

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

TRANSFER CRIMINAL PETITION No.185 of 2017

ORDER :

The petitioner is A3 of S.C.No.43 of 2016 on the file of the IV Additional Sessions Judge, Kadapa, and belongs to non-Scheduled Caste. The 1st respondent herein is A1 and belongs to Scheduled Caste(for short 'S.C.') and the 2nd respondent herein is the *de facto* complainant of Crime No.85 of 2008 of Rajupalem Police Station, Kadapa District. The Police, under the provisions of the Act, after investigation filed the final report and the learned Magistrate from the protest raised by the *de facto* complainant of the referred report filed by the police with notice to the *de facto* complainant, on the protest by following the procedure contemplated by Sections 200 to 204 r/ w 190 and 209 Cr.P.C. taken cognizance including for the offence under Section 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') in committing the case to the Special Court and the Special Court pursuant to that allotted Sessions Case number and the same is pending.

Now, the petitioner/ A3 is seeking for transfer to the regular Sessions Court of II Additional Sessions Judge, Kadapa, saying the provisions of the Act have no application, once the cognizance order is for the offence punishable under Section 302

I.P.C. also. There are main contentions raised including the above contentions mainly urged in the transfer petition covered by ground No.8 of the present petition.

Heard the learned counsel for the petitioner/ A3 and the learned Public Prosecutor representing the State/respondent No.3 and learned counsel for respondent No.2/ A1, who also supported the contentions in the transfer petition and respondent No.1/ de facto complainant did not choose to appear and perused the material on record.

Section 3(2)(v) of the Act, 1989 reads as follows:

“commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;”

By virtue of the provision *supra*, for the offences punishable of ten years and above committed against a person with knowledge that the victim belongs to Scheduled Caste or Scheduled Tribe, the punishment provided is upto life and with fine also.

In fact, in one of the references made, the Division Bench of this Court in Referring Officer rep. by State of A.P. by Public Prosecutor v. Shekar Nair @ Guru and others¹, answering the reference regarding non-application of the provisions of the Act,

¹ 1999(3) ALT 533

so far as Section 3(2)(v)(a) of the Act concerned, for an offence punishable above life, particularly, for the offence under Section 320 I.P.C., because regular Court of Sessions can impose a death penalty as maximum punishment provided under Section 302 I.P.C. whereas Special Court, under the provisions of the Act by virtue of Section 3(2)(v)(a) of the Act supra can impose maximum sentence of life with fine at best. The order of reference from para-56 of the judgment in this regard reads as follows:

“56. The next question referred to by the learned single Judge is whether clause (v) of Sub-section (2) of [Section 3](#) is attracted in the case of an offence under [Section 302, IPC](#) which is punishable with death or imprisonment for life. Our answer to this question is in the negative. The object of the above provision is to provide for enhanced punishment in regard to offences punishable under [IPC](#) with imprisonment for a term of ten years or more, if such offence is committed on the ground that the victim is a member of Scheduled Caste or Scheduled Tribe. Where the punishment of not less than imprisonment for life and higher sentence i.e., death sentence is provided for in respect of offences such as the one under [Section 302, IPC](#), the question of applying clause (v) of [Section 3](#) (2) does not arise.”

The order of the learned committal Magistrate in committing the case as provided under the provisions of the Special Act was challenged by A1 and A3(since A2) died before the IV Additional Sessions Judge, Kadapa, which is the Special Court for trial of the offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was challenged by filing CrI.M.P.No.295 of 2017, though provision of law mistakenly mentioned as if under Section 181 Cr.P.C. that did not gain

importance rightly, as mere wrong quoting of provision of law, no way fatal. The learned Sessions Judge dismissed the petition questioning the application of the provisions of the Act to continue the case before the Special Court with observations particularly at para-9, which reads as follows:

“Section 181 of Cr.P.C. deals with places of trial in case of certain offences. Under this provision this Court is not having any competency to transfer any case. Further, as the deceased was a Scheduled Caste person, the case was also taken cognizance under Section 3(2)(v) of S.C & S.T (POA) Act, 1989. Though this provision is not applicable to the first petitioner/ A1, but it is applicable to the 2nd petitioner/ A3. The accused No. is no more and the case was abated against him. As per Section 20 of S.C & S.T (POA) Act, 1989 the provisions of this Act shall have effect notwithstanding anything inconsistent herewith contained in any other law for the time being in force. For the all the above said reasons the petition filed by the petitioners is not maintainable and is liable to be dismissed. This point is answered against the petitioners.

In the result, the petition is dismissed.”

In fact, the Division Bench of this Court in Shekar Nair @Guru (supra) categorically held that the Act itself has no application for the offence under Section 302 I.P.C. to try by the Special Court, the question of invoking Section 20 of the Act by the Special Court in its saying the provisions of the Act prevails over the provisions of any other law including Cr.P.C. does not arise. The said Division Bench expression is not in the notice of the learned Special Judge in so answering, as had it been, it could not be ignored.

Having regarding the above and in view of the expression of the Division Bench of this Court supra in saying Section 3(2)(v)(a) of the Act has no application to continue the case of the offence punishable under Section 302 I.P.C. even committed by a non S.C. person against a S.C. victim, though otherwise a S.C. accused and non-S.C. accused also can be tried before the Special Court for the reasons of A1 is an S.C. and A3 is a non-S.C. and the victim is an S.C. besides the deceased, the case is withdrawn from the file of the IV Additional Sessions Judge, Kadapa and instead of transferring it to the II Additional Sessions Judge, Proddatur, transferred to the file of the Principal Sessions Judge by directing the IV Additional Sessions Judge, Kadapa, to endorse so in its record and send the case file by virtue of this order, to the learned Principal Sessions Judge so that the learned Principal Sessions Judge on giving any fresh Sessions Case number if necessary either to try or to make over to any Additional Sessions Judge, being the head of the Sessions Unit.

Accordingly, the Transfer Criminal Petition is disposed of.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:24-10-2017
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L.R. copy to be marked - yes