

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.7906 of 2017

ORDER:

Heard learned counsel for the petitioner/accused in crime No.23 of 2017 of Harbour (L&O) Police Station, Visakhapatnam District, registered for the offences punishable under Sections 3(2)(va) and 3(1)(r) & (s) of SC & ST (POA) amended Act, and also learned Public Prosecutor representing the 1st respondent State and perused the grounds urged in the quash petition and the contents of the FIR.

The very report of the defacto complainant which is registered as the above crime supra is that he is working from 17 years at Ship Building centre and on 08.08.2017, while he was working at around 09.20 AM the accused called him and informed that he was transferred and forced him to sign the copy. It is averred that on enquiring with his General Manager, he has informed that there is no such transfer orders were issued and informed him to continue the work. It is further averred that while the defacto complainant was doing his duty, the accused came to his work place and demanded to come his cabin and when he went along with one Jangam Vinayakudu, who was also demanded to come around 11.45 AM, the accused insulted in his caste name and scolded them by using foul language saying that they got transferred and stated that the accused hates mala community and also insulted in his caste before three other employees by name Ch. Suryanarayana, NYSN Reddy and V.Nancharaiah, hence to take action.

The grounds urged in the quash petition are that the complaint is a false one and the defacto complainant with connivance with other employees, after 17 years of working under the petitioner/accused maligned him with oblique motive of forcing the organization to revert his transfer order. It is contended that defacto complainant stated in the complaint that he belongs to SC, but he does not belong to SC community and on 15.05.1994, he informed the employer that he has embraced Christianity and requested SC identification to be deleted appearing against his name from all the records published in the Civilian Establishment Order, in accordance with the Government instructions on the subject and accordingly, the concerned authorities have removed his identification from SC as requested. It is also contended that in view of the above, the present complaint itself is not maintainable as the defacto complainant is not a member of Scheduled Caste or Scheduled Tribe, thereby sought for quashing of the proceeding by allowing the Criminal Petition.

This Court passed interim order dated 29.08.2017 after hearing learned Public Prosecutor and the learned counsel for the petitioner, which reads as follows:

“Heard learned counsel for the petitioner/accused in crime No.23 of 2017 of Harbour L&O Police Station, Visakhapatnam, registered for the offences punishable under Sections 3(1)(r), (s) & (2)(va) of SC & ST (POA) amended Act, which is outcome of report of the 2nd respondent and also learned Public Prosecutor representing the 1st respondent-State and perused the grounds urged in the quash petition and the contents of the FIR and also the document showing from the Civil Establishment Order dated 09.10.2004 of the 2nd respondent already converted into baptism and taken Christianity with effect from 04.04.1993 in his services nominal role thereby the caste is

not mentioned and it also shows he is also transferred to MAT vide proceedings dated 27.07.2017 and the very report in registering the crime shows the accused informed the defacto complainant that he was already transferred and to be relieved from which he questioned and did not oblige to take the transfer proceedings and asked to come to his chamber there he is alleged and another person by name J.Vinayakudu, he abused and further saying 3 more persons of the office also came there in their presence also he abused.

In fact as contended by the learned counsel for the petitioner that once he is converted from SC into Christianity by taking baptism by virtue above he ceased to be SC as also held by this Court in **Chinni Appa Rao Vs. State of A.P. rep. by its Public Prosecutor (2016 (1) ALD (Crl.) 545)**.

Having regard to the above, the very application of provisions are bleak, there shall be stay of investigation for six (06) weeks.

Learned counsel for the petitioner is permitted to take out personal notice to respondent No.2 by registered post with acknowledgment due and file proof of service.

Post on 04.10.2017.”

Notice even sent to the 2nd respondent, the same is returned unclaimed is a sufficient service. Thereby taken as heard the defacto complainant to decide on own merits and heard arguments further of the learned counsel for the petitioner and also learned Public Prosecutor.

From the above material, the very application of the Act are bleak for the defacto complainant shown converted into Christianity and no longer remained as SC and once he is not the SC, the provisions of the Act has no application. Thereby by virtue of the interim stay already granted, on that ground, the quash petition can be allowed for the proceedings which no way sustains for the said offence.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings of Cr.No.23 of 2017 supra.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:01.11.2017
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