

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.6834 of 2017

ORDER :

The petitioners are the A.1 to A.6 of Cr.No.169 of 2017 of Anantapur II Town Police Station registered for the offences punishable u/sec.323 r/w 34 IPC and u/Sec.3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act(for short 'the Act') from the private complaint of the 2nd respondent that was referred to police for investigation. The private complaint was dated 10.02.2017 and the documents filed are copy of report dated 23.11.2015 said to have been given to II Town Police Station, Anantapur and copy of caste certificate of the complainant. There are 6 witnesses including the complainant. The order of the learned Magistrate dated 03.04.2017 shows "The complainant called present. *Heard. Perused the record. In the circumstances the case is forwarded to the SDPO, Cell-I u/ sec. 156 (3) CrPC for investigation and report*". Leave about the order is laconic. The alleged occurrence shows happened on 23.11.2015 at 10A.M. The private complaint in this regard speaks that the complainant belongs to SC caste(Madiga), resident of 6th ward, Anantapur town and worked as computer operator in APMIP, Anantapur. The A.1 was also working in the same office and the A.2 is husband of A.1 and A.3 is brother-in-law of A.2 and all are permanent residents of Venkatadripalli village of Beluguppa mandal and belong to OC category and A.4 to A.6 are close friends of A.2. It is further averred that at the time of joining in office, A.1 was introduced to the complainant and the complainant

informed about his caste to A.1. Since they were working by sitting in the seats side by side in the same office and after some days A.1 demanded the officials to change her seat from the side of the complainant and also pressurized the complainant to change his seat but when he did not accept her demand, she started abusing him touching his caste. While so, on 23.11.2015 at about 10.30A.M. in the office on seeing the complainant, A.1 abused him touching the caste and when he questioned her highhanded acts, she again abused him in the presence of other employees Naresh, Purushotham, Dudekula Noor Basha, D.Balaraju and H.Saikumar, who tried to pacify but the A.1 did not heed and in the meantime, the A.2 to A.6 came there and dragged the complainant by holding his shirt and abused touching his caste and beat him on his back in the presence of self-same witnesses from which he felt ashamed and reported to the Programme Officer Venkatesh who replied saying to lodge a report to police, on that he went to the II Town Police Station at 12 noon and reported against the accused but no enquiry conducted and no action taken, thereby filing the private complaint.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the 1st respondent-State and taken as heard the 2nd respondent for no representation even served with notice and perused the material on record.

For the alleged incident, dt.23.11.2015 at about 10.30a.m. went and given report to police on 12 noon even but no crime registered according to him. There is nothing to wait for more than

two years 2½ months till filing of the private complaint on 10.02.2017. In fact, the complainant herein is A.1 among two accused including one Tulsiram in C.C.No.133 of 2016 pending on the file of the AJFCM, Anantapur, outcome of Cr.No.448 of 2015 for the offence u/ sec.354-A and 506 r/ w 34 IPC which is outcome of the report of the A.1 herein as defacto-complainant saying since past few days, the said Ramesh has been sexually harassing her by unwelcoming explicit sexual overtures and even while she was working on the system he came to her and kissed her and expressed lust on her to marry him and for her refusal, he threatened her. While it was so, the A.2 Tulsiram therein came to the house of A.1 herein in the absence of her husband and forced to participate in sex but she resisted therefrom they started propagating badly against her before colleagues with certain coloured remarks and she even attempted to commit suicide by swallowing poisonous pills and she was admitted in Divya Sree hospital and she had written suicide note which was collected by investigating agency in that case. The prosecution therein examined as many as 8 witnesses. The said crime 448 of 2015 was for the occurrence dt. 31.12.2015. The present private complaint of the defaco-complainant who is A.1 therein was dated 10.02.2017.

From the above factual background, It clearly shows only after deliberations and consultations and to serve as a counterblast if possible, he filed the private complaint and the learned Judge without proper verification of the facts mechanically forwarded the same to the police for investigation even without application of

mind to the facts which is one of the pre-requisites as held in the recent past settled expressions of the Apex Court in Mrs. Priyanka Srivastava and another Vs.State of Uttar Pradesh in CrI.A.No.781 of 2012,dt.19.03.2015 held by scanning the law at para-19 that this Court in Maksud Saiyed Vs.State of Gujarat¹ examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) or Section 200 CrPC and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. Thus, the proceedings in the present crime are nothing but abuse of process and liable to be quashed.

Having regard to the above, the Criminal Petition is allowed by quashing the proceeding in Cr.No.169 of 2017 on the file of the II Town Police Station, Anantapur, and they are acquitted and their bail bonds stands cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO J,

Date: .10.2017
vvr

¹ (2008) 5 SCC 668