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**Ganesh S Hegde S/O Shankrappa ... vs The State Of Karnataka on 8 March, 2022**

**Bench: Suraj Govindaraj**

 :1:

 IN THE HIGH COURT OF KARNATAKA

 DHARWAD BENCH

 DATED THIS THE 08TH DAY OF MARCH, 2022

 BEFORE

 THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

 WRIT PETITION No.100746/2022 (GM-POLICE)

BETWEEN

GANESH S. HEGDE,

S/O. SHANKRAPPA HEGADE,

AGE 61 YEARS, OCC: AGRICULTURIST,

R/O. ATTIMURD, POST HEROOR,

TALUK : SIDDAPURA, PIN : 581450

 ... PETITIONER

(BY SHRI. VISHWANATH BHAT, ADVOCATE

FOR SRI. NARAYAN V. YAJI, ADVOCATE)

AND

1. THE STATE OF KARNATAKA,

 DEPARTMENT OF HOME AFFAIRS,

 VIDHANA SOUDHA, DR. AMBEDKAR VEEDHI,

 BENGALURU-560001.

2. THE TAHSILDAR SIDDAPURA,

 UTTAR KANNADA DISTRICT - 581355.

3. THE DEPUTY SUPERINTENDENT OF POLICE,

 SIRSI, UTTAR KANNADA DISTRICT,

 PIN : 581401.

4. THE INSPECTOR OF POLICE,

 SIDDAPURA TALUKA,

 UTTAR KANNADA, DISTRICT-581355

 ... RESPONDENTS

(SHRI. SHIVAPRABHU HIREMATH, AGA FOR RESPONDENTS)

 THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227

OF CONSTITUTION OF INDIA, READ WITH SECTION 482 OF

 :2:

CR.P.C., PRAYING TO ISSUE A WRIT OF MANDAMUS AND DIRECT

THE RESPONDENT NO.2 TO CONSIDER THE REPRESENTATION OF

THE PETITIONER DATED 01.02.2022 VIDE ANNEXURE-E TO THE

WRIT PETITION AND ALSO DIRECT THE 3RD RESPONDENT TO

REGISTER FIR IN PURSUANCE OF A COMPLAINT SUBMITTED BY

THE PETITIONER ON 20.01.2022 VIDE ANNEXURE-D TO THE WRIT

PETITION AS IT IS ILLEGAL AND UNCONSTITUTIONAL.

 THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE

COURT MADE THE FOLLOWING:

 ORDER

1. The petitioner is before this Court, seeking for the following reliefs:

 (i) Issue a writ of mandamus and direct the

 respondent No.2. to consider the

 representation of the petitioner dated

01.02.2022 vide Annexure-E to the writ petition and also direct the 3rd respondent to register FIR in pursuance of a complaint submitted by the petitioner on 20.01.2022 vide Annexure-D to the writ petition as it is illegal and unconstitutional.

(ii) Issue a writ, mandamus, direction or declaration or pass such other orders as this Hon'ble Court deems fit under the facts and circumstances of the case, to meet the ends of justice.

2. The grievance of the petitioner is that, the petitioner on 20.01.2022, at about 10.00 a.m. on account of his sister and her husband having entered the property of the petitioner with 30 gunda elements and removed the standing Areka Nut crop by force and threatened.

3. The petitioner immediately called the respondent No.4 over telephone however no action was taken. Despite the first information having been provided, no complaint was registered. Hence, the petitioner called the police helpline No.112 and informed about the non-cooperation of the 4th respondent and for registration of FIR, despite which no action has been taken. Subsequently, the petitioner approached respondent No.3 the Deputy Superintendent of Police, requesting him to initiate action.

4. The Deputy Superintendent of Police had directed the 4th respondent Inspector of Police to take action despite which the 4th respondent has not registered a complaint, but called upon the petitioner and his sister to come to the Police Station along with the documents relating to the property for the purpose of enquiry.

5. It is on the above basis, the petitioner is before this Court contending that, the respondents have not registered an FIR in pursuance of first information provided by the petitioner and therefore, his rights have been violated so also the procedure prescribed by the Apex Court in the case of Lalita Kumari Vs. Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1.

6. Sri. Narayan V. Yaji, learned counsel for the petitioner would submit that, since the petitioner had informed the 4th respondent and or the Police helpline about the commission of a cognizable offence, an FIR ought to have been registered which till date has not been registered. On this ground, he submits that, the relief as sought is required to be granted.

7. Sri. Shivaprabhu Hiremath, learned AGA would however submit that, there is no call received by the 4th respondent, a call was made only to the police helpline No.112, the operator had informed the person attending the emergent call in the sub- police station, who in fact had visited the spot and having found that there are some disturbance had directed the persons present there not to cause any nuisance and had asked them to attend to Police Station along with the documents of the disputed property.

8. Though the petitioner's sister attended to the enquiry along with the possession receipt and Judgment copy, the petitioner did not attend to the enquiry and as such his complaint was not registered.

9. He further submits that, the petitioner directly approached the Office of the Deputy Superintendent of Police the respondent No.3, complaining about the trespass to the land when respondent No.3 forwarded the same to the respondent No.4 seeking for a report in the matter.

10. After receipt of the information from respondent No.3, despite respondent No.4 making various phone calls to the petitioner, the petitioner did not come forward or assist in the enquiry, therefore, no action has been taken, the writ petition has filed is misconceived and no relief can be granted in the present matter.

11. These being the submissions by both the counsels, the point that would be required to be determined by this Court is "Whether on information being received, either on the police helpline or directly to a police station, the concerned Officer can carryout a enquiry, requiring the complainant to attend an enquiry before registering of a complaint?"

12. This aspect is no longer a res integra. The Apex Court in the case of Lalita Kumari's case (supra) has extensively dealt with the matter and has concluded on the applicability and the procedure to be followed as also issued various directions. The same are reproduced hereunder for easy reference:

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

120.1. The registration of FIR is mandatory under [Section 154](https://indiankanoon.org/doc/1034470/) 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."

13. A perusal of the above indicates that, whenever any information is received disclosing a commission of a cognizable offence, there is no preliminary enquiry which is permissible and FIR is required to be registered by the person receiving information. It is only when the information received does not disclose a cognizable offence, a preliminary enquiry could be conducted to ascertain if there is a cognizable offence committed or not. If the enquiry discloses the commission of a cognizable offence an FIR must be registered.

14. These being the categorical findings of the Apex Court, applying the same to the present case, there was a call alleged to have been made by the petitioner to the respondent No.4 complaining about the trespass by his sister, her husband and 30 gunda elements into his property and the removal of the standing Areka Nut crop in the said property. This aspect is denied by the respondents. However, it is admitted that there was a call made to the police helpline Number on "112", informing the said police helpline about the trespass and removal of Areka Nut.

15. Once, such an information has been provided by any citizen to the police helpline or to the police station and that information discloses the commission of a cognizable offence as in this case, inasmuch as the trespass into the property of the petitioner and removal of Areka Nut is a cognizable offence in terms of [Sections 441](https://indiankanoon.org/doc/1768645/) and [427](https://indiankanoon.org/doc/222396/) of the Indian Penal code. The information disclosing the offence ex facie being cognizable there was no enquiry which was required to be conducted as sought to be contended by the learned AGA. The decision of the Apex Court in the case of Lalita Kumari (supra) is very clear.

16. The Apex Court has also stated that in the event of a Police officer not registering the offence when a cognizable offence is disclosed, action must be taken against the erring officials, who do not register an FIR.

17. In the aforesaid circumstances and on the basis of the aforesaid reasoning, I pass the following:

ORDER

(a) A Mandamus is issued, directing the respondent No.2 to consider the representation of the petitioner dated 01.02.2022 and register the FIR in pursuance of the complaint submitted by the petitioner on 20.01.2022 and thereafter investigate the matter.

(b) The Superintendent of Police, Uttara Kannada District is directed to enquire into the matter and take suitable action against the respondent No.4 for violation of the directions issued by the Apex Court in the case of Lalita Kumari (supra) and submit a report to this Court, within a period of eight weeks from today.

(c) With the above observation, the writ petition stands allowed.

Sd/-

JUDGE SVH