

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2820 OF 2017

ORDER:

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/accused on pre-arrest bail since he is apprehending arrest in connection with Crime No.231 of 2016 of Malkapuram Police Station, Visakhapatnam, registered for the offences punishable under Sections 448, 509, 506 of IPC, Sections 3 (I) (r) (s) of SCs and STs (POA) Act.

The case of the prosecution is that the de facto complainant Sngarapu Eshwaramma lodged a complaint alleging that on 20.10.2016 at 10 P.M. when she went to the house of her sister-in-law to attend a birthday party, the petitioner-accused came to the house and picked up a quarrel, abused her as 'malalanja' raising her caste name and threatened her with dire consequences, thereupon all the family members who belongs to scheduled caste were annoyed. Hence, she lodged a complaint. On the strength of those allegations, the above crime was registered against the petitioner.

The main contention of the petitioner before this Court is that the allegations made in the complaint would not attract an offence punishable under Section Sections 3 (1)(r)(s) of SCs and STs (POA) Act since insult, humiliation or intimidation are not within the public view as the persons who present at the birthday party are only close relatives to one another and not independent and therefore, the

insult, intimidation and humiliation are not within the public view, thereby it would not attract an offence punishable under Sections 3(1)(r)(s) of SCs and STs (POA) Act. It is also further contended that there is any amount of improbability in the allegations made in the complaint as the petitioner belongs to Gumdham village of Salur mandal of Vizianagaram District, his coming over to Malkapuram of Visakhapatnam District and abusing her does not arise in normal course of events.

While arguing the matter, the learned counsel for the petitioner drawn the attention of this Court to the judgment of Odisha High Court reported in RATIKANTA RAY v. STATE OF ODISHA¹ wherein the High Court of Orissa took a view that the expression 'public view' in Section 3(1)(x) of the said Act has been incorporated to mean that the persons, however small in number, should be independent, impartial and not interested in any of the parties. In other words, the persons having any kind of association with the complainant would be necessarily excluded.

On the strength of the above principle, the learned counsel for the petitioner sought to grant pre-arrest bail to the petitioner since the humiliation and insult are not within the public view.

The learned Public Prosecutor for the State of Andhra Pradesh opposed the bail application and based on Section 18 of the SCs and STs (POA) Act as amended in 2015.

As seen from the allegations made in the complaint, the petitioner abused the de facto complainant as 'Lanja' raising her

¹ 2015 LawSuit(Ori) 481

caste name when she was in the house attending the birthday party in the house of her sister-in-law Appikonda Nagamani @ Jyothi and when she is attending the birthday party neighbours and relatives are expected to attend such birthday party if invited. The learned counsel for the petitioner while placing reliance on the above judgment, contended that the independent persons have to be present and the relatives and others who had association have to be excluded to consider whether the insult was within the public view or not.

In this case, the investigating agency examined LWs.5 and 6 by name Sopeti Prasannakumari and Palagarra Vijaya who are neighbour and co-tenant in the house, they are independent and not having any kind of association with the petitioner. They clearly testified about the insult on the ground that she belongs to scheduled caste. Therefore, this allegation made in the complaint coupled with the statements recorded by the police under Section 161(3) Cr.P.C. would prima facie show that the de facto complainant was insulted and intimidated with an intent to humiliate her in the public view raising her caste name that she belongs to scheduled caste. Therefore, if the principle laid down in the above judgment is applied, though not a binding precedent, still the evidence collected by the investigating agency is sufficient to conclude prima facie that the petitioner did commit an offence.

In the present case, one of the offences allegedly committed by the petitioner is punishable under Section 3 (1) (r) (s) of the SCs and STs (POA) Act. No doubt, there is a clear bar to grant pre-arrest

bail directing the concerned police officials to release the accused who committed offences punishable under the provisions of SCs. and STs. (POA) Act, but the law declared by the Apex Court in **Vilas Panduranga Pawar v. State of Maharashtra**² carved out certain exceptions to such interdict and held that Section 18 of the SCs. and STs. (POA) Act creates a bar from invoking Section 438 of Cr.P.C. However, a duty is cast on the court to verify the averments in the complaint and to find out whether any offence under Provisions of the SC/ST (POA) Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST (POA) Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

If the principle laid down in the above judgment is applied to the present facts of the case, it is the duty of the Court to find out whether the petitioner committed the offence punishable under the provisions of SCs. and STs. (POA) Act *prima facie*. If the Court concludes that no *prima facie* offence is committed by the petitioners, the Court can exercise its discretionary jurisdiction conferred on it by Section 438 of Cr.P.C. and grant pre-arrest bail.

² (2012) 8 SCC 795

In view of the law declared by the Apex Court, it is the duty of the Court to verify the averments in the complaint to find out whether an offence under Section 3(1)(r) (s) of the SCs & STs (POA) Amendment Act, 2015 has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. When an offence is registered against a person under the provisions of the SCs/STs POA Amendment Act, 2015, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

Here, the petitioner allegedly committed an offence under Section 3(l) (r) and (s) of the Act. Section 3(l) of the Act deals with punishment for forces or intimidates or prevents a member of a scheduled caste or a scheduled tribe. Clause (r) deals with intentionally insults or intimidates with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view. Clause (s) of the Act deals with abuses any member of a scheduled caste or a scheduled tribe by caste name in any place within the public view. Therefore, even according to these two provisions, the act done must be within the public view. Here, several independent persons not having any association with the petitioner, viz. the neighbours were examined and those two persons spoke about the insult and humiliation abusing the de facto complainant raising her caste name. Therefore, I find no ground to exercise the discretion to grant pre-arrest bail to the petitioner under Section 438 Cr.P.C. and consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 11.04.2017
ccm



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