

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9129 OF 2018

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') to quash the proceedings in S.C. No.93 of 2018, pending on the file of the learned XI Additional District Judge - cum - Special Judge for the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act Cases, Visakhapatnam, against petitioners - accused Nos.1 to 4 registered for the offences punishable under Sections 324, 323 and 109 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 (1) (r) (s) and 13 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'Act, 2015').

2. Respondent No.2 herein, who is *de facto* complainant in the aforesaid Case, lodged a complaint with the Police alleging that the accused Nos.1 to 4 caused hurt voluntarily and that they insulted him based on caste name within public view; that based on the complaint, Gajuwaka Police Station, registered a case in Crime No.132 of 2018, and issued FIR, that the said FIR was challenged before this Court vide Crl.P. No.5342 of 2018, and this Court, by order, dated 06.06.2018, wherein this Court issued a direction to the Investigating Officer to follow the guidelines framed by the Hon'ble Supreme Court in **Dr. Subhash Kashinath Mahajan v. The State of Maharashtra**¹, that despite direction, the Investigating Officer did not follow the guidelines

¹. (2018) 6 SCC 454

and, therefore, filed the present Criminal Petition to quash the proceedings against the petitioners in the aforesaid S.C.

3. During hearing, the main grievance of learned counsel for the petitioners is that despite issuing a direction by this Court to follow the guidelines in **Dr. Subhash Kashinath Mahajan¹**, the Investigating Officer did not adhere to them, and in a casual manner concluded the investigation and filed charge sheet. Whereas, learned Public Prosecutor for the State of Andhra Pradesh contended that they followed the guidelines of the Hon'ble Supreme Court in the aforesaid decision, and on that ground, the Court cannot quash the proceedings.

4. In view of the rival contentions, for better appreciation, it is relevant to refer to the guidelines issued by the Hon'ble Supreme Court in paragraph No.77 of the aforesaid decision which is as under:

“ Accordingly, we direct 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.”

Basing on this direction, the learned counsel for the petitioners requested this Court to quash the proceedings in the aforesaid S.C. as the Investigating Officer did not adhere to the directions. A close analysis of the direction issued by the Hon’ble Supreme Court, it is clear that in the absence of any independent offence calling for arrest, in respect of offences under the Atrocities Act alone, the Investigating Officer is required to follow the guidelines. But, in the case at hand, the offences committed by the petitioners are punishable under 324, 323 and 109 IPC. The offences under IPC are independent, and when the arrest of the petitioners herein is warranted in connection with the offences under IPC, but not the offences under the Act, 2015 alone. Therefore, based on such view, the proceedings against the petitioners cannot be quashed since their arrest is warranted in connection with the offences under IPC also. The other direction issued by the Hon’ble Supreme Court is to conduct preliminary enquiry before registration of FIR. But, by the time the petitioners reached this Court, FIR was registered as

Crime No.132 of 2018, and at best, in pursuance of the direction, they require to comply with other formalities referred supra i.e., before arrest of the accused in connection with the offence punishable under the Act, 2015, the Investigating Officer is required to obtain permission from the Senior Superintendent of Police. But, in the case at hand, the petitioners not only committed the offences punishable under the provisions of IPC, but also under the Act, 2015 allegedly. When arrest is warranted for the offences punishable under IPC, the Investigating Officer is not required to obtain such permission from Senior Superintendent of Police at District. Hence, on this ground, the proceedings against the petitioners herein cannot be quashed.

5. It is also contended that when petitioner No.4 is a member of Scheduled Tribe, the provisions under the Act, 2015 do not attract against him. But, petitioner No.4 has not produced any certificate to support his contention. Even otherwise, the proceedings against him cannot be quashed as petitioner No.4 allegedly committed the offences not only under Act, 2015, but also the offences punishable under IPC provisions.

6. At this stage, the learned counsel for the petitioners requested to permit the petitioners to file an application under Section 239 of the Code. But, this Court need not grant liberty since it is a right of the accused to file such applications.

7. In view of the foregoing discussion, I find no ground to quash the proceedings against the petitioners at this stage. Consequently, the present Criminal Petition is dismissed.

Consequently, the Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

September 07, 2018
Mgr

