

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Appeal No.1407 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the 3rd respondent in W.P.No.37403 of 2016 aggrieved by the order passed by the Learned Single Judge on 02.11.2016.

Respondents 3 to 6 herein filed the said Writ Petition to declare the action of the Station House Officer, Choudepally Police Station, in registering Crime No.63 of 2016 dated 21.10.2016 under Sections 447, 427 and 324 read with Section 34 I.P.C and Sections 3(1) and 3(2)(V-A) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 on the file of Choudepally Police Station, Chittoor District, and in threatening to arrest them, as being illegal and arbitrary.

In the order under appeal, the Learned Single Judge observed that he was not inclined to interfere with the investigation in the above crime; however, taking into consideration the facts and circumstances of the case and without going into the merits of the case, the crime could be investigated into without arresting the writ petitioners. The Station House Officer, Choudepally Police Station was directed to complete investigation and file a final report, in the above crime, in accordance with law, without arresting the writ petitioners; and the writ petitioners were also directed to appear before the Investigating Officer concerned, as and when required, and co-operate with the investigation. The Learned Single Judge further observed that, in case a charge sheet was filed before the Court concerned and summons were received by the writ petitioners, they should appear before the Court concerned and execute a bond for a sum of Rs.5,000/- with one surety for the like sum, for their future appearance.

Sri J.Satya Prasad, learned counsel for the appellant-3rd respondent, would submit, not without justification, that this Court, in proceedings under Article 226 of the Constitution of India, would not discharge the functions assigned under the Cr.P.C. to police officers or take upon itself the task of exercising the discretion conferred upon police officers under Sections 41 and 41-A of Cr.P.C; it is for the concerned police officers to exercise discretion in accordance with the aforesaid provisions of the Criminal Procedure Code, and to take a decision whether or not the accused in a criminal complaint, that too for offences under the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989, should be arrested or not; and the Learned Single Judge has substituted his discretion, for that of the Special Judge, in granting the respondent-writ petitioners anticipatory bail.

The jurisdiction exercised by this Court, under Article 226 of the Constitution of India, is circumscribed by self-imposed limitations. This Court would not, ordinarily, substitute its discretion for the discretion vested in statutory authorities. While this Court can, undoubtedly, require police officers to adhere to the conditions stipulated in Sections 41 and 41-A Cr.P.C, it would be wholly inappropriate for us to determine, on the material placed before us in Writ proceedings, whether the person accused of an offence should or should not be arrested; and whether such a person should be granted or refused bail. These are all matters for the authorities (police officers) and the Special Judge concerned to consider on the facts and circumstances of each case.

The order under appeal is, therefore, set aside. We make it clear that any action, which the Investigation officer shall take against the respondent-writ petitioners, shall be strictly in accordance with Sections 41 and 41-A Cr.P.C. The Special Court concerned shall also examine any application, for grant of bail, on its merits uninfluenced by any observations made either by us in this order or in the order under appeal.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

22nd December, 2016
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
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Date: 22.12.2016

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