

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P. No.6226 of 2015

ORDER :

This Criminal Petition is filed by the petitioners/ accused Nos.2 to 5 under Section 482 Cr.P.C seeking to quash the proceedings in PRC No.5 of 2015 on the file of Additional Judicial First Class Magistrate, Kadiri, outcome of the final report filed by police under Section 173 Cr.P.C at the post investigation stage of Crime No.144 of 2013 of Mudigubba Police Station, Anantapur District from the report given by the 2nd respondent herein for the offences punishable under Sections 323, 355, 506 r/w 34 IPC and Sections 3 (i) (x) of SC/ST POA Act, 1989.

2) Heard learned counsel for the petitioners/ accused Nos.2 to 5 and 1st respondent—State represented by learned Public prosecutor before admission and before ordering notice to 2nd respondent—de facto complainant and perused the material on record.

3) The learned committal Magistrate has taken cognizance of the final report for the offences supra against five accused including petitioners/ A2 to A5. A1 has not approached this Court since he obtained regular bail at the post arrest stage. The petitioners/ accused Nos.2 to 5 by filing an application under Section 482 Cr.P.C obtained an order not to arrest while investigation going on. As referred supra, the police filed final report from the investigation, it is practically to say the interim direction not to arrest pending investigation of another bench of this Court seizes its force immediate to police filed final report under Section 173 Cr.P.C. It is after filing of the final report by police, the taking of cognizance by the Magistrate under Section 190 Cr.P.C of the offences arise.

Where the case is triable by Court of Sessions the subsequent stage is of committing the case to Court of Sessions under Section 209 Cr.P.C for in turn taking cognizance by the Court of Sessions under Section 193 Cr.P.C. The law is fairly settled on the scope of Section 209 Cr.P.C that subject to application of mind at the stage of taking cognizance under Section 190 Cr.P.C by the committal Magistrate where it appears at that stage from the material of the case triable by Court of Sessions, to commit the case under Section 209 Cr.P.C subject to compliance of Section 209 (a) to (d) Cr.P.C.

4) Section 209 (a) provides for committing the case, after compliance of Section 207/ 208 Cr.P.C of the case material being supplied to the accused. Clause (c) speaks of sending of the record and the documents and articles etc., by the committal Court to the Court of Sessions, which are to be produced in evidence and clause (d) speaks of informing the public prosecutor as commitment of the case to the Court of Sessions. Clause (b) of Section 209 importantly speaks that the Magistrate shall, subject to the provisions of this code relating to bail, remand the accused to custody during, and until the conclusion of the trial.”

5) Once such is the case unless the accused is on bail, the Magistrate while committing the case has to take him to custody and remand him to judicial custody.

6) In fact, in the factual matrix, the learned committal Magistrate ought to have issued warrant, however issued summons. Merely because summons issued, the accused cannot evade the mandatory requirement of obtaining bail or asking the Magistrate not to take them into custody in spite of the mandatory provision under Section 209 (b) Cr.P.C (supra).

7) No doubt, under Section 18 of the SC/ST (POA) Act, no

anticipatory bail is provided once the offence attracts the provisions specified. The Full bench of this Court in **Smt Shaik Kasim Bee v. The State of A.P.**^[1] held that even at the post cognizance stage on warrant issued by the Magistrate and pending its execution anticipatory bail can be obtained. However, in the factual matrix, from the bar under Section 18 of the Act (supra) the petitioners cannot claim anticipatory bail unless it is shown from the post cognizance material any case under Section 3 (1) (x) of SC/ST (POA) Act is not made out.

8) Having regard to the above and to resolve the anomaly as Section 482 Cr.P.C inheres on the Court with inherent powers with all elasticity as per the need, to pass appropriate orders to subserve the ends of justice and from the material pending before the committal Magistrate Court, it entitles the accused to the concession of bail for main accused No.1 was already enlarged on regular bail, the application is disposed of, directing the petitioners to surrender before the learned Magistrate concerned and move for regular bail on the same day with affidavit of surrender before the learned Special Judge with notice to special public prosecutor concerned and in such an event, the learned Special Judge shall grant bail on the same day with necessary conditions. It is pursuant to which the petitioners/ accused are to be enlarged on bail. It is therefrom the learned Magistrate shall commit the case to the Court of sessions.

9) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.07.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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