

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.832 of 2017

ORDER:

The prayer in the Writ Petition is as under:

“to call for the records in FIR No.487 of 2016 on the file of the Station House Officer, Kachiguda Police Station, Hyderabad and quash the same by issuing a Writ of Certiorari or any other appropriate writ, order or direction as the same is illegal, arbitrary, abuse of process of law and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. The affidavit averments are that the very report of the de-facto complainant of he borrowed a hand loan of Rs.1,40,000/- in March, 2016 from one Govind Reddy, husband of the petitioner/ accused, and promised to repay the same on weekly basis and paid an amount of Rs.1,00,000/- and he could not be paid Rs.40,000/- . Govind Reddy pressurized the de facto complainant to repay and employed Shekhar Reddy as mediator and came to his shop on 16.12.2016 at around 9.30 p.m. along with the petitioner/ accused and five others and forcefully entered into the shop and abused the de-facto complainant by touching the caste as “MALA LANGA KODUKA NEE BATHUKU ENTHA NEVU ENTHA” and highhandedly taken Rs.9,000/- from the cash counter and also taken his two wheeler bike and locked the shop by closing the shutters and taken the keys.

3. It is the submission of learned counsel for the petitioner/ accused that the said allegations are untrue and it is a false implication to avoid money transaction and the petitioner is an innocent, who is no other than the wife of Govind Reddy, and she is falsely implicated and none of the provisions of the Schedule Castes & Schedule Tribes (Prevention of Atrocities) amendment Act, 2015 are applicable and the proceedings in FIR No.487 of 2016 are liable to be quashed.

4. The learned Government Pleader for Home (TG) from the counter-affidavit submits that the crime is under investigation and it is in progress and from the allegations the *prima facie* accusation is made of cognizable offence.

5. Heard the learned counsel for petitioner, and the learned Government Pleader for Home (TG) representing the respondents 1 & 2 for notice sent to respondent No.3-de facto complainant, to the address given in the FIR, is returned unserved, which is sufficient service and no representation is made on his behalf.

6. On 05.01.2017, this Court while ordering notice before admission directed the respondents i.e., respondent No.2 to proceed with the investigation without arresting the petitioner.

7. 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:

“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.”

8. 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.*

¹ (2018) 1 SCC 742

² 2018 (2) ALT 50 SC

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 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.

9. 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 respondent No.2 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/ accused, if at all required by notice of appearance for the purpose of investigation of the case. No order as to

³ (1992) 1 GLR 405

⁴ (1997) 2 GLR 942

⁵ (1995) 3 SCC 221

⁶ (2017) 13 SCC 439

costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

16.04.2018
MVA

