

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4 OF 2017

ORDER:

This criminal petition, under Section 482 Cr.P.C, is filed to quash the proceedings in Cr.No.410 of 2016 of Piduguralla Town Police Station, Guntur District, registered against the petitioners for the offences punishable under Sections 307, 324 r/w.34 of Indian Penal Code, 1860 (for short, 'I.P.C.') and Section 3(1)(r)(s) of SC & ST (POA) Amendment Act, 2015.

The main ground urged by the counsel for the petitioners before this Court is that there was a complaint lodged against the second respondent and the same was registered as a case in Cr. No.411 of 2016 of Piduguralla Town Police Station as a counter blast. It is also contended that the petitioners are apprehending their arrest in connection with the above crime, since there is prohibition to grant pre-arrest bail under SC/ ST (PoA) Act.

The allegations made in the complaint is specific which attracts the offence punishable under Section 3(1)(r)(s) SC/ST (PoA) Act on the face value of it.

Therefore, I find no ground to quash the proceedings at this stage.

The only apprehension of the petitioners is that there is every possibility of their arrest by the police in connection with the above crime and that apart Section 438 Cr.P.C. has no application to the proceedings under the provisions SC/ST POA Act and in case the police arrested, they will put to serious loss.

The arrest of the accused is not must in all cases and the Court can issue necessary direction to the concerned police to follow certain guidelines. In **SOM MITTAL V. GOVERNMENT OF KARNATAKA (1994 CRL LJ 1981)** the Apex Court while deciding the application to release on pre-arrest bail relating to a State of Uttar Pradesh, held that where there is no provision for grant of pre- arrest bail in Criminal Cases, and while concurring with justice H.K. Sema, his Lordship Justice Markandey Katju, following the principle laid down in **JOGINDER KUMAR V. STATE OF UTTER PRADESH AND OTHERS (AIR 1994 SC 1349)**, wherein it was held that

“no arrest can be made, power to arrest is one thing and the justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It is would be prudent for a police officer in the interest of protection of the constitutional right of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the persons’s complicity and even so as to the need of effect arrest. Denying a person of his liberty is a serious matter. The recommendation of the police commissioner merely reflects the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be a reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except

- 3 -

in heinous offences, an arrest must be avoided if a police officers issues notice to a person to attend the Station House and not to leave Station without permission would do. Para No.13 of the same judgment has also referred to the Third Report of the National Police Commission which stated that by and large nearly 60% of the arrests in the country were unnecessary or unjustified. Also, 43.2% of the expenditure in jails was over such prisoners only who need not have been arrested at all. Despite this categorical judgment of the Supreme Court, it appears that the police is not at all implementing it. What invariably happens is that whenever an FIR of a cognizable offence is lodged the police immediately goes to arrest the accused person”.

In case the police resort to arrest the petitioners without following the principle, it amount to clear violation of the aforesaid judgment of the Supreme Court.

Therefore, the police, Piduguralla Town Police Station, Guntur District, are directed to follow the principle laid down by the Apex Court in **JOGENDER KUMAR**'s case and proceed with the investigation in connection with Cr.No.410 of 2016.

Accordingly, the criminal petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date: 03.01.2017
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