

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

WP (CrI.) 03 (AP)2018

1. *Shri Gombu,
S/o Lt. Tow Tsering,
Permanent resident of Vill-Khaso,
P.O./P.S.- Dirang, Dist-West Kameng.*
2. *Shri Sang Leto,
S/o Lt. Phassang,
Permanent resident of Village Sangti,
P.O./P.S.-Dirang, Dist-West Kameng,
Arunachal Pradesh.*
3. *Shri Pem Tsering,
S/o Tashi Dorjee, Permanent resident of Vill-Sangti,
P.O./P.S.- Dirang, West Kameng, Arunachal Pradesh .*
4. *Shri Serap Dorjee,
S/o Karchung, Permanent resident of Vill-Sangti,
P.O./P.S.-Dirang, West Kameng District,
Arunachal Pradesh.*
5. *Shri Tsering,
S/o Dorjee, Permanent resident of Village-Sangti,
Dist-West Kameng District, Arunachal Pradesh.*

.....Petitioners.

By Advocate:
Mr. T. T. Tara.

-Versus-

1. *The State of Arunachal Pradesh, represented by
Chief Secretary-cum- the Chief Vigilance Officer, Govt. of
Arunachal Pradesh, Itanagar.*
2. *The Commissioner, Home & Vigilance
Govt. of Arunachal Pradesh, Itanagar.*
3. *The Superintendent of Police,
(Vigilance), Special Investigation Cell,
Govt. of Arunachal Pradesh, Itanagar.*
4. *The Officer-in-Charge,
Special Investigation Cell, Chimpu,
Itanagar, Govt. of Arunachal Pradesh.*

..... Respondents.

By Advocates:

Mr. K. Ete, learned Sr. Addl. Advocate General.

Date of Judgment & Order (Oral):28.06.2018.

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR
JUDGMENT & ORDER (ORAL)

By this petition under Article 226 of the Constitution of India, the petitioners have prayed for a direction to the respondent authorities to register a case against the miscreants, involved in illegal sale of their community land, on the strength of their complaint, dated 27.03.2018, and to investigate into the allegations made therein.

2. The petitioners' case, in a nut-shell, is that they lodged a complaint, on 27.03.2018, with the respondent No. 1/ the Chief Secretary-cum- the Chief Vigilance Officer, Government of Arunachal Pradesh; the respondent No. 3/ the Superintendent of Police (Vigilance), Special Investigation Cell, Government of Arunachal Pradesh and the respondent No. 4/ the Officer-in-Charge, Special Investigation Cell, Government of Arunachal Pradesh alleging, *inter-alia*, in connection with sale of their community land, measuring 73 acres by private persons, named therein, in connivance with the District administration, without their consent, to the Indo Tibetan Border Police (ITBP) in a very clandestine manner. The petitioners alleged that in the aforesaid transaction, the miscreants resorted to various criminal acts such as preparation of false bills, misappropriation of public fund etc and without following the prescribed procedure in the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. However, the said complaint has not been registered as a criminal case for the purpose of investigation.

3. Mr. T. T. Tara, learned counsel appearing on behalf of the petitioners, submits that the complaint filed by the petitioners disclosed commission of cognizable offences and in view of the mandate of the Supreme Court of India in ***Lalita Kumari Vs. Govt. of Uttar Pradesh***, reported in **(2014) 2 SCC 1**, the respondent authorities, although it is obligatory on their part to register a case, have not done so till date.

4. Mr. K. Ete, learned Senior Addl. Advocate General appearing for the State respondents, submits that as per the report of the respondent No. 3, a preliminary

enquiry was conducted and it revealed that the compensation amount paid to Sri Dorjee Letro, Sri Yeshe Tsewang, Sri Nima Dorjee, Sri Tashi and Sri Dowla Sermupa, considering the land in question being their private land. Mr. Ete assures that the enquiry into the allegations will be conducted in a time bound manner and action will be taken as per law. Mr. Ete, however, submits that no criminal case has been registered so far on the complaint.

5. Be it mentioned that Section 154 Cr.P.C. casts a statutory duty upon the Police Officer to register a case on receipt of an FIR as to commission of a cognizable offence. The case shall be registered as disclosed in the FIR. Genuineness or credibility of the information is not a condition precedent for registration of a case. Only in the case, where information received does not disclose a cognizable offence a preliminary inquiry may be conducted to ascertain, whether cognizable offence is disclosed or not. This is the mandate of the Apex Court in ***Lalita Kumari*** Case (Supra). In Para 120 of the said judgment, the Apex Court held as herein below extracted:-

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

120.1 The 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 information 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".

6. In the case, in hand, perusal of the complaint prima-facie discloses alleged commission of cognizable offences such as forgery, criminal breach of trust, cheating etc. Therefore, in such fact situation, law requires that a case is to be

registered first on the complaint and then to investigate. As held in ***Lalita Kumari*** (Supra), while ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry may be made time-bound and in any case, it should not exceed 7 days and the fact of such delay and the causes of it must be reflected in the General Diary.

7. Therefore, the respondent authorities are directed to immediately register or cause to register a criminal case, through competent authority, on the complaint filed by the petitioners, dated 27.03.2018 and investigate the same, in accordance with law, keeping in mind the mandate of ***Lalita Kumari*** case (Supra).

With the above direction, the writ petition stands disposed of.

JUDGE

Taloni