

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11422 of 2018

ORDER:

The petitioner Syed Mahammad Ali @ Mahammed Ali of Kadapa town is A1 among eleven or more accused in Crime No.346 of 2016 of Kadapa I Town U/G Police Station, Kadapa District, registered for the offences punishable under Sections 143, 341, 353, 188 r/w 34 IPC, which is outcome of the report of respondent No.2 sentry Police Constable (P.C.No.1621) of Kadapa I Town U/G Police Station, now seeking to quash said crime proceedings so far as the petitioner-A1 is concerned.

2. Heard the learned counsel for petitioner and the learned Additional Public Prosecutor representing the respondent No.1-State and perused the material on record.

3. The sum and substance of the contentions from the grounds of the quash petition vis-à-vis the oral submissions of the learned counsel for petitioner in the quash petition are that none of the ingredients of any of the penal sections are applicable to the case on hand for the police to register the crime for sin of asking reasons for the arrest of Sk. Mohammed Jakeer Hussain in Crime No.435 of 2016 of Kadapa I Town Police Station and it is not even the case that any of them armed with any weapons nor a case of writing and not even the case of attacked any police officials including sentry on duty besides others and thereby sought for quashing by also submitting that there is a bar

to register the crime for the offence under Section 188 IPC from Section 195 (1)(a) Cr.P.C., but for on the private complaint.

4. Learned Additional Public Prosecutor submits that it is not mere approaching the police to ask the reasons for arrest, but for as a mob came in attack and veiled police and obstructed their duties despite their pursuing including by informing about the Police Act provisions in force in Kadapa town and even pushed the sentry on duty by use of criminal force and that squarely attracts; but for if at all the offence under Section 188 IPC from the bar under Section 195 Cr.P.C. and sought for dismissal of the petition.

5. So far as the offence under Section 353 IPC of assault or use of criminal force intentionally to deter public servant from discharge of his duty is concerned, it is not mere assault or force, but intentional use of criminal force defined under Section 350 IPC or intentional assault as defined under Section 351 IPC a prerequisite and there is nothing to say anybody intentionally by name attacked any police including by pushing, but for a casual reference saying all unheeding about the Police Act in force allegedly on the sentry pushed. The intentional push to commit an offence to deter public servant practically lacking to attract the offence under Section 353 IPC besides the bar for registering the crime under Section 188 IPC from Section 195 Cr.P.C. though the other offences for which the crime registered under Sections 143 & 341 IPC are not readily liable to be quashed.

6. Accordingly and to the extent above, this Criminal Petition is allowed in part. If at all any of the accused not arrested and produced to the judicial custody, the police strictly follow 41-A Cr.P.C. and also the guidelines as held by the Apex Court in **Arnesh Kumar v. State of Bihar**¹.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

11.12.2018
MVA



¹ (2014) 8 SCC 273