

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.154 of 2017

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Home for respondent Nos.1 to 4 and perused the prayer in the writ petition with the supporting affidavit and other material on record.

This Court initially while ordering notice before admission on 03.01.2017 directed police of Ananthasagaram Police Station, SPSR Nellore District, not to arrest the petitioner in the said crime No.78 of 2016 for eight (8) weeks.

The supporting affidavit averments in the writ petition read that it is a false accusation in connection with a property dispute and there is another crime No.77 of 2016 pending for the offences punishable under Sections 447, 341, 323, 506 r/w 34 IPC on the report of the quash petitioner against the 5th respondent-defacto complainant herein and others.

It is the submission of the learned Government Pleader that both the crimes are under investigation and charge sheets are to be filed.

It is needless to say the intention is the criteria without which no findings could be made out as held by the latest expression of the Apex Court in **Asharfi v. State of Uttar Pradesh**¹. Leave apart the latest expression of the Apex Court in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra**² wherein it was held as follows:

¹ (2018) 1 SCC 742

² 2018 (2) ALT 50 SC

“that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District - such permissions must be granted for recorded reasons which must be served on the person to be arrested and to the concerned court - As and when a person arrested is produced before the Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found to be valid - To avoid false implication, before FIR is registered, preliminary enquiry may be made whether the case falls in the parameters of the Atrocities Act and is not frivolous or motivated.”

The Apex Court also made observations in saying there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*. Having approved the view taken and approach of the Gujarat High Court in **Pankaj D. Suthar v. State of Gujarat**³ and **Dr. N.T. Desai v. State of Gujarat**⁴ and clarified the judgments of the Apex Court in **State of M.P. v. Ramkishan Balothia**⁵ and **Manju Devi v. Onkarjit Singh Ahluwalia**⁶, it is observed that besides the above direction to avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated. It is also stated that any violation of direction supra, particularly of the arrest and preliminary enquiry concerned, will

³ (1992) 1 GLR 405

⁴ (1997) 2 GLR 942

⁵ (1995) 3 SCC 221

⁶ (2017) 13 SCC 439

be actionable by way of disciplinary action as well as contempt and these directions are prospective.

Having regard to the above, there is nothing to interfere with the interim order of not to arrest the petitioner, however the investigation shall continue by directing the police to complete early.

Accordingly, this Writ Petition is disposed of directing the respondents 2 to 4 to complete the investigation and file a final report within three (3) months from today. It is made clear that it will not prevent the police to secure the presence of petitioner, if at all required by notice of appearance for the purpose of investigation of the case. No order as to costs.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 20.04.2018
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JUSTICE Dr. B.SIVA SANKARA RAO

