

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2372 OF 2017

ORDER:

The present petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the First Information Report in Crime No.640 of 2016 of Panjagutta P.S., Hyderabad.

2. The petitioners are arraigned as accused Nos.1 & 2 respectively, in the aforesaid crime. They alleged to have committed the offences punishable under Sections 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Heard Sri Rajanikanth Jwala, the learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

4. The learned counsel for the petitioners has pleaded innocence and false implication of the petitioners.

5. According to the learned counsel for the petitioners, a reading of the complaint does not disclose taking place of the alleged incident in a public place within public view and the person complained is directed only to sidetrack the issue of civil dispute between the petitioners and their dependants and thus, the 2nd respondent/*de facto* complainant herein created false cause of action so as to attract the penal provisions of law against the petitioners.

6. The learned counsel further submits that the 1st petitioner, Mulugu Balaraju is a chronic diabetic patient and is suffering with uncontrolled diabetes and diabetic neuropathy and severe hypertension, whereas the 2nd petitioner is in critical health condition and a patient of chronic kidney disease with ESRD and severe hypertension and undergoing haemodialysis three times per week since 31.12.2015 and he is advised and planned to undergo renal transplantation and is awaiting cadaver kidney and presently became bedridden.

7. The learned Additional Public Prosecutor for the State of Telangana resisted the request contending that the allegations mentioned by the 2nd respondent would clearly attract the offences under the Special Act alleged against the petitioners.

8. A look at the complaint would reflect various events that transpired from preceding the present incident and the relevant details thereof are unnecessary to refer to. The complaint in vernacular language (Telugu) was made by the 2nd respondent/ *de facto* complainant to the Commissioner, SC & ST Commission, Telangana State and on 17.8.2016, the Commission referred it to the Commissioner of Police, Hyderabad city, in turn, a direction by the Commissioner of Police, and consequently crime was registered.

9. The relevant allegations in the complaint are to the effect on 9.10.2013, the petitioners herein alleged to have visited the house and

uttered abusive phrases taking the caste of the *de facto* complainant and threatened using most abusive language. The abusive phrases are not referred to in the present order, but they are mentioned in the complaint.

10. The learned counsel, no doubt, drawn the attention to the order dated 18.11.2016 passed by the learned Single Judge of this Court in W.P.No.39926 of 2016 granting interim stay while permitting personal notice on respondent No.5 therein, who is the *de facto* complainant herein, but by order dated 13.2.2017, in the same writ petition while acceding to the request of the petitioners to withdraw the writ petition with liberty to take appropriate proceedings in accordance with law, dismissed the petition.

11. It is true, the 2nd petitioner, Mulugu Bhaskar, is undergoing Haemodialysis, as could be seen from the certificate dated 11.2.2017 issued by the Consultant Nephrologist of Apollo Hospitals to the effect that the petitioner is undergoing Haemodialysis three times per week since 31.12.2015 and CKD is a chronic life time and life threatening disease, requiring lifetime haemodialysis minimum three times per week as a life saving measure along with BP medication, and erythropoietin and iron injections to prevent anemia and he has to undergo renal transplantation and is waiting for cadaver kidney.

12. But no pre-arrest direction can be granted, which if granted would amount to according pre-arrest bail, which the special statute

bars. His other request to grant interim order to suspend the investigation also cannot be considered for the reason that in the writ petition when such a relief was sought and got by the petitioners, but, somehow, they sought permission and got it dismissed as withdrawn, as mentioned in the above. When looked at the contents mentioned in the complaint, certainly, it cannot be said that there are no *prima facie* allegations as to the complicity of the petitioners in the commission of the offences alleged against them. It is not a case where exceptional relief of quashing the First Information Report can be granted by construing abuse of the process of law, as sought to be viewed by the learned counsel for the petitioners.

13. Hence, the Criminal Petition is dismissed.

At this stage, the learned counsel for the petitioners would submit to direct the Investigating Officer to follow the procedure inlaid under Section 41-A of the Code. It is his submission that the 2nd petitioner is on ventilator. The request is reasonable, and, therefore, the Investigating Officer is directed to follow the procedure under Section 41-A of the Code and also the guidelines given by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

Dt. 03.04.2017
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A. SHANKAR NARAYANA, J

¹ (2014) 8 SCC 273