

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2354 OF 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioners, who are A-1 to A-18 in Crime No.11 of 2017 of Pedakurapadu Police Station, Guntur District, for the offences punishable under Sections 326, 323, 509 read with 149 of the Indian Penal Code, 1860 (for short, "IPC") & 156(3) of Cr.P.C. seeking a direction against the Station House Officer, Pedakurapadu Police Station, Guntur District, to release the petitioners on bail in the event of their arrest in connection with the above crime, apprehending their arrest.

2. The case of the prosecution, in brief, is that the *de facto* complainant - Gummadidala Srinivasa Rao and all the petitioners/accused belong to Kummara Community and their community is conducting jathara of Gowramma Goddess every year, but the *de facto* complainant and the petitioners belong to two different groups of same caste. There is a tradition in the village that the community people have to bring the Gowramma Goddess to the temple by procession in the village and likewise, the *de facto* complainant, while conducting jathara on 11.10.2016 between 10.03 and 11.00 p.m., at Kannegandla Village by procession, driving tractor, all the accused gathered and threatened the *de facto* complainant to stop the tractor and they said that they should bring the Gowramma Goddess first and demanded the *de facto* complainant to give way to them. Then the

de facto complainant and his community people told the accused that they are going to the temple first and the accused can come later. Then an altercation took place between the *de facto* complainant and others and the petitioners at that place and in that incident, A-1 pulled the *de facto* complainant from tractor and all the accused beat the *de facto* complainant indiscriminately, due to which the *de facto* complainant sustained bleeding injuries and his finger was also fractured. At that time, the community people of the *de facto* complainant intervened to rescue the *de facto* complainant, but all the accused beat them also with hands and legs. A-1 tried to beat the *de facto* complainant with iron rod with an intention to kill him, but the *de facto* complainant and others escaped from the hands of A-1 and other accused and went to Pedakurapadu Police Station and gave a complaint about the said incident, but the Police did not register the same and informed the *de facto* complainant that the Sub-Inspector is not available and suggested the *de facto* complainant to go to Government Hospital, Sattenapalli, for treatment. Accordingly, the *de facto* complainant and others went to Sattenapalli Government Hospital and the staff of the hospital gave first aid by administering pain killers to the *de facto* complainant and he was sent back and advised them to come tomorrow, as the doctors are not available. Then the *de facto* complainant and others went to the Police Station and informed the same and then the police informed the *de facto* complainant that the Sub-Inspector is not available and advised them to come tomorrow. Later on the next day, when the *de facto* complainant and others went to the Police Station, Pedakurapadu and informed about the incident to the Sub-Inspector of Police, then the police

advised him to join in the Hospital. Accordingly the *de facto* complainant and others came to Sattenapalli and joined in Sanjana Hospital and the doctor, after examining the x-ray of finger, opined that the finger was fractured and the doctor sent a letter to the Sattenapalli Town Police Station as it is a Medico Legal Case and in turn Sattenapalli Town Police came to the Sanjana Hospital and recorded the statement of the *de facto* complainant and the same was sent to Pedakurapadu Police Station on the point of jurisdiction. The *de facto* complainant was discharged from the hospital on the same day. Later, when the *de facto* complainant approached the Police Station and requested to register the complaint against accused, but the police did not register any crime against the accused by saying that they will compromise the matter. Later the police colluded with the accused and registered a case against the *de facto* complainant and others in Crime No.73 of 2016 for the offences under Sections 326, 323 read with 34 IPC based on false report of the accused. The police also arrested the *de facto* complainant and others in Crime No.73 of 2016 and they were later released on bail. Subsequently, when the *de facto* complainant approached the police several times, they did not register any crime against the accused and aggrieved by the same, the *de facto* complainant lodged a private complaint under Section 190 of Cr.P.C., on the file of the II Additional Junior Civil Judge, at Sattenapalli, Guntur District, and the same was referred to the Pedakurapadu Police Station, under Section 156(3) of Cr.P.C. and the Police registered the said complaint as Crime No.11 of 2017 against the accused for the offences punishable under Sections 326, 323, 509 read with 149 of IPC & 156(3) of

Cr.P.C. The police took up investigation and examined the witnesses and completed major part of the investigation.

3. It is the case of the petitioners that there was an abnormal delay in lodging the complaint, which remained unexplained and it is a ground to grant pre-arrest bail to the petitioners and that apart, the petitioners also lodged a complaint against the *de facto* complainant and others in Pedakurapadu Police Station, which was registered as Crime No.73 of 2016 for the offences punishable under Sections 326, 323 read with 34 IPC and the said case is at the stage of investigation. The present complaint was lodged by the *de facto* complainant as an after thought in view of the complaint lodged against the *de facto* complainant and prayed to enlarge the petitioners on pre-arrest bail.

4. The learned Public Prosecutor for the State of Andhra Pradesh would contend that the witnesses who were examined under Section 161(3) of Cr.P.C., subsequently stated that the petitioners caused injuries on the body of the *de facto* complainant and others including fracture to the finger of the *de facto* complainant and thus, there is *prima facie* material to conclude that the petitioners committed the offences punishable under Sections 326, 323, 509 read with 149 of the Indian Penal Code, 1860 (for short, "IPC") & 156(3) of Cr.P.C. and that they cannot be enlarged on pre-arrest bail and hence, prayed for dismissal of the same.

5. As seen from the material on record, the petitioners belong to one group and the *de facto* complainant and others, who

were accused in Crime No.73 of 2016, belong to a different group of the same community, who participated in jathara of Gowramma Goddess and the dispute is regarding their supremacy to bring the Gowramma Goddess to the temple first, but in order to maintain the supremacy in the Village, an altercation took place between the *de facto* complainant and others and the accused and both parties lodged complaints against one another. Therefore, both the parties sustained injuries in the alleged incident and criminal proceedings are pending before the police for investigation.

6. In the present case, entire investigation is completed. According to the remand report filed under Section 167(1) of Cr.P.C. in Crime No.73 of 2016, under Sections 326, 323 read with 34 IPC filed by the Pedakurapadu Police Station, dated 22.12.2016, A-1 to A-5, A-7, A-10 & A-11 were already arrested and released on bail, but the present petitioners are some of the accused in the same crime. However, in view of the serious disputes between the two groups, there is every possibility of law and order problem in the event of enlarging the petitioners on pre-arrest bail. Therefore, it is difficult for me to exercise my discretion under Section 438 of Cr.P.C. since the *de facto* complainant sustained a fractured injury to his finger and the delay, if any, in lodging the complaint is not on account of the *de facto* complainant, but on account of the police and doctors of the hospital authorities. Hence, I find that the delay is not a ground, more over, the material would disclose that the petitioners *prima facie* committed the offence punishable under Sections 326, 323, 509 read with 149 of IPC & 156(3) of Cr.P.C. Hence, it is not a fit case to grant pre-arrest bail to the petitioners.

7. At this stage, learned counsel for the petitioners, Sri Gopinath Lakkineni, requested the Court to permit the petitioners to surrender before the Magistrate concerned, and if any application is filed under Section 439 of Cr.P.C. to grant bail, the learned Magistrate may be directed to consider their application on the same day.

8. Acceding to the request of learned counsel for the petitioners, I deem it appropriate to permit the petitioners to surrender before the Magistrate concerned and on such surrender, in the event of filing of an application for grant of bail under Section 439 of Cr.P.C., after due service of notice to the Public Prosecutor and after affording reasonable opportunity to the learned Public Prosecutor to defend the case, the learned Magistrate is directed to decide such application on the same day in accordance with law.

9. With the above direction, the Criminal Petition is disposed of. Miscellaneous Petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 27th March, 2017

KL

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.2354 OF 2017

Date: 27th March, 2017

KL