

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.673 of 2017

ORDER:

The prayer in the Writ Petition is to issue a writ, more particularly in the nature of Writ of Certiorari, to call for the records relating to Cr.No.172 of 2016 of Yemmiganur town Police Station, Kurnool District and to quash the proceedings against the petitioner-A2 in said crime, which is registered for the offence punishable under Section 323 r/w 34 IPC and Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) amendment Act, 2015.

2. The affidavit averments are that A1 was the Chairman of the Yemmiganur municipality and presently he is 25th Ward Councilor. Respondent No.4-de facto complainant belongs to the political rival group of the ruling party. On 30.12.2016, when the petitioner-A2 accompanied his friend one Y.Parasuramudu and went to the municipal office of Yemmiganur as the mother of Parasuramudu also filing tender for the shop D7 to pick, that was reserved for S.T. category, the de facto complainant-respondent No.4 and his people picked up quarrel and beat the petitioner from which he sustained dumb injuries. When the petitioner made a compliant against respondent No.4, the police did not receive

the said complaint out of his political clout. The police registered a false case against the petitioner-A2 on the compliant of respondent No.4 alleging the petitioner-A2 abused him in caste name and Butta Rangaiah-A1 hit him on the chest and the petitioner also slapped him on his cheek and he sustained dumb injuries. It is the contention that all the averments in the compliant are false and baseless and thereby, the FIR is liable to be quashed.

3. Heard the learned counsel for petitioner-A2, and the learned Government Pleader for Home (A.P.) for the respondents 1 to 3.

4. On 05.01.2017, this Court while ordering notice before admission directed the Police i.e., respondents 2 & 3 to proceed with the investigation without arresting the petitioner, and the same holds good till date.

5. It is the submission of the learned Government Pleader for Home (A.P.) that the crime is under investigation and the charge sheet is yet to be filed.

6. 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

Pradesh¹. Leave apart the latest expression of the Apex Court in Dr. Subhash Kashinath Mahajan v. State of Maharashtra² wherein it was held as follows:

“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.”

7. 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 Gujarat³ and Dr. N.T. Desai v. State of Gujarat⁴ and clarified the judgments of the Apex Court in State of M.P. v. Ramkishan Balothia⁵ and Manju Devi v. Onkarjit Singh

¹ (2018) 1 SCC 742

² 2018 (2) ALT 50 SC

³ (1992) 1 GLR 405

⁴ (1997) 2 GLR 942

⁵ (1995) 3 SCC 221

Ahluwalia⁶, 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 be actionable by way of disciplinary action as well as contempt and these directions are prospective.

8. 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.

Accordingly, this Writ Petition is disposed of directing the respondents 2 & 3 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-A2, if at all required by notice of appearance for the purpose of investigation of the case. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

16.04.2018
MVA

⁶ (2017) 13 SCC 439