

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.3452 of 2017

Between:

Konidhana Ananda Sharma.

... Petitioner/Accused

And

State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court at Hyderabad.

... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED: 22.06.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Petitioner : Sri Akkapeddi Srinivas

^ Counsel for Respondent : Public Prosecutor for State (A.P)

< Gist:

> Head Note:

? Cases referred:



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3452 of 2017

ORDER:

Petitioner/accused filed the instant petition under Section 438 Cr.P.C., seeking pre-arrest bail in P.R.C.No.30 of 2015 on the file of Additional Judicial Magistrate of First Class, Piler (arising out of Cr.No.188 of 2014 of Piler PS) in which the petitioner allegedly committed offence under Sections 323, 506 IPC and Section 3(1)(x) of SC & ST (POA) Act, 1989.

2) The *de-facto* complainant lodged a complaint with the Piler PS stating that his marriage was held on 19.06.2014 at TTD Kalyana Mandapam, Piler for which the petitioner, who is a purohit in Ramalayam, Piler arranged photography, cook and utensils for a sum of Rs.70,000/-; he paid Rs.40,000/- at the time of marriage and requested some time to pay the balance amount; thereafter, due to paucity of money, he could not pay the balance amount. While so, on 30.09.2014 at 7 PM, petitioner came to his house and took him to the welding shop opposite to the telephone office and demanded the balance amount of Rs.30,000/- and when he requested for some more time to repay the amount, petitioner grew wild and abused him in filthy language touching the name of his caste and also beat him with hands on his cheek and threatened him with dire consequences.

Hence the complaint.

3) On the basis of the said complaint, the police registered a case in Cr.No.188 of 2014 and the Sub-Divisional Police Officer, Madanapalle granted station bail to the petitioner on 28.10.2014 and after completion of investigation filed charge sheet before the Additional Judicial Magistrate of First Class, Piler. The learned Magistrate by order dated 16.11.2015 while committing the case to the Special Sessions Judge-cum-IV Additional District Judge, Tirupati for trial observed that since the petitioner was on station bail, he was ordered to be continued on bail till conclusion of trial. The learned Special Sessions Judge by letter Dis.No.19 dated 02.01.2016 returned the entire case record for non-compliance of Section 209(a) Cr.P.C and observed that bail order of the petitioner was not on record. Thereupon, the committal Court called for the explanation of the investigating officer regarding the bail order. It appears, the SDPO Madanapalle, in his letter dated 13.04.2017 submitted that his predecessor SDPO Madanapalle, conducted the investigation and he served notice to accused under Sec.41-A Cr.P.C since the offences of the case were punishable below 7 years of imprisonment and he did not consider necessary to arrest the accused as the accused had not failed to comply with the terms of the notice under Sec.41-A Cr.P.C and he cannot submit more than that and prayed the Court to pass orders.

4) After receiving the aforesaid explanation, the Addl. Junior Civil Judge, Piler passed an order dated 18.05.2017 which raised an apprehension in the mind of petitioner to seek for anticipatory bail. The

learned Addl. Junior Civil Judge while observing that Sec.41-A Cr.P.C does not apply to the facts of the present case as the offence was a special Act offence and grave in nature as per Sec.2(d) and 18 of SC, ST (POA) Act and directed the SDPO Madanapalle to comply with the provisions of Sec.209(a) Cr.P.C and to file neat copy of charge sheet.

5) What can be inferred from the above order is that learned Magistrate felt that since no anticipatory bail can be granted in respect of an offence under SC, ST (POA) Act in view of the bar under Sec.18, the investigating officer ought not to have granted station bail to accused while dealing with him under Sec.41-A Cr.P.C and further held that Sec.41-A had no application since the offence is a special Act offence.

It must be said, the above observation is legally incorrect. No doubt, Sec.18 of SC, ST (POA) Act, creates a bar for invoking Sec.438 of Cr.P.C i.e, entertaining a pre-arrest bail application by the Court. However, Sec.18 cannot militate and operate as an interdict against the power of a police officer under Sec.41 and 41-A Cr.P.C. A conjunctive reading of Sec.41 & 41-A Cr.P.C give an understanding that where a reasonable complaint has been made or a credible information has been received or a reasonable suspicion exist against an accused that he has committed a cognizable offence punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years with or without fine, the investigating officer may, without the warrant of the Court arrest such an accused, provided the police officer is satisfied that such arrest is necessary for the reasons enumerated in

Sec.41 Cr.P.C. Provided, if the police officer feels that the arrest of the accused is not required, record the reasons in writing for not making the arrest. This is the procedure to be followed by the police officer in respect of a cognizable offence punishable upto 7 years as enumerated in Sec.41 Cr.P.C. We are not concerned with other part of the said Section.

Then coming to Sec.41-A Cr.P.C, in cases where the arrest is not required under the provisions of Sec.41(1) Cr.P.C, the police officer shall issue notice directing the accused to appear before him for interrogation. Where such person i.e, accused complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice, unless for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

6) The offences alleged in the instant case are under Sec.323, 506 IPC and Sec.3(1)(x) of SC, ST (POA) Act, 1989. All the aforesaid offences are punishable with a term less than 7 years. Therefore, the procedure contemplated under Sec.41 and 41-A Cr.P.C, squarely apply to them and those Sections have not made any express distinction between the offences punishable under IPC and other Special enactments. Therefore, the contra view expressed by learned Addl. Junior Civil Judge, is incorrect. The explanation of the SDPO Madanapalle dated 13.04.2017 shows that since the offence was punishable below 7 years of imprisonment and as the accused had not failed to comply with the terms of notice under Sec.41-A Cr.P.C, the I.O did not consider it necessary to arrest the accused. Therefore, the I.O

granted station bail by securing the bail bonds of the sureties on behalf of the accused. This procedural order under Sec.41-A Cr.P.C cannot be equated with an order passed by a Court under Sec.438 Cr.P.C. Therefore, in my view, there is no procedural violation. Consequently, the committal Court is directed to submit the bail bonds produced before the I.O by the accused and sureties to the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, in which case they shall be deemed to be the due compliance under Sec.209(a) of Cr.P.C by the Sessions Court.

7) This Criminal Petition is disposed of accordingly.

Date: 22.06.2017
Murthy/scs

U. DURGA PRASAD RAO, J

