

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1344 OF 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioners/ A.1 to A.3 apprehending their arrest in connection with Cr.No.2 of 2017 of Lingasamudra Police Station, Prakasham District, registered for the offences punishable under Sections 379, 409, 506, 468 read with 34 of Indian Penal Code, 1860 (for short 'I.P.C.') and Section 3(i)(r)(s)(ii)(va) of the Scheduled Castes and Scheduled Tribes (POA) Act, 1989.

The case of the prosecution, in brief, is that the *de facto* complainant running petrol bunk since 2004 in Lingasamudram Village under the name and style Sri Dathasai petrol bunk. She appointed the petitioners as clerks to attend the work in petrol bunk. Some time later the petitioners alleged to have committed theft the records of petrol bunk, ATM card cheque book, and forged the signature of the *de facto* complainant on the cheques and committed criminal breach of trust and submitted the cheques in the oil filling station and received petrol loan and disposed them. On knowing the issue, the *de facto* complainant and her husband went to petrol bunk on 01.01.2017 at 9.00 p.m., there the petitioners abused them in filthy language indicating their caste name and insulting them in the presence of two auto drivers. On the strength of the report, the police registered a case in Cr.No.2 of 2017.

The main contention of the petitioners is that the petitioner running petrol bunk being the partners under the agreement dated 23.06.2013 and as per the terms of the agreement, they are entitled to 70% of the profits where the *de facto* complainant is entitled to

30% of the profit. In view of their share, she allegedly issued cheques, which were dishonoured on their presentation, for which notice dated 17.01.2017 was issued demanding payment covered by dishonoured cheques, forestalling the complaint under Sections 138 of the Negotiable Instrument Act, 1882, the *de facto* complainant lodged the present complaint with false allegations.

The public prosecutor for the state of Andhra Pradesh only contended that in view of bar under Section 18 of the SC & ST (POA) Act, anticipatory bail cannot be granted and prayed to dismiss the criminal petition.

As seen from the allegations made in the complaint, the *de facto* complainant belongs to Mala caste, which is a scheduled caste and she was allegedly abused by the petitioners raising her caste name that itself would attract the offence punishable under Section 3(1)(r)(s)(ii)(va) of the SC & ST (POA) Act.

Therefore, when the allegations made in the complaint attract the offence under the provisions of the SC & ST (POA) Act, invocation of section 438 of Cr.P.C is impermissible, in view of bar under Section 18 of the SC & ST (POA) Act. Therefore, on this ground, I am not inclined to grant pre-arrest bail to the petitioners and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

17.02.2017
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