

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14536 of 2016

ORDER

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the proceedings in Cr.No.101 of 2016 of Kolimigundla Police Station, Kurnool District, registered for the offence punishable under Section 3(1)(s) of SCs & STs (POA) Amendment Act, 2015, against the petitioner/accused.

2. It is the case of petitioner that on 03.09.2016 at 12.00 noon, while the de facto complainant was grazing his cattle in the land in Sy.No.1221, the accused came in a car and abused him in filthy language raising his caste name and thereby, the de facto complainant lodged a complaint to the police.

3. Learned counsel for petitioner contended that the petitioner never committed any offence and he is apprehending his arrest by the police in connection with Crime No.101 of 2016 and that there is no provision for grant of pre-arrest bail in SCs and STs Act.

4. 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 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

¹ 1994 CrI.L.J.1981

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 person'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 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".

5. 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.

6. In view of the principles laid down in the above judgment and unless the police satisfied that arrest of accused is necessary and there is a reasonable justification for arrest, the accused cannot be arrested. Taking into consideration the facts and circumstances of the case and the law declared in **Joginder Kumar's** case, the Station House Officer, Kolimigundla Police Station, Kurnool District, is directed to complete the investigation within two months from today and till then, not to arrest the petitioner/accused in Crime No.101 of 2016 on the file of Kolimigundla Police Station, Kurnool District.

7. 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

17th October, 2016

sj

