

ORDER:

This criminal petition is filed under Section 438 Cr.P.C. by the petitioners/ A1 to A4 in Crime No.40 of 2018 of Kuppam Police Station, Chittoor District, registered for the offences punishable under Sections 447, 427, 506 r/w 34 I.P.C. and Section 3(1)(f)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) Amendment Act, 2015.

2. Heard learned counsel for the petitioners and learned Public Prosecutor representing the State.

3. It is stated in the affidavit filed in support of the petition that the 1st petitioner is the husband of the 2nd petitioner, 3rd petitioner is the son of petitioners 1 and 2 and 4th petitioner is the elder brother of 2nd petitioner and it is a false accusation in connection with a property dispute.

4. It is needless to say that 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.”

¹ (2018) 1 SCC 742

² 2018 (2) ALT 50 SC

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 Ahluwalia⁶, it is observed that besides the above direction to avoid false implication of an innocent, a preliminary enquiry may be conducted by the Deputy Superintendent of Police 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.

5. Accordingly, this Criminal Petition is disposed of directing the Police concerned not to arrest the petitioners and 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 petitioners, if at all required by notice of appearance for the purpose of investigation of the case.

6. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 03.07.2018
pab

³ (1992) 1 GLR 405

⁴ (1997) 2 GLR 942

⁵ (1995) 3 SCC 221

⁶ (2017) 13 SCC 439