

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1543 OF 2017

ORDER:

This petition is filed by the petitioners, apprehending their arrest, under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") for grant of anticipatory bail to the petitioners/accused Nos.1 and 2, in the event of their arrest in Crime No.161 of 2016 of Payakaraopeta Police Station, registered for the offences punishable under Section 323 read with 34 of Indian Penal Code (for short "I.P.C.") and under Sections 3 (1) (4) (2) of Scheduled Castes and Scheduled Tribes (POA) Act (for short "the S.Cs. and S.Ts. (POA) Act).

Defacto complainant P.Prema Soujanya, wife of Srinivas, who belonged to Scheduled Caste, went to the house of her in-laws on 22.10.2016, where the petitioners, who are the mother-in-law and sister-in-law of the defacto complainant, were present. When she enquired about her husband, both the accused abused her as "Konda Lanja" and the petitioner No.1 caught hold of her tuft and beat her; the petitioner No.2 also beat her with hands and in spite of her request, the petitioners did not leave her. Thereafter, the defacto complainant lodged a complaint with the police. Based on the said complaint, police registered the above crime and issued F.I.R.

The main contention of the petitioners before this Court is that the defacto complainant does not belong to "Konda" community and she belongs to "Yerukula" community, which is a Scheduled Tribe, but abusing her as "Konda Lanja" would not

attract the offence punishable under Section 3 (1) (r) (s) of the S.Cs and S.Ts. (POA) Act.

No doubt, the defacto complainant belongs to Scheduled Tribe i.e. Yerukula community and she was not abused by raising her caste name, but the petitioners abused her as “Konda Lanja”, even otherwise, the allegation of causing hurt voluntarily would fall within the ambit of Section 3 (2) (va) of the S.Cs. and S.Ts. (POA) Act besides abusing her as “Konda Lanja”.

In view of the bar under Section 18 of the S.Cs. and S.Ts. (POA) Act, this Court cannot exercise discretionary power under Section 438 of Cr.P.C. when there is a prima-facie material against the petitioners to conclude that they committed offence punishable under the provisions of the S.Cs. and S.Ts. (POA) Act.

A similar question came up before the Apex Court in “**Vilas Panduranga Pawar v. State of Maharashtra**”¹, where the Supreme Court held that Section 438 of Cr.P.C. is not applicable to the persons, who committed offences punishable under the provisions of the S.Cs. and S.Ts. (POA) Act. In view of the bar contained in Section 18 of the S.Cs. and S.Ts. (POA) Act this Court can not exercise power under Section 438 of Cr.P.C. However, a duty was cast upon the Court to verify averments in complaint to find out whether an offence under Section 3 (1) of the S.Cs. and S.Ts. (POA) Act had been prima facie made out. When the allegations made in the complaint disclosed that the petitioners prima facie committed offence under the provisions of the S.Cs. and S.Ts. (POA) Act, the Court cannot grant pre-arrest bail in view of the bar under Section 18 of the S.Cs. and S.Ts. (POA) Act.

¹ (2012) 8 SCC 795

Applying the principles laid down in the said judgment to the present facts of the case, this Court verified the contents of the complaint. The allegations made in the complaint would attract the offence punishable under Section 3 (1) (r) (s) of the S.Cs. and S.Ts. (POA) Act *prima facie*. Therefore, I am not inclined to exercise discretionary power available under Section 438 of Cr.P.C. in view of the interdict contained in Section 18 of the S.Cs. and S.Ts. (POA) Act.

At this stage, learned counsel for the petitioners requested this Court to permit the petitioners to surrender before the concerned Court and on such surrender, the Court may decide the bail application on the same day.

Acceding to the request of the learned counsel for the petitioners and considering the material available on record, I deem it appropriate to accord the permission as sought for. Accordingly, the petitioners are permitted to surrender before the Special Sessions Judge for Trial of Cases under S.Cs. and S.Ts. (POA) Act – cum – Additional District Judge, Visakhapatnam and on such surrender, the concerned Court is directed to decide the application for bail if any filed on the same day, subject to giving prior notice to the learned Public Prosecutor and on hearing the argument of learned Public Prosecutor.

With the above observations, criminal petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

28.02.2017
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