kill his

son, if the petitioner does not withdraw the cases filed by petitioner against the 5th respondent. It is also stated that two days prior to the petitioner lodging the complaint with the 2nd respondent viz., 21st June, 2019, the petitioner's son was forcibly taken to India by the 5th respondent from USA and the petitioner's son is in the custody of the 5th respondent. According to the petitioner, the 5th respondent is now staying at Hanuman Junction. Stating the above, the petitioner has lodged an e-mail complaint with the 2nd respondent on 21.06.2019 at 12.26 AM EDT (Eastern Day Time) requesting the 2nd respondent police to register the complaint and protect the petitioner's son from the illegal custody of the petitioner's wife as well as issue a Look-out-Circular to prevent her from escaping from India.

5. Learned counsel for the petitioner vehemently contends that the 2nd respondent, with whom the petitioner has lodged the above complaint through e-mail, has not taken any action, while the 2nd respondent is known to take action by eliminating people through encounter. Despite this Court cautioning the learned counsel for the petitioner not to make irrelevant submissions unconnected with the case, learned counsel for the petitioner persisted with the same.

6. *Per contra*, learned Assistant Government Pleader for Home submits that the petitioner has filed the present writ petition with concocted facts to mislead the court. Learned Assistant Government Pleader further submits that based on the complaint made by the petitioner on 21.06.2019, the 2nd respondent had got caused an enquiry with regard to the alleged immovable property and found that no such property exists as claimed by the petitioner. Further, by the said complaint itself, since it is stated that the 5th respondent is now residing at Hanuman Junction which is in Vijayawada of Krishna District, State of Andhra

Pradesh, the 2nd respondent authority has no jurisdiction over the State of Andhra Pradesh and the same had been informed to the petitioner through e-mail on 26.06.2019. That, despite such communication being sent, the petitioner is pursuing with the present writ petition, and therefore, prays that the same is liable to be dismissed with costs.

7. In reply to the above submissions, learned counsel for the petitioner submits that when such a complaint is lodged by the petitioner expressing concern about the life and liberty of the son of the petitioner, the respondent police ought to have registered a zero FIR and ought to have swung into action and transferred the case to the concerned police station having jurisdiction.

8. Since, safety and security of a person is involved, this court decided to examine the matter in detail and queried with the learned counsel for the petitioner as to how and where did the kidnap take place and how did the 5th respondent come to India along with the petitioner's son - the learned counsel for the petitioner has stated the sequence of events to be as under :

On the day the petitioner lodged the complaint with the 2nd respondent, *"the 5th respondent rang the bell of the petitioner's house in New Jersey, and when petitioner opened the door, the 5th respondent, barged into the house and pulled the son from the petitioner's house forcibly, put him in a car and drove to airport and took a flight to India."*

9. Based on the complaint lodged by the petitioner vide 21.06.2019 claiming to be from USA and also the facts of the case as narrated by the counsel during the course of hearing, it is the admitted case of the petitioner, that the petitioner's son is stated to be kidnapped from his

custody in U.S.A. The case as pleaded before this court as narrated above, is at variance from the facts stated in the complaint.

10. In the complaint lodged by the petitioner with the 2nd respondent through e-mail claiming to be from USA by mentioning the USA address and EDT, it is stated that the 5th respondent had kidnapped petitioner's son '*recently*', without mentioning the date of such occurrence and how recently the said incident having taken place. Nothing has been mentioned or stated in the affidavit, as to what action the petitioner had taken, with regard to the alleged incident of kidnapping, either on the day of lodging of the complaint with the 2nd respondent as claimed by the counsel during the course of hearing or during the period between 'recently' to the date of lodging of complaint, as stated in the complaint. Further, the facts as stated by the petitioner also do not lend any credence to the case of the petitioner, for the fact that, travel from USA to India, requires a person to possess a passport, VISA and is also required to go through immigration check for stamping of departure and arrival etc., apart from possessing a air-ticket to travel and it is not expected of a boy carrying his passport with an Indian VISA with him, while being in the house, during the alleged incident of kidnapping. Though, the sequence of events as stated are no less cinematic, this court is at a loss to fathom the reason behind the petitioner lodging the complaint with the 2nd respondent when the alleged incident took place in USA and the 5th respondent along with the kidnapped boy are living at Hanuman Junction, Vijayawada, Krishna Dist, in the State of A.P., as per petitioner's own assertion.

11. The fallacy of the case of the petitioner is further borne out from the fact that, though the petitioner sought to give an impression that the complaint is being made from USA by altering time zone settings in the e-

mail i.e, EDT (Eastern Day Time settings as applicable in USA by advancing an hour during summer time), the affidavit filed into this court is sworn to by the petitioner on 22.06.2019 at Hyderabad., the following day of the complaint, without even waiting for a day and the signed papers have been filed into the court on 24.06.2019. This only goes to show that the petitioner was premeditated to file the present writ petition on some pretext or the other and in furtherance thereof has lodged the present complaint by e-mail as if being sent from USA. The another aspect that goes to show the petitioner not approaching this court by stating true facts would be evident from the affidavit filed into this court, wherein it is claimed that the petitioner is presently residing at 1333, Bay RD, Sharon, MA 02067, i.e., in Massachusetts State of USA, while in the complaint lodged with the respondent no. 2, the petitioner has shown his address as 246, Academy St., 3rd Fl, Jersey City, New Jersey, NJ 07306, USA. Further, if the affidavit is sworn to by the petitioner in Massachusetts State of USA, as being claimed, the same should bear apostille or atleast signed before a Notary Public in USA before being sent to India. In addition, it is not clear as to why the petitioner chose to mention New Jersey address in the complaint, if he is living in the State of Massachusetts of USA, as shown in the affidavit. On the other hand, it is evident that the petitioner using USA time zone settings in his e-mail, has lodged a complaint with the 2nd respondent to show that such complaint is being made from USA, while the petitioner being in Hyderabad, may be anticipating that the complaints made from USA receive the desired attention.

12. Though there are many more shortcomings in the case of the petitioner, including the claim of the son being in the custody of the petitioner before being kidnapped by the 5th respondent as per the

judgement of divorce dated 08.08.2016 of the Norfolk Probate and family Court, the property being transferred by the 5th respondent by allegedly forging the signatures of the petitioner, this court is of the view that the same are not required to be considered since the same would not advance the case of the petitioner any further and on the other hand would go to show the falsity of the claim being made by the petitioner.

13. The learned counsel for the petitioner as a last ditch effort, submits that though as per the communication dated 26.06.2019, the place where 5th respondent resides may fall under the jurisdiction of the Police authorities of State of AP, the 2nd respondent ought to have registered a "0" FIR and take up the investigation. The said submission as made by the learned counsel is not found in the pleadings and this court is aware that the above submission is being made, since the concept of "0" FIR has been talked about in recent times due to an unfortunate occurrence in the State. Though, the concept of registering a "0" FIR was suggested by Justice Verma Committee constituted in the year 2012 to recommend amendments to Criminal Law particularly in relation to offences against women, the same was not implemented in the State of Telangana. It is only from the 04th December, 2019, the "0" FIR concept was introduced in the State of Telangana, where a complaint can be lodged in any police station even if the offence takes place outside the territorial jurisdiction of the said police station. However, the "0" FIR was introduced only in respect of offences against women such as women missing cases and not in relation to other cases. Thus, at the relevant point of time when the petitioner lodged a complaint, the "0" FIR concept was not in place and also that the same is not applicable to the cases of the present nature being complained off.

14. Nothing has been brought to the notice of this court to show that the petitioner took any further action by approaching the concerned authorities in the State of Andhra Pradesh after being informed of the offence committed being outside the jurisdiction of the 2nd respondent, by e-mail dated 26.06.2019 issued from the office of the 2nd respondent in response to the e-mail complaint dated 21.06.2019 lodged by the petitioner. In absence of any such action being taken, would go to show that the complaint lodged by the petitioner is not genuine and is intended to bolster up the petitioner's fight against his wife in the matrimonial and pending civil disputes. The reliance placed by the learned counsel for the petitioner on the judgment of the Delhi High Court in the case of **Sumer Singh Salkan V. Asst. Director (Delhi)**¹, is a case dealing with opening of Look Out Circular against the petitioner in the said case and has no relevance to the facts of the present case. On the other hand the judgment rendered by the Delhi High Court in the case of **Bimla Rawal and others V. State (NCT of Delhi)**², is more apposite, where the Delhi High Court was pleased to quash the "0" FIR registered in Delhi for an offence committed in Mumbai.

15. In view of the above, the action of the 2nd respondent in not registering a case based on the e-mail complaint of the petitioner dated 21.06.2019, cannot be found fault with, as it is clear that the 2nd respondent has no authority at all either to register the case, since, the alleged offence did not take place within the jurisdiction of the 2nd respondent, nor the 5th respondent was residing within the jurisdiction of the 2nd respondent authority. The 2nd respondent authority cannot even take steps for issue of LOC as being claimed by the petitioner. The entire

1 2010(4) CCR 134

2 2008(1) LRC 391 (Delhi)

endeavor of the petitioner appears, some how or the other, to have a case registered against his wife, to settle their *inter se* matrimonial / civil disputes unconnected with the alleged incident. Further, as the petitioner has approached this court with unclean hands, concocted facts and by not making the true disclosure of events, is not entitled for relief under Article 226 of Constitution of India, as held by the Hon'ble Supreme Court in the case of ***K.D. Sharma V. Steel Authority of India Limited and Others***³, where in the Hon'ble Supreme Court was pleased to observe –

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

The Hon'ble Supreme Court in the above mentioned judgement was further pleased to observe that –

“39. If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material

3 (2008) 12 SCC 481.

facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

16. Having regard to the above settled position of law and the facts of the case as stated herein above, the writ petition, set in motion by the petitioner, is misconceived and an abuse of process of law and is accordingly liable to be dismissed.

17. In the result, the writ petition is dismissed with costs. Costs quantified at Rs.5,000/- (Rupees Five Thousand only) to be paid to the Telangana State Legal Services Authority.

18. Pending miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE T.VINOD KUMAR

Date:11.05.2020

Note: L.R. copy to be marked

B/o
GJ