

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14602 OF 2016

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure 1973 (for short, 'Cr.P.C.') to quash the proceedings in Crime No.179 of 2016 of Nellore II Town Police Station, Nellore, SPSR Nellore District, on the ground that the proceedings were initiated in irregular and illegal manner and abused the process of law and that the petitioner denied the alleged overtacts attributed to the petitioners and that it would not attract the provisions under Section 3(1)(r)(s) of SC/ST (POA) amendment Act 2015 (for short, 'the Act') and other provisions of law.

The allegations made in the complaint are that the petitioners allegedly abused the *de facto* complainant raising her caste name and when there was a discussion about repayment of amount advanced to her by the first petitioner through one lawyer Sessaiah, beaten her with pestle on her head, right hand and wrist and caused bleeding injures.

These allegations *prima facie* show that the petitioners intentionally committed an offence punishable under Section 3(1)(r)(s) of the Act. However the counsel for the petitioner requested this Court to protect the petitioners from arrest by the police.

It is the case where the petitioners allegedly committed an offence under Section 3(1)(r)(s) of the Act, the arrest of the petitioners is only based on the investigation.

Similar circumstances came up before the Apex Court in **SOM MITTAL V. GOVERNMENT OF KARNATAKA**¹ 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**², 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

¹ AIR 2008 SC 1126

² 1994 Cr.L.J.1981

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.

This is clear violation of the aforesaid judgment of the Apex 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 only allegation made against the petitioners is that they abused the *de facto* complainant raising her caste name, which attracts an offence punishable under Section 3 (1) (s) (r) of SCs and STs (POA) Act, 2015. In such cause, no custodial interrogation is necessary to collect any

- 4 -

material or to collect any evidence based on the confession leading to discovery.

Taking into consideration, the facts and circumstances of the case and the law declared in **JOGINDER KUMAR'S** case, I find that it is a fit case to direct the Police, Nellore II Town, not to arrest the petitioners in Crime No.179 of 2016 of Nellore II Town Police Station, except by following the guidelines in **JOGINDER KUMAR's** case. However, investigation may go on.

With the above observation, the criminal petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date: 18.10.2016
BV

