

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14477 of 2016

ORDER:

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the proceedings in Cr.No.89 of 2016 on the file of Bheemini Police Station, Adilabad District.

The petitioners are allegedly committed offence punishable under Section 306 r/w 34 IPC. It is the case of the petitioners that he is falsely implicated in the case on account of criminal case pending against the deceased and his brother—Tirumalesu as they trespassed into the house of petitioner No.2 and tried to outrage the modesty of the sisters of 2nd petitioner's wife and in this regard, C.C.No.627 of 2014 was registered against them and now the petitioners are apprehending that there is a likelihood of their arrest by the police in connection with Crime No.89 of 2016.

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 others¹, 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

¹ 1994 CrI.L.J.1981

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.

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

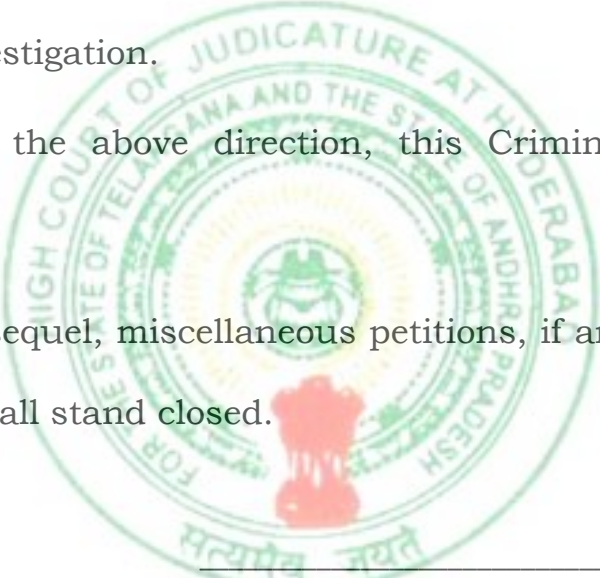
In the present case, the allegation made against the petitioners are that they beat the son of *de facto* complainant on 12.09.2016 at about 2.00 Pm near Kiranashop of Chandraiah, Bheemini and a complaint was lodged to the police but police did not register any crime against petitioners, feeling ashamed, complainant’s son consumed insecticide and succumbed, and it attracts an offence punishable under Section 306 r/w 34 IPC. 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, the Police, Bheemini Police Station, Adilabad, is directed to complete the investigation within two months from today while directing them not arrest the petitioners in Crime No.89 of 2016 on the file of Bheemini Police Station, Adilabad, 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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