HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.141 of 2021

Date:06.01.2021

Between:
Sattarsetti Nirmala W/o.Pampary Vasudev,
Aged about 55 years, occ:Housewife, R/o.H.No.1-141/3/1,
Balajinagar, Ghatkesar Village and Mandal,
Medchal-Malkajgiri District and another.

.....Petitioners

And

The State of Telangana,
Rep.by its Principal Secretary,
Home Department, Secretariat Building,
Secretariat, Hyderabad and others.

.....Respondents

The Court made the following:

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ORDER :

Heard learned counsel for petitioners and learned Assistant Government Pleader for Home.

2. According to first petitioner, second petitioner is her daughter and her marriage was performed in the year 2017 with a person by name Shivakumar. Both of them lived happily for about four months. But thereafter, husband of the second petitioner developed illegal intimacy with another woman by name Jyothi, who is the daughter of sixth respondent in the writ petition and were living under one roof in Ghatkesar. Mr.Shivakumar started harassing the second petitioner. In a panchayat held by the elders, there was understanding that Shivakumar would lead marital life with the second petitioner by leaving the daughter of sixth respondent. However, the illegal relationship of husband of second petitioner and daughter of sixth respondent continued. The second petitioner filed a complaint with the Ghatkesar Police. Based on the said complaint, Crime No.345 of 2019 was registered under Sections 498-A and 497 IPC. At that stage, sixth respondent and his daughter approached the petitioners and requested to withdraw the case. The daughter of the sixth respondent gave an assurance in front of the police that she would not interfere in marital life of the second petitioner. In believing the said settlement, petitioners did not pursue the complaint. However, the daughter of the sixth respondent continued to have illegal relationship with the husband of the second petitioner. In collusion with the fifth respondent, sixth respondent and his

daughter lodged a complaint alleging that petitioners abused them in filthy language and on caste lines. Based on the said complaint, Crime No.252 of 2020 was registered in Adbullapurmet Police Station under Section 34 IPC and Sections 3(1)(r)(s), 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act, 1989). Petitioners now allege that taking advantage of registration of crime, sixth respondent and his daughter threatened the petitioners and is forcing the second petitioner to give divorce to her husband. In this writ petition, petitioners contend that Police are harassing and they are not following the procedure as required by law and prays to direct the fourth respondent to follow the procedure directed to be followed by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**[1]**.**

3**.** On the issue of the scope of power of police to conduct investigation, arrest of accused, grant of bail, and the role of Constitutional Courts in such matters was extensively considered by the Hon'ble Supreme Court in ***state of Haryana v. Bhajan Lal***[2]**.** The Hon'ble Supreme Court held as under:

> **"38.** "The Privy Council in *Emperor* v. *Khwaja Nazir Ahmad* [AIR 1945 PC 18 : 71 IA 203 : 46 Cri LJ 413] while dealing with the statutory right of the police under Sections 154 and 156 of the Code within its province of investigation of a cognizable offence has made the following observation: (AIR p. 22)
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> > "... so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a

[1] (2014)8SCC 273
[2] 1992 Supp (1) SCC 335

> statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491, Cr PC to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it and not until then."

40. The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

60. ***The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the***

> ***track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.*** But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy." (emphasis supplied)

4. Admittedly, crime reported against the petitioners is under the Act, 1989.

5. Once a crime is reported, the Code of Criminal Procedure (Cr.P.C.) lays down detailed procedure how to register the crime, how to conduct investigation, how to prepare final report, submission of final report before the competent Court and taking cognizance of the crime and placing the accused for trial before the competent Court. It is settled principle of law, once cognizable crime is reported, police have to register the crime and investigate into the crime. Such investigation has to be taken-up immediately, collect the evidence and then take steps to finalize the investigation and file the final report. As the existing provisions of law are not redressing the grievance of people belonging to the Scheduled Castes and Scheduled Tribes and atrocities against them are

continued, the Indian Parliament enacted the Act, 1989 incorporating more stringent provisions, in addition to what is envisaged in the Cr.P.C and I.P.C. As against the procedure envisaged in the Code of Criminal Procedure, where power is vested in the Magistrate, to monitor investigation of a crime under the Act, 1989 and take cognizance of the crime, the power is now vested in the Special Court. The Special Court is vested with the power to take cognizance of offence under the Act. The Act prescribes time limit for completion of investigation and filing of final report. It also prescribes penal consequences on the Police officers if the investigation is not completed within the time prescribed and are negligent in conducting investigation.

6. The scope of provisions of the Act, 1989 came up for consideration before the Hon'ble Supreme Court in **Subhash Kashinath Mahajan v. State of Maharashtra[3].** The Supreme Court held that merely because a crime is reported under the Act, 1989, it need not be registered automatically and to avoid false implication of an innocent person, a preliminary enquiry may be conducted by the Deputy Superintendent of Police concerned to find out whether allegations in the complaint made out a case to proceed under the Atrocities Act, and that the person need not be arrested. In paragraph No.79 the Hon'ble Supreme Court recorded its conclusions. In paragraph No.79.2, the Hon'ble Supreme Court held that there is no bar against granting anticipatory bail and in paragraph Nos.79.3 and 79.4 the Supreme Court held that arrest of public servant can only be affected after approval of appointing authority and in case of non-public servant after approval by the

[3] (2018) 6 SCC 454

SSP as the case may be, which may be granted in appropriate cases. Paragraph No.79 reads as under:

> ***"Conclusions***
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> **79.** Our conclusions are as follows:
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> **79.1.** Proceedings in the present case are clear abuse of process of court and are quashed.
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> **79.2.** 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. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar* [*Pankaj D. Suthar* v. *State of Gujarat*, (1992) 1 Guj LR 405] and *N.T. Desai* [*N.T. Desai* v. *State of Gujarat*, (1997) 2 Guj LR 942] and clarify the judgments of this Court in *Balothia* [*State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439] and *Manju Devi* [*Manju Devi* v. *Onkarjit Singh Ahluwalia*, (2017) 13 SCC 439 : (2017) 4 SCC (Cri) 662] ;
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> **79.3.** In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.
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> **79.4.** 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.
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> **79.5.** Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.
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> **79.6.** The above directions are prospective."

7. In **Union of India** v. **State of Maharashtra**[4], the Hon'ble Supreme Court reviewed the said directions issued in **Subhash Kashinath Mahajan** (supra) and the Hon'ble Supreme Court deleted directions in paragraphs in 79.3, 79.4 and 79.5. The Hon'ble Supreme Court held as under:

> **"19.** It is apparent from the decision in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] that FIR has to be registered forthwith in case it relates to the commission of the cognizable offence. There is no discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry before registration of the FIR. Preliminary inquiry can only be held in a case where it has to be ascertained whether a

[4] (2020)4SCC 761

cognizable offence has been committed or not. If the information discloses the commission of a cognizable offence, it is mandatory to register the FIR under Section 154 CrPC, and no preliminary inquiry is permissible in such a situation. This Court in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] observed as under : (SCC p. 36, para 54)

> "*54*. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction."

Concerning the question of arrest, in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] this Court has considered the safeguard in respect of arrest of an accused person. This Court affirmed the principle that arrest cannot be made routinely on the mere allegation of commission of an offence. The question arises as to justification to create a special dispensation applicable only to complaints under the Atrocities Act because of safeguards applicable generally.

57. The guidelines in paras 79.3 and 79.4 appear to have been issued in view of the provisions contained in Section 18 of the 1989 Act; whereas adequate safeguards have been provided by a purposive interpretation by this Court in *State of M.P.* v. *Ram Kishna Balothia* [*State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439] . The consistent view of this Court that if prima facie case has not been made out attracting the provisions of the SC/ST Act of 1989 in that case, the bar created under Section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh* [*Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] , a Constitution Bench of this Court has laid down that taking away the said right of

anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

70. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above."

8. The very issue has come-up for consideration before the Hon'ble the Supreme Court in **Prathvi Raj Chauhan v. Union of India**[5]. After extensively referring to view taken by the Hon'ble Supreme Court in **Union of India** v.**State of Maharashtra** the Hon'ble Supreme Court observed as under:

"9. Concerning the provisions contained in Section 18-A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general Directions 79.3 and 79.4 issued in *Subhash Kashinath case* [*Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] . A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in *Lalita Kumari* v. *State of U.P.* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , shall hold good as explained in the order passed by this Court in the review petitions on 1-10-2019 [*Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761] and the amended provisions of Section 18-A have to be interpreted accordingly.

10 [Ed. : Para 10 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2020 dated 25-2-2020.] . Section 18-A(*i*) was inserted owing to the decision of this Court in *Subhash Kashinath* [*Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] , which made it necessary to

[5] (2020)4 SCC 727

> obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No. 228 of 2018 decided on 1-10-2019 [*Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761] . Thus, the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of mandate issued in *Subhash Kashinath* [*Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] which no more prevails. The provisions were already in Section 18 of the Act with respect to anticipatory bail."

9. Having regard to the scope of Act, 1989 as explained by the Hon'ble Supreme Court in the above decisions, the prayer in this writ petition cannot be granted. The Writ Petition is accordingly dismissed. However, it is open to the petitioners to work out their remedies as available in law. Pending miscellaneous petitions shall stand closed.

P.NAVEEN RAO, J

6th January, 2021
Nvl

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Date:06.01.2021

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