

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15683 OF 2016

ORDER:

This criminal petition, under Section 482 Cr.P.C, is filed by the petitioners to quash the proceedings in Cr.No.591 of 2016 of P.S. Madhapur (Guttala) Hyderabad, registered against the petitioners for the offence punishable under Section 3(1)(r)(s) SC/ST POA Act and Section 506 IPC.

The petitioners are the owners of land in S.No.11 of Guttala, Begumpet, and the property was given for development, but they allegedly abused the *de facto* complainant, who is the second respondent herein, raising his caste name, when he called the first petitioner as 'Madam', in the presence of public who are present there.

It is the contention of the petitioners that there is a dispute between the petitioners and builder regarding completion of work and handing over their share of villas, etc.

The allegations made in the complaint is specific which attracts the offence punishable under Section 3(1)(r)(s) SC/ST POA Act on the face value of it.

Therefore, I find no ground to quash the proceedings at this stage.

The only apprehension of the petitioner is that there is every possibility of their arrest by the police in connection with the above crime and that apart Section 438 Cr.P.C. has no application to the proceedings under the provisions SC/ST POA Act and in case the police arrested, they will put to serious loss,

besides incalculable damage to their reputation, being the medical practitioners.

The arrest of the accused is not must in all cases and the Court can issue necessary direction to the concerned police to follow certain guidelines. In **SOM MITTAL V. GOVERNMENT OF KARNATAKA (1994 CRL LJ 1981)** the Apex Court while deciding the application to release on pre-arrest bail relating to a State of Uttar Pradesh, held that 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 KUMAR V. STATE OF UTTER PRADESH AND OTHERS (AIR 1994 SC 1349)**, 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

- 3 -

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”.

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

Therefore, police are directed to follow the principle laid down by the Apex Court in **JOGENDER KUMAR**'s case and proceed with the investigation.

Accordingly, the criminal petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 04.11.2016
BV

Note: Issue CC by 09.11.2016.

b/o.BV