

THE HON'BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL PETITION NO.3101 OF 2011

ORDER:

Heard the learned counsel for the petitioners as well as the learned Public Prosecutor. As per the Court record, though notice is served on the 2nd respondent, he has not chosen to appear either in person or by engaging a counsel.

The petitioners who are accused 1 and 2 in Crime No.28 of 2011, filed this criminal petition seeking to quash the proceedings initiated against them in Crime No.28 of 2011 for the offences under section 307 IPC read with Section 3 (2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the file of the Station House Officer, Allagadda Town P.S., Allagadda, Kurnool district.

Brief facts of the case are that the 2nd respondent who is a resident of Allagadda town, filed a complaint on 7.3.2011 stating that in the early hours of 7.3.2011, at 5.30 a.m., when he and one M.Bhushanam were returning from the morning walk, one unidentified person came on a motor cycle wearing helmet, parked the same nearer to Bhushanam and nabbed said Bhushanam with knife at his neck and axed him above the left ear. When the 2nd respondent obstructed the unidentified person, he tried to axe even the 2nd respondent. However, he

escaped and shouted for help. Meanwhile, the unidentified person, fled away. Immediately, the 2nd respondent lodged a complaint. Pursuant to the complaint, a crime has been registered vide FIR.No.28 of 2011 for the offence U/s.307 IPC and subsequently Section.3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989 is also added. Aggrieved by the same, the present criminal petition is filed.

Learned counsel for the petitioners would contend that they have been falsely implicated in the offence and they have not committed any offence much less the offence as alleged. Further, the petitioners do not know the 2nd respondent, more particularly, the said Bhushanam. Therefore, the question of committing an offence under the provisions of 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989 will not arise at all.

During the course of argument, learned counsel for the petitioners brought to the notice of this Court that Accused Nos. 3 to 5 in the same crime, filed criminal petition No.2905 of 2011 before this Court. After hearing, the said criminal petition has been disposed of vide orders dated 6.11.2017 whereunder the offence under section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act,1989, was quashed. However, the criminal petition as far as section 307 IPC is concerned, was dismissed.

This Court, after going through the record find that in the complaint, there is no allegation that attack was made on the ground that victim was a person belonging to either a scheduled caste or scheduled tribe community. Learned counsel for the petitioners also brought to the notice of this Court, the statement of Bhushanam where he identified the culprits and spoke about the attack made, but he does not anywhere stated that the attack made on him was on the ground that he belongs to scheduled caste or scheduled tribe caste.

The provisions of Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989 prescribes punishment only if the offence is committed against a person or property on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member. As such, there is no allegation attracting the said provision.

Therefore, this Court feels that no prima facie case is made out as far as the offence under section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989 is concerned. Accordingly, the criminal

petition is partly allowed quashing the proceedings as far as the offence under section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned. The truth or otherwise of the allegation of the complaint under section 307 IPC will be elicited only after a full fledged investigation and during the course of trial. Hence, the criminal petition is dismissed with regard to quashing of proceedings for the offence under section 307 IPC.

Consequently, interim order dated 8.4.2011 shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

KESHA RAO, J

Date: 20.12.2017

KPM

