

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.670 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioners on bail in the event of their arrest in connection with Crime No.405 of 2016 of Sarpavaram Police Station, East Godavari District, registered for the offences punishable under Sections 341, 324, 323, 427, 143 read with 149 of IPC and Section 3(2)(va) of the SCs and STs (POA) Act, 1989 (for short 'the Act').

The *de facto* complainant Kommuri Srinivasa Rao, who is working in S.V.Wine Shop as waiter, lodged a complaint alleging that the petitioners came to the shop on 11.12.2016 at about 03.30 PM and while A1 and A2 drinking Alcohol, they called him and asked to supply Chicken Pakodi. Thereupon, he replied that Chicken Pakodi is not available and on making necessary enquiry about his caste, the petitioners abused him by raising his caste name as "mala lanzakodaka" and thereby a petty altercation took place between them. On seeing it one VRO, Chandrapalem and Siva, who are present in the shop questioned the petitioners about the same, but they did not heed their words and that when VRO and Siva were trying to leave the shop by boarding in a car, the petitioners obstructed the said car and beat them with hands and brickbats and so also the *de facto* complainant and caused injuries.

The main contention of the petitioners is that there was nothing to point out their complicity with the offences stated above and the allegations made in the complaint would not attract the offences punishable under the provisions of the Act.

Learned Additional Public Prosecutor representing the State opposed the application on the ground that Section 438 of Cr.P.C. cannot be invoked in view of bar under Section 18 of the Act and prayed to dismiss the criminal petition.

As seen from the allegations made in the complaint, the *de facto* complainant while discharging his duty as employee in S.V Wine Shop supplied wine etc. to the petitioners, who abused him raising his caste name and beat him with hands and brickbats, in open place, and is accessible to public, the specific allegation that the petitioners abused the *de facto* complainant, who admittedly belongs to scheduled caste, attracts the offences punishable under Section 3(v)(s) of the Act and causing injuries with hands and brickbats would fall within Section 3(2)(va) of the Act. Therefore, Section 3(2)(va) of the Act deals with commission for offences of atrocities specified commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

Section 18 of the Act says that Section 438 of Cr.P.C. would not attract to the persons who committed offence under the Act. In this case, since the accused, who committed an offence punishable under any of the provisions of the Act, are not entitled to invoke Section 438 of Cr.P.C. in view of the bar under Section 18 of the Act.

As the material on record *prima facie* shows that the petitioners committed offence under the Act, they are disentitled to

invoke Section 438 of Cr.PC. in view of bar under Section 18 of the Act and on this ground alone the petition is liable to be dismissed.

In the facts and circumstances of the case including the allegations made in the complaint and the bar under Section 18 of the Act, I find that it is not a fit case to grant pre-arrest bail to the petitioners.

With the above observations, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

06.02.2017
kvrn

M.SATYANARAYANA MURTHY,J

