

(2010) 09 AP CK 0029

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 9099 of 2010

Guddanti Narasimha Rao

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 208, 209, 33, 441
Penal Code, 1860 (IPC) — Section 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2010) 2 ALD(Cri) 963 : (2011) 1 RCR(Criminal) 640 : (2011) 1
RCR(Criminal) 640

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P. Ragendra Reddy, for the Appellant; Public Prosecutor, for the
Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This Criminal Petition is filed u/s 482 Code of Criminal Procedure seeking to issue a direction to the Additional Judicial Magistrate of First Class, Chirala, Prakasham District not to insist the Petitioner to obtain bail at the time of committing P.R.C. No. 26 of 2010 to the Court of Sessions.

2. I have heard the learned Counsel appearing for the Petitioner and the learned Public Prosecutor representing the State.

3. On a report lodged by the second Respondent-complainant the police registered a case u/s 506 IPC and Section 3(1)(x) of the SC and ST (POA) Act, investigated into and filed a final report stating that the case is false. Subsequently, in protest the second Respondent filed a petition and the learned Magistrate after recording sworn statement of the second Respondent, took cognizance of the case against the Petitioner u/s 3(1)(x) of SC and ST (POA) Act, 1989.

4. Since the offence is triable by the Special Court for the trial of offences under prevention of atrocities Act, it has to be committed by the magistrate to the said Court. It is submitted by the learned Counsel representing the Petitioner that at the time of committing the case, the learned Magistrate is insisting upon the Petitioner to obtain order of bail from the Special Court, or any other competent court as the case may be, and therefore, the Petitioner filed the present criminal petition to issue the required direction to the learned Magistrate.

5. It can be understood from Section 209 Code of Criminal Procedure that when the Court directly issues summons to the accused to secure his attendance and in obedience thereto, the accused attends before the magistrate, the magistrate while committing case to the Court of Session can bind him over to the Sessions Court on his executing a bond, as provided u/s 441 Code of Criminal Procedure. Obtaining bail is not a requirement as per Section 209 Code of Criminal Procedure. Further, there is no provision under prevention of atrocities act for granting anticipatory bail.

6. From the language of Section 209 Code of Criminal Procedure, it does not appear that at the time of committing the case to the Court of Session, he must be on bail by the Sessions Court.

7. Section 209 Code of Criminal Procedure lays down that when it appears to the Magistrate that the offence is exclusively triable by Court of Session, he shall-

a) commit, after complying with the provisions of Section 207 or 208, as the case may be, the case to the Court of Session, and subject to the provisions of this code relating to bail, remand the accused to custody until such commitment has been made;

b) subject to the provisions of this Code, relating to bail, remand the accused to custody during; and until the conclusion of, the trial;

8. The expression subject to the provisions of this code relating to bail can only be understood to mean subject to the provisions in Chapter 33 of the Code.

9. When the accused appeared before the Court on receiving summons from the Court issued after registering the PRC, and undertakes himself to appear before the Magistrate during the committed proceeding and also to appear before the Court of Session/Special Court and the accused not being arrested and released on bail earlier in connection with said case, need not be driven to obtain bail from the Court of Sessions/Special Court. Section 441(3) Code of Criminal Procedure lays down, if the case so requires the bond shall also bind the person released on bail to appear when called upon the High Court or Court of Session or other court to answer the charge.

10. There is no requirement in law that in each and every case triable by the Court of Session the accused shall be arrested and released on bail. When only summons were issued to the accused to secure his attendance after the charge sheet is filed in a case triable by Court of Session the accused shall not be

compelled to approach the Sessions Court/Special Court and to obtain bail. In every case triable by Court of Session unless the accused is arrested and is in judicial custody,, the question of his obtaining bail from the Sessions Court does not enough while committing the case it is enough on the part of the committing Magistrate to bind over the accused with or without sureties undertaking to appear before the Sessions Court till the conclusion of the trial.

11. Therefore, this Court agrees with the submission made by the learned Counsel appearing for the Petitioner and the learned Magistrate is hereby directed not to insist the Petitioner to obtain bail from the Court concerned for the purpose of commitment of P.R.C. to the Special Court or Court of Sessions and the Magistrate can commit the case by obtaining personal bond from him to appear before the Special Court ensuring his attendance before the said Court till the conclusion of the trial.

12. The criminal petition is accordingly allowed.