

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5542 OF 2018

ORDER:

Heard the learned counsel for petitioner, who is A5 in Crime No.58 of 2018 on the file of Chirala II Town Police Station, Prakasam District, and the learned Public Prosecutor representing the State of Andhra Pradesh. The crime registered is for the offences punishable under Sections 448, 323, 324 r/w 34 IPC & Section 3 (1)(r), 3(1)(s) & 3(2)(va) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short, 'the Act').

2. A perusal of the record shows there is a counter case in Cr.No.56 of 2018 registered for the offences punishable under Section 324 r/w 34 IPC. It is one of the contention of learned counsel for the petitioner-A5 that it is nothing but the counterblast to earlier case referred supra. In Cr.No.56/2018 the occurrence was as per the very report dated 08.04.2018. As per the expression of the Apex Court in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra**¹ giving prospective operation there is a direction as under:

¹ 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**² and **Dr. N.T. Desai v. State of Gujarat**³ and clarified the judgments of the Apex Court in **State of M.P. v. Ramkishan Balothia**⁴ and **Manju**

² (1992) 1 GLR 405

³ (1997) 2 GLR 942

⁴ (1995) 3 SCC 221

Devi v. Onkarjit Singh Ahluwalia⁵, 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.

3. Having regard to the above, though the petitioner-A5 is not entitled to concession of anticipatory bail including from the bar under Section 18 of the Act, though the observations in the above expression says there is no total bar from that provision if at all for exceptional circumstances to consider for no such a case, this Criminal Petition is disposed of rather than dismissal by directing the Investigating Officer to follow the above guidelines of the Apex Court including Section 41-A Cr.P.C.

Dr. B. SIVA SANKARA RAO, J

13.06.2018
MVA

⁵ (2017) 13 SCC 439