

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 2865 OF 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') is filed to grant pre-arrest bail to the petitioner/A.1 apprehending his arrest in connection with Crime No.86 of 2017 of Police Station, Mancherial Town and District, registered for the offences punishable under Sections 417, 420, 323, 506 of IPC, Sections 3 (1) (s), 3 (1) (w) (ii) of SCs and STs (POA) Amendment Act, 2015.

It is the case of the petitioner that the petitioner and the de facto complainant used to work in Maruthi showroom for the last four years and while she was working in the showroom, she developed contacts with the petitioner who is working as sales executive and that they fell in love and used to send messages and some times calling by phone and made her to believe that he is going to marry her as she was a divorcée by then. They moved to cinemas etc. and the petitioner was also a divorced man and under the threat or fear, he enjoyed her sexually promising to marry her, but later due to disputes with showroom Manager, he resigned to service in Maruthi showroom and joined in Royal Enfield showroom as Manager and insisted her to join as computer operator in the said showroom. He collected Rs. 10 lakhs promising to marry her after performing his sister's marriage from the de facto complainant and her parents. The said amount was paid after sale of gold ornaments for Rs.3 lakhs, Rs.5 lakhs on personal loan and Rs.2 lakhs in the finance company, in the presence of her parents. But, later when she insisted him to marry her, he abused her in filthy language raising her caste name with an intention to humiliate the de facto complainant, insulted her in the public view

raising her caste name and threatened to kill her. Based on the above complaint, the present crime was registered for the offences mentioned supra.

It is the contention of the petitioner that he also lodged a complaint dated 16.02.2017 which is the subject matter of Crime No.21 of 2017 of Mancherla Police Station and this complaint was lodged as a counterblast to the earlier complaint and that no offence was committed by the petitioner and that the bar under Section 18 of the SCs and STs (POA) Act has no application to the case.

As seen from the material on record that the petitioner and the de facto complainant fell in love and enjoyed sexually, he also collected Rs.10 lakhs allegedly from the parents of the de facto complainant towards dowry promising to marry, after performing the marriage of his sister, but later refused to marry her and abused her raising her caste name as “Nuvvu Madiga Mundavu, Ianjavu”.

Section 3(1)(s) of the SCs and STs Act deals with punishment for abusing any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view and similarly, Section 3(1)(w)(ii) of the SCs and STs Act deals with punishment for using words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Therefore, the material on record led me to conclude prima facie that the petitioner committed the offences mentioned supra.

When the allegations made in the complaint on its face would prima facie show that the petitioner committed an offence punishable under the provisions of Scheduled Castes and Scheduled Tribes (POA), Act, this Court cannot exercise its powers when there is an interdict to

grant pre-arrest bail under Section 18 of the SCs & STs (POA) Amendment Act, 2015.

The law declared by the Apex Court in *Vilas Panduranga Pawar v. State of Maharashtra*¹ carved out certain exceptions to such interdict and held that Section 18 of the S.Cs. and S.Ts. (POA) Act creates a bar to invoke Section 438 of Cr.P.C. However, a duty is cast on the court to verify the averments in the complaint and to find out whether any offence under Provisions of the SC/ST (POA) Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST (POA) Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

If the principle laid down in the above judgment is applied to the present facts of the case, it is the duty of the Court to find out whether the petitioner committed the offence punishable under the provisions of S.Cs. and S.Ts. (POA) Act *prima facie*. If the Court concludes that no offence is committed by the petitioner, the Court can exercise its discretionary jurisdiction conferred on it by Section 438 of Cr.P.c. and grant pre-arrest bail.

In view of the law declared by the Apex Court, it is the duty of the court to verify the averments in the complaint to find out whether an offence under Section 3(1)(s)(w)(ii) of the SCs & STs (POA) Amendment Act, 2015 has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the

¹ (2012) 8 SCC 795

accused persons are not entitled to anticipatory bail. When an offence is registered against a person under the provisions of the SCs/STs (POA) Amendment Act, 2015, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

In the present case, the allegations made in the complaint *prima facie* sufficient to conclude that the petitioner committed the offences mentioned supra. Therefore, I find no ground to grant pre-arrest bail to the petitioner. Hence, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

Date: 24.04.2017
Ccm



JUSTICE M. SATYANARAYANA MURTHY

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.2865 OF 2017

Date:24.04.2017

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