

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 879 of 2015

ORDER:

The issue that stems out for consideration in the present application filed under Section 438 Cr.P.C. is whether an offence punishable under Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act") is bailable or non-bailable.

Before answering the question, it may be useful to refer to the allegations made in the First Information Report, which are as under:

The petitioner herein worked as Sub-Divisional Police Officer, West Division, Guntur from 28.11.2011 to 09.02.2012 and from 12.02.2014 to 05.09.2014. During the said period, he is alleged to have given a depressing picture in investigating cases registered under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is stated that on the date of his transfer from the said station, he is alleged to have left behind 21 cases un-investigated without any reason. In the report, which is lodged by the Superintendent of Police, Guntur, a table showing the pendency of the cases is enclosed. In fact, the said report addressed to the Director General of Police, Andhra Pradesh, Hyderabad is recommending initiation of departmental action against the petitioner. However, the said letter written by the Superintendent of Police to the Director General of Police was made the basis for registering a case in Crime No.34 of 2015 of Narampalem Police Station, Guntur District, for an offence punishable under Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The present application is filed seeking release in

the event of arrest in connection with the above crime.

Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State of Andhra Pradesh, who opposed the petition on the ground of maintainability in view of the bar under Section 18 of the Act and also on the ground that the offence under Section 4 of the Act is bailable.

Before proceeding further it would be relevant to refer to Section 4 of the Act which reads as under:

4. Punishment for neglect of duties: Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties requires to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

Section 4 of the Act postulates imposing punishment on a public servant not being a member of Scheduled Caste or a Scheduled Tribe, who willfully neglect his duties required to be performed, with imprisonment of not less than six months but which may extend to one year.

It is to be noted that the offences under Section 3 of the Act are made punishable with imprisonment extending upto seven years or life imprisonment or death sentence and in no case it is made punishable with maximum imprisonment of less than five years. But the Act is silent as to whether the offences under Section 3 of the Act are bailable or non-bailable. Similarly, the Act is also silent as to whether the offence under Section 4 of the Act which prescribes maximum punishment of one year is bailable or non-bailable.

Since the Act is silent as to which of the offences are bailable and which of the offences are non-bailable, one has to fall back on to

the Code of Criminal Procedure to find out the same, as the Act does not exclude the applicability of the Cr.P.C., except on certain aspects. As per Section 2 (a) of Cr.P.C., bailable offence means an offence which is shown as bailable in first Schedule or which is made bailable by any other law for the time being in force. Non-bailable offence means any other offence. The first schedule appended to the Cr.P.C. contains two parts, 1) offence under IPC and (2) the offence under other laws.

In the second part of the first schedule to Cr.P.C., which deals with classification of offences against other laws, it is stated that if the offences are punishable with imprisonment for less than three years or with fine only, the same is bailable, non-cognizable and triable by any Magistrate. Section 18 of the Act states that nothing in Section 438 Cr.P.C. shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. From a reading of Section 18 of the Act, it is clear that bar under Section 438 Cr.P.C. shall apply when a person commits offences under the Act in which he is liable to be arrested.

Arresting a person would arise only if he commits an offence which is non-bailable. Since the punishment prescribed under Section 4 of the Act is an imprisonment upto one year and in view of the First Schedule to the Cr.P.C., the said offence has to be treated as bailable.

The said view of mine gets support from the judgment of the Apex Court in ***State of Madhya Pradesh v. Ram Krishna Balothia***^[1] wherein the Apex Court, while dealing with the constitutional validity of Section 18 of the Act and applicability of Section 438 Cr.P.C. to offences under the Act, held that the said provision does not apply to cases involving arrest of any person

accused of having committed any of the offences under Section 3 of the Act. The Apex Court dealt with virus of Section 18 of the Act vis-à-vis the offences which warrant arrest. The said judgment does not anywhere refer to the applicability of Section 438 Cr.P.C. and the bar under Section 18 of the Act insofar as the offence punishable under Section 4 of the Act is concerned, though the object, scheme and all the provisions of the Act were taken into consideration while dealing with the virus of Section 18 of the Act. It may also be noted here that the word “atrocities” as defined in Section 2 of the Act refers only to offences under Section 3 of the Act. From the above, it has to be held that offence under Section 4 of the Act which is punishable with a maximum imprisonment of one year is a bailable offence.

The next objection that was raised is whether First Schedule to Cr.P.C. can be made applicable to the offences under the Act when Part-II of First Schedule to Cr.P.C. states that offences which are punishable with imprisonment for less than three years are triable by the Court of Magistrate only, as the case on hand is triable by a Special Court constituted under the Act and presided over by the Sessions Judge. Section 26 (b) (ii) of Cr.P.C. gives an answer to this query. From a reading of the Section 26 (b) (ii), it is clear that if the Special law prescribes or refers a particular Court to deal with the case, the same shall be done exclusively by that Court though the schedule prescribes the same to be tried by some other Court. Ergo, though the offence under Section 4 of the Act is made punishable with a maximum imprisonment of one year and triable by a Special Court presided over by a Sessions Judge, the same has to be treated as a bailable offence in view of the findings recorded above. Hence, no application under Section 438 Cr.P.C. can be entertained.

Accordingly, the Criminal Petition is dismissed.

C. PRAVEEN KUMAR, J

06.03.2015

Note: L.R.copy to be marked.

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[\[1\]](#) (1995) 3 SCC 211