

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2769 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings against him in Crime No.17 of 2011 on the file of Penuganchiprolu PS, Krishna District registered for the offences under Section 448 IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act").

2) On 19.03.2011, the *defacto* complainant who is working as Hostel Welfare Officer, Penuganchiprolu Boys Hostel, gave a complaint to the police alleging that the accused being the Village Revenue Officer (VRO) of Penuganchiprolu has been harassing every day and demanding Rs.5,000/- every month. On 18.03.2011, in the morning when the students went to the school, the accused came to the hostel and called the complainant into a room and demanded Rs.5,000/- and when the complainant pleaded that he was not having money, the accused abused him as '*Lambada Lanja Kodaka*', I will see your end and pulled him by holding his shirt. He also abused in vulgar language and threatened that if he disclosed to any body, he would lose his job. The investigation is under progress.

3) The petitioner filed I.A.No.1 of 2018 seeking to add *defacto* complainant as 2nd respondent. Notice was served on 2nd respondent and he is represented by Sri K.Aravind Kumar. However, when the matter

came up for hearing, there was no representation on his behalf. Hence, heard arguments of learned counsel for petitioner Sri P.Prabhakar Rao and learned Additional Public Prosecutor (AP).

4a) Severely fulminating the complaint allegations as false, learned counsel for petitioner would argue that the petitioner/accused is working as VRO, Penuganchiprolu Mandal and on 19.03.2011, on the instructions of RDO, Vijayawada, the MRO and the petitioner/accused surprised the BC Boys Hostel in which the *defacto* complainant was working as Welfare Officer and during their inspection they found some irregularities in ration/stocks maintained in the hostel. The MRO recorded the statement of *defacto* complainant which was scribed by the petitioner/accused. Later, the MRO submitted report to RDO vide letter No.RCA/15/2011 dated 19.01.2011 and in turn RDO submitted report to the District Collector, Krishna stating that Hostel Warden was purposefully maintaining false records by misusing the provisions and recommended for action. Learned counsel would submit that as a counter blast, *defacto* complainant filed a false case against the petitioner. Since the MRO belongs to SC caste, the complainant did not implicate him in this case.

b) Nextly, learned counsel would argue that even that complaint allegations are assumed to be true, they do not disclose any offence either under Section 3(1)(x) of the Act or under Section 448 IPC. The offence under Section 3(1)(x) is concerned, he would submit, even as per the complaint allegations, the offence was not occurred within the

public view. The offence under Section 448 IPC has no legs to stand because the petitioner never trespassed into the hostel as alleged and when the offence under Section 3(1)(x) of the Act is found to be not sustainable, the question of maintainability of offence under Section 448 IPC does not arise. He would thus submit that continuation of criminal proceedings against the petitioner would amount to abuse of process of the Court and thus prayed to quash the FIR.

5) Learned Addl.P.P. opposed the petition and contended that whether the offence was committed within the gaze of public or not would be known only after thorough investigation and the petition is pre-matured one. He thus prayed to dismiss the petition.

6) As per the decision in *State of Haryana and others vs. Bhajan Lal and others*¹, the High Court can exercise its plenary power under Section 482 Cr.P.C. to quash the FIR only when its contents even if uncontroverted do not disclose any offence. Therefore, at this juncture, this Court cannot trust the veracity of the complaint allegations on the strength of arguments that the complaint was a counter blast to the report submitted against the defacto complainant. What is germane for consideration is, even if the complaint allegations are accepted to be true on their face value whether any offence is made out or not.

7) In the above angle when the complaint allegations are perused, in the complaint itself the *defacto* complainant stated that on 18.03.2011 in

¹ 1992 Supp. (1) SCC 335

the morning time when the students went to the school the accused allegedly went to the hostel and called the complainant to a room and demanded Rs.5,000/- from him and when he pleaded that he had no money, the petitioner/accused allegedly abused and insulted him in the name of his caste and threatened him with dire consequences by pulling his shirt. So, even as per the narration in the complaint, the offence was allegedly committed in one of the rooms in the hostel after the students went to the school. The complaint does not disclose that any third person of the public have witnessed the incident. This fact is confirmed by the further narration in the complaint that the accused allegedly threatened that if the complainant discloses about the atrocious act of the accused to anybody, he would have to loose his job. Therefore, it is obvious that the alleged offence was not occurred in the public view.

8) In this back drop, it is useful to extract Section 3(1(x) of the Act which reads thus:

Sec.3: Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) to (ix) xx xx xx

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

9) So, the facts in this case are glaringly missing the basic ingredient i.e. “*within public view*” to complete the offence. We have decisions of this Court holding that any of the comment or utterance made at a

private place not being the place within the public view does not attract the offence under this Act.

10) In similar circumstances, a learned single Judge of this Court in ***K.Padma Reddy vs. Station House Officer, Bellampalli and others***² held thus:

“Para-10 xx xx xx *The provision is very clear, in so far as it requires the intentional insult, or intimidation with an intent to humiliate the member of Scheduled Caste or Scheduled Tribe, to take place (in any public place within public view), to constitute an offence. Therefore, every utterance which comes within the purview of this provision by itself is not an offence, unless it is made in any place within public view.*

Para-11 *In the complaint, the 3rd respondent has categorically stated that the scene of offence was the Chambers of the Municipal Commissioner and there is no allegation to the effect that such utterance was made 'within public view'. Once this basic ingredient is lacking, the offence cannot be said to have been committed by the writ petitioner. In the decision referred to above, this Court dealt with this aspect extensively and held that any of the comment or utterance made at a private place not being a place within public view does not attract the provisions of the Act or the Rules made thereunder.”*

11) In the light of precedential jurisprudence, it is clear that in the instant case, the offence under Section 3(1)(x) of the Act has no application. Consequently, the offence under Section 448 IPC has also

² 2003 (2) ALD (CrL.) 421 (AP)

no room to sustain. Therefore, continuation of the investigation would amount to abuse of process of the Court.

12) In the result, this Criminal Petition is allowed and proceedings in Crime No.17 of 2011 on the file of Penuganchiprolu PS are quashed against the petitioner/accused.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

Date: 23.11.2018
Murthy

U.DURGA PRASAD RAO, J

