

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14476 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in Cr.No.308 of 2016 on the file of Police Station, Mills Colony, Warangal, Warangal District.

The petitioner is allegedly committed offences punishable under Sections 323, 504, 506 IPC and Section 3 (i) (x) of SCs and STs (POA) Act, 1989. It is the case of the petitioner that he is falsely implicated in the case on account of civil dispute pending between respondent No.2 and five others as the petitioner filed O.S.No.466 of 2013 on the file of Principal Junior Civil Judge, Warangal in respect of the land in Sy.No.109/A2 admeasuring 0.28 gunts situated at Gorrekunta Revenue village, Geesugonda Mandal, Warangal District, seeking permanent injunction and in which, the petitioner filed I.A.No.476 of 2013 in O.S.No.466 of 2013 and obtained *interim* injunction in his favour and now the petitioner is apprehending that there is a likelihood of his arrest by the police in connection with Crime No.308 of 2016 and that there is no provision for grant of pre-arrest bail in SCs and STs (POA) Act.

Similar circumstances came up before the Apex Court in **Som Mittal v. Government of Karnataka**ⁱ while deciding the application releasing on pre-arrest bail relating to a State of Uttar Pradesh, where there is no provision for grant of pre- arrest bail in Criminal Cases, and while concurring with justice H.K. Sema, his

Lordship Justice Markandey Katju, following the principle laid down in ***Joginder's Kumar v. State of Uttar Pradesh and others***¹, wherein it was held that “no arrest can be made, power to arrest is one thing and the justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It is would be prudent for a police officer in the interest of protection of the constitutional right of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the persons's complicity and even so as to the need of effect arrest. Denying a person of his liberty is a serious matter. The recommendation of the police commissioner merely reflects the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be a reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officers issues notice to a person to attend the Station House and not to leave Station without permission would do. Para No.13 of the same judgment has also referred to the Third Report of the National Police Commission which stated that by and large nearly 60% of the

¹ 1994 CrI.L.J.1981

arrests in the country were unnecessary or unjustified. Also, 43.2% of the expenditure in jails was over such prisoners only who need not have been arrested at all. Despite this categorical judgment of the Supreme Court, it appears that the police is not at all implementing it. What invariably happens is that whenever an FIR of a cognizable offence is lodged the police immediately goes to arrest the accused person”.

This is clear violation of the aforesaid judgment of the Supreme Court.

By following the principle laid down in the above judgment, his lordship justice Markandety Katju directed the Police Officers not to arrest the accused by following the principle laid down in **Joginder Kumar’s case**.

In the present case, the allegation made against the petitioner is that the petitioner stopped the respondents herein and hold their color, pushed him down and kicked with legs by abusing them in filthy language, which attracts an offence punishable under Section 323, 504, 506 IPC and 3 (i) (x) of SCs and STs (POA) Act, 1989. In such case, no custodial interrogation is necessary to collect any material or to collect any evidence based on the confession leading to delivery.

Taking into consideration the facts and circumstances of the case and the law declared in **Joginder Kumar’s case**, Police, Mills Colony, Warangal, is directed to complete the investigation within two months from today while directing them not arrest the

petitioner in Crime No.308 of 2016 on the file of Mills Colony P.S., Warangal, Warangal District, pending investigation.

With the above direction, this Criminal Petition is disposed of.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 17-10-2016.

Note: Issue C.C. in three days.

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Dt. 17-10-2016

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