

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4563 OF 2018

ORDER:

This Criminal Petition, under Section 438 of Cr.P.C., is filed by the petitioner, who is arrayed as accused in Crime No.36 of 2018, on the file of Huzurabad Police Station, Karimnagar District, apprehending his arrest in connection with the above Crime, registered for the offences punishable under Sections 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Sections 420 and 290 of Indian Penal Code, 1860 (for short, 'the I.P.C').

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor appearing for the respondent-State, and perused the record.

3. The case of the prosecution, in brief, is that the de-facto complainant, who belongs to scheduled caste, is a coolie, and the petitioner, his friend, is working as Government Teacher. The de-facto complainant believing the words of the petitioner to provide employment as attender to his daughter Datla Vijayalakshmi, paid first installment amount of Rs.1,00,000/- on 20.09.2014, and also paid second installment amount of Rs.1,00,000/- to the petitioner and agreed to pay the final installment amount of Rs.1,00,000/- out of Rs.3,00,000/- after receiving appointment order. But, even after lapse of three years, neither the daughter of the de-facto complainant received any appointment order nor the petitioner repaid the amount. Due to which, the de-facto complainant sold Ac.1-00 cents of land for payment of interest on Rs.2,00,000/- and also to perform the marriage of his daughter. Later, the de-facto complainant asked the petitioner to return the amount to meet the marriage expenses of his daughter, but the petitioner evaded for payment

of the amount and also shifted his residence. Finally, on 18.02.2018, when the de-facto complainant pressurized the petitioner to either provide employment as attender to his daughter or return the amount, the petitioner abused the *de-facto* complainant touching his caste name in the presence of Matta Ramesh, Bhasker, Odelu and Chennaboina Raju and asked the de-facto complainant to do whatever and thus cheated the de-facto complainant to an extent of Rs.2,00,000/-.

4. Learned Additional Public Prosecutor appearing for the respondent-State opposed the petition on the ground that the investigation is not yet completed in this case.

5. In a recent decision of the Apex Court in ***Dr.Subhash Kashinath Mahajan Vs. The State of Maharashtra and another***¹, when certain allegations, touching the caste name of the de-facto complainant, who belongs to scheduled caste, were attributed against the appellant therein who is a public servant, the Apex Court, while disposing of the Criminal Appeal, framed the following guidelines to be followed by the investigating agencies while effecting the arrest of public-servants and non-public servant and observed as follows:

“83. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed;

ii) 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. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be

¹ Crl.A. No.416/2018 (Arising out of S.L.P. (Criminal) No.5661/2017), Dt.20.03.2018

after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention;

iv) 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;

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.”

6. From a bare looking of the contents of the report, it is clear that the petitioner-accused abused the de facto complainant which *prima facie* indicates that the petitioner insulted the de facto complainant in the public view to attract the offence punishable under Section 3(1)(r)(s) of the Act. Since there is a bar under Section 18 of the Act, the petitioner is not entitled to claim pre-arrest bail. However, in the recent judgment of the Apex Court in ***Dr.Subhash Kashinath*¹** and, in view of bar under Section 18 of the Act, the petitioner-accused is not entitled to claim pre-arrest bail, the SDPO concerned is directed to follow the guidelines laid down in the by the Apex Court in ***Dr.Subhash Kashinath*¹**.

7. Accordingly, with the above observation, the Criminal Petition is disposed of.

8. In consequence, miscellaneous petitions, if any, pending in this Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 25.04.2018.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CRIMINAL PETITION No. 4563 OF 2018

Date. 25.04.2018

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