

K. Mallesham Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Aug-10-1998

Reported in : 1998(5)ALD120; 1998(2)ALD(Cri)562; 1998(2)ALT(Cri)395; 1999CriLJ324

Judge : B. Sudershan Reddy, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 436, 437 and 438; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3 and 18; [Indian Penal Code \(IPC\), 1860](#) - Sections 306

Appeal No. : Crl. P. No. 3223 of 1998

Appellant : K. Mallesham

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. C. Praveen Kumar, Adv.

Judgement :

ORDER

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973, to direct release of the petitioner (A-1) on bail, in the event of his arrest, in connection with Cr.No.81 of 1998 on the file of P.S.Parkal, Warangal District. The

petitioner apprehends arrest at the hands of the Police in connection with the above crime registered under Section 306 IPC and Section 3(i)(x) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (for short 'Prevention of Atrocities Act').

2. The allegations made in the First Information Report (FIR) and the Remand Case Diary may, briefly, be noticed. The deceased, K.Tirupathi was working as an Attender in Sahiti Junior College, Parkal. The deceased is alleged to have committed theft of a cheque for Rs.10,000-00 and presented the same in State Bank of Hyderabad and withdrew the amount. On 19-6-1998 the matter came to the notice of the management and an inquiry was held. The management is alleged to have made inquiry with the deceased and obtained the specimen signature and hand-writing for the purposes of comparison with the writing found on the cheque. On comparison, it was found that the deceased had committed theft of the cheque for Rs.10,000/-. Therefore, the management asked the deceased to pay the said amount in instalments. The deceased did not agree with the proposal and the management gave a report to the Police. The deceased, having come to know about reporting of the matter to the Police had committed suicide by consuming pesticide on the morning of 26-6-1998. On 27-6-1998, father of the deceased, Kashamalla Yellaiah lodged a complaint against the petitioner and three others alleging that the accused made false allegations against the deceased and in that process harassed him mentally. On account of such unbearable harassment, his son committed suicide by consuming pesticide by writing reasons on the black-board of the College and also leaving a death note addressed to the Press reporters. His son was admitted into a private hospital and during the course of treatment he died. The complainant accordingly prayed for taking appropriate action against the accused, who are responsible for mental harassment of his son and drove him to commit suicide. The S.I. of Police, Parkal, accordingly registered the case under Section 306 IPC and Section 3(i)(x) of the Prevention of Atrocities Act.

3. It is revealed, during the course of investigation so far made, that all the accused, including the petitioner herein, on mere suspicion that the deceased had stolen the cheque for a sum of Rs.10,000/-, harassed him mentally and physically

alleging that the deceased had drawn the cheque in the name of Raja. It is stated in the Remand Case Diary that due to unbearable harassment made by the accused, the deceased felt insulted, and got vexed with the life had decided to commit suicide by writing death note addressed to the Press Reporters of Parkal, SI of Police, Parkal, apart from writing the same tiling on the black-board at Sahiti Junior College, Parkal, stating that all the accused persons were responsible for his death.

4. In this application, learned senior Counsel, Sri C.P.admanabha Reddy contends that there is no specific allegation against the petitioner of any particular or specific act as such and under those circumstances, the petitioner is entitled to be released on bail, in the event of his arrest. On the other hand, learned Additional Public Prosecutor, Sri O.Kailashnath Reddy, inter alia, contends that the application filed under Section 438 of the Code of Criminal Procedure, 1973 (forshort 'the Code') is not maintainable, since application of Section 438 of the Code is expressly barred by Section 18 of the Prevention of Atrocities Act. It is contended by the leanied Addl. Public Prosecutor that a case against the petitioner had been registered not only under Section 306 IPC, but also under Section 3(i)(x) of the Prevention of Atrocities Act. The learned Addl. Public Prosecutor contends that the application has to be summarily rejected.

5. Sri C.Padtmnabha Reddy, learned senior Counsel would contend that mere mentioning the provision of law under Section 3(i)(x) of the Prevention of Atrocities Act would not be enough to exclude the application of Section 438 of the Code, unless the FIR contains specific allegations attracting the provisions of the Prevention of Atrocities Act.

6. It would be appropriate to have a look at Section 18 of the Prevention of Atrocities Act:

'Nothing in Section 438 of the Code shall apply in relation to the nature of case involving the arrest of the person on accusation of having committed the offence under this Act.'

7. The Apex Court in *State of M.P. v. Ram Kishna Balothia*, 1995 Cr.LJ 2076, while upholding the Constitutional validity of Section 18 of the Prevention of Atrocities Act observed that:

'It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offence under the Penal Code, is not available in respect of the offences under the said Act'

The Apex Court further observed that:

'The exclusion of Section 438. of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.'

The Apex Court had also observed that:

'Looking to the historical back-ground relating to the practice of 'Untouchability' and the social attitudes, which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences. There is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act..... The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of the Society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.'

Learned senior Counsel appearing on behalf of the petitioner would, however, contend that mere mentioning of Section 3(i)(x) of the Prevention of Atrocities Act in the FIR, itself, would not be enough to exclude the operation of Section 438 of the Code. Learned senior Counsel would lay emphasis on the phrase, in Section 18 of the Act accusation of having committed the offence under this Act.

8. It may be noticed that Section 438 of the Code is a part of general law and confers statutory right upon a person apprehending arrest on an accusation of having committed a non-bailable offence to be released on bail, in the event of his arrest. The power to grant such bail is conferred only upon the Sessions Court and the High Court; but no person is entitled for grant of such bail as a matter of right. Whereas Section 18 of the Prevention of Atrocities Act, is a special law enacted with a laudable object of preventing commission of offences to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes. While enacting the law, the Parliament was aware and fully conscious that Scheduled Castes and Scheduled Tribes still remain vulnerable and they are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons. (See Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989.)

9. It is settled principle of the interpretation of statute that a special law or provision shall always prevail over the general law or provision. Thus, clearly Section 18 of the Prevention of Atrocities Act excludes operation Section 438 of the Code and to that extent takes away the statutory right conferred upon the persons to be released on bail in the event of their arrest in connection with the commission of an offence under Prevention of Atrocities Act. The Sessions Court or the High Court, as the case may be, shall have no power to direct release of the accused on bail in the event of his/their arrest, if such persons are facing accusation of having committed an offence under the provisions of the Prevention of Atrocities Act. This is the only interpretation possible in relation to the respective provisions viz., Section 438 of the Code and Section 18 of the Prevention of Atrocities Act. Only such an interpretation would advance and further the object and purpose for

which the Act was enacted. Each one of the provisions would operate in their respective fields.

10. But the crucial question that would arise for consideration is as to whether mere mentioning of the provisions of Prevention of Atrocities Act in the FIR would exclude the operation of Section 438 of the Code and whether this Court would have no power to issue/necessary directions in exercise of its power under Section 438 of the Code?

11. A plain reading of Section 18 of the Prevention of Atrocities Act would make it clear that operation of Section 438 of the Code is excluded whenever the nature of the case involves the accusation of having committed an offence under the provisions of the said Act. It is, thus, clear that Section 18 of the Prevention of Atrocities Act would spring into action and deprive any persons to avail the remedy of bail under Section 438 of the Code, if such person is facing accusation of having committed an offence under the provisions of the Prevention of Atrocities Act. What is significant is such person should be accused of having committed offences under the Prevention of Atrocities Act. Section 18 does not speak about mentioning of provision of law; but, it does not exclude the operation of Section 438 of the Code whenever the provision of law is mentioned or stated in the FIR or the complaint, as the case may be.

12. However, in *Punjak D. Suthar v. State of Gujarat*, (3), while considering the scope of Section 18 of the Prevention of Atrocities Act, the Gujarat High Court observed:

'Now undoubtedly it is true that the alleged offence under the Atrocities Act is a very serious offence and if indeed the complaint is ultimately found to be truthful and genuine one, there cannot be any two views about the strictest possible view taken in such matter. Not only that but if the complaint is also found to be prima facie dependable one that is to say free from doubt, then as warranted under Section 18 of the Atrocities Act, even the anticipatory bail to such accused has got to be refused. In fact, the Parliament in its utmost wisdom has rightly evinced great concern and anxiety over the atrocities which are going on unabatedly on SCs and STs by inserting the provisions under Section 18 of the Atrocities Act disabling the

accused from obtaining the anticipatory bail under Section 438 of the Code. This indeed is a welcome step and in accordance with the axiomatic truth viz., 'the disease grown desperately must be treated desperately else not'. The disease of commission of offences by way of atrocities against the members of SCs and STs are unabatedly going on since last hundreds of years and in the recent past have become alarmingly increasing and has become so rampant, breath-taking and has reached such a desperate pass that it indeed needed a very stringent and desperate legislation which could help save the situation by effectively providing the legal protection to such crushed, crushed and down-trodden members of SCs and STs communities. Under such circumstances, it is equally the paramount duty of every Court to see that it responds to legislative concern and call and ensure effective implementation of the Atrocities Act, by seeing that the provisions enshrined in the said Act are duly complied with. But then, what according to this Court is the most welcome step by way of collective wisdom of the Parliament in ushering social, beneficial legislation cannot be permitted to be abused and converted into an instrument to black-mail to wreck some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants, as prima facie appears to have been done in the present case. The basic question in such circumstances, therefore - whether a torch which is lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife, an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent? The very same fundamental question arises in the facts and circumstances of this case also, viz., 'Whether any statute like the present Atrocities Act, especially enacted for the purpose of protecting weaker sections of the Society hailing from SC and ST communities can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents'? The answer to this question is undoubtedly and obviously 'No'. Under such circumstances, if the Courts are to apply such provisions of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices, based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinising and testing the probabilities,

truthfulness, genuineness and otherwise dependability of the accusations in the complaint, etc. then it would be simply unwittingly and credulously playing in the hands of some scheming unscrupulous complainant in denying the justice. Virtually it would be tantamount to abdicating and relegating its judicial duty, function of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply unthinkable and therefore impermissible. Whether the provisions of any particular Act and for that purpose the Rules made thereunder are applicable to the facts of a particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration - discretion' and therefore neither mere allegation made in the complaint by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinise and test the prima facie dependability of the allegations made in the complaint and reach its own decision.'

13. In my considered opinion, a detailed and microscopic examination of the FIR, at the stage of considering the applications under Sections 436, 437 or 438 of the Code may not be permissible. The Court would have to take a broad look at the contents of the complaint and the FIR. It would not be possible for this Court to express any opinion as to whether the allegations contained in the FIR are true or not. If such a reading of the complaint or FIR attracts the provisions of the Prevention of Atrocities Act, it would not be open for this Court or the Court of Session to issue any directions in exercise of its power under Section 438 of the Code and direct release of a person on bail, in the event of his arrest, who is a person facing accusation of having committed an offence under the provisions of the Prevention of Atrocities Act. Such a course is not permissible. It would be permissible for the Court to make an analysis or scrutiny of the allegations made in the FIR and arrived at prima facie conclusion about the applicability of the provisions of the Prevention of Atrocities Act. If the allegation is clear attracting the provisions of the Prevention of Atrocities Act, the Court is bound to exercise restraint and refuse to exercise its power to issue directions under Section 438 of the Code, as the operation of Section 438 of the Code is clearly excluded in such situation.

14. But the Court's jurisdiction to issue appropriate directions in exercise of its jurisdiction under Section 438 of the Code would in no way be excluded by mere mentioning the provisions of the Prevention of Atrocities Act in the FIR or in the complaint, as the case may be. The Court's jurisdiction in no way could be effected by what the Station House Officer does at the time of registration of the crime. The crucial question would be as to whether the contents of the complaint or the FIR would attract the provisions of the Prevention of Atrocities Act. Mere mention or non-mention of the provisions of the Prevention of Atrocities Act is of no consequence. In a given case, the contents of the allegations may attract the provisions of the Prevention of Atrocities Act, though there is no such mention of the provisions at the time of registration of the crime. Like-wise, the allegations in the FIR or the complaint may not attract the provisions of the Prevention of Atrocities Act, at all, though a mention is made in the FIR of those provisions. What is required is a pragmatic assessment of the contents of the complaint in every given case. Even if there is a single averment attracting the provisions of the Prevention of Atrocities Act, it would be enough to exclude the operation of Section 438 of the Code. What is important is to have an assessment of the cumulative effect of the allegations made in the Complaint or the FIR, as the case may be.

Relief

A plain reading of the complaint and the letter written by the accused, in the instant case, in my considered opinion, do not reveal any accusation of the petitioners having committed the offences punishable under the provisions of the Prevention of Atrocities Act. Mere fact that the defacto complainant and the deceased belong to Scheduled Caste, itself, may not attract the provisions of the Prevention of Atrocities Act, more so, particularly, in a case of harassment of this nature. Under those circumstances, the application of Section 438 of the Code is not excluded and the Court's jurisdiction to issue direction thereunder in no way could be restricted. But that does not mean that the petitioner herein is entitled to be released on bail, in the event of his arrest. The name of the petitioner is mentioned in the FIR by the defacto complainant and the letter purported to have been written by the deceased addressed to the SI of Police and the Local Press reporters. The

said letter and the complaint contain distinct allegations against the accused, including the petitioner herein, having harassed the deceased by making an accusation against him, which had led to commission of suicide. What is the role played by the petitioner, may, perhaps to be, revealed during the course of investigation. It is not as if the petitioner is implicated in a false case. Mere fact that the petitioner is in service is of no consequence. I am not inclined to issue directions to release the petitioner in the event of his arrest on bail, not for the reason of maintainability of the application, but on merits.

15. The petition fails and the same is accordingly dismissed.

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