



Crl.O.P.No.1198 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.1198 of 2021

&

Crl. M.P.No. 730 of 2021

K.G.Subramanian

... Petitioner

Vs.

1.The Deputy Superintendent of Police,
Erode Sub Division,
Crime No.476 of 2018,
Chennimalai Police Station,
Erode District.

2.C.Prema

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to criminal case in Spl. S.C.No.16 of 2020 pending on the file of the learned Sessions Judge, Fast Track Mahila Court, Erode, quash the same by allowing this Criminal Original Petition.



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For Petitioner : Mr. N.Manokaran
For Respondent 1 : Mr. S.Balaji
Government Advocate (Crl. Side)
For Respondent 2 : No Appearance.

ORDER

The petition is filed to quash the final report filed for the alleged offences under Section 352 IPC, Section 3 (1) (w) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Sections 9 (n) and 10 of the Protection of Children from Sexual Offences Act , 2012.

2. It is alleged in the final report that the petitioner had misbehaved with the defacto complainant, who was working in the petitioner's house by touching the hands and breasts of the defacto complainant and thus he had committed the aforesaid offences.

3. Though the 2nd respondent has been served, none has appeared for the 2nd respondent. Therefore, this Court directed the learned Additional Public Prosecutor to instruct the 1st respondent to inform the defacto



complainant about the pending proceedings. On instructions, the learned Additional Public Prosecutor submitted that the 1st respondent had informed the defacto complainant about the pending proceedings. However, the defacto complainant has chosen not to appear before this Court.

4. a) Mr. N.Manokaran, learned counsel for the petitioner would submit that the impugned final report is liable to be quashed mainly on the ground that the 1st respondent was not competent to file the impugned final report since, he had filed a final report earlier closing the case as “*mistake of fact*”. The 1st respondent had given elaborate reasons for coming to the said conclusion. While so, without any notice to the petitioner, the 1st respondent re-investigated the case and filed the impugned final report, which is diametrically opposite to the earlier report filed by him.

4. b) The learned counsel would further submit that the 1st respondent had no authority to re-investigate the case as held by the Hon'ble Supreme Court in number of cases, including the Judgement reported in **2016 (4) SCC 160 – Dharam Pal Vs. State of Haryana and others**. Since the 1st respondent had violated the settled position of law, the impugned final report is liable to be quashed.



5. Per contra, the learned Government Advocate (Crl. Side) submitted that pursuant to the closure report filed by the 1st respondent, it appears that one Nartharsha Malim.H, State Corordinator – Tamil Nadu, Bachpan Bachao Andolan - BBA had approached the National Commission for Scheduled Castes, complaining about the action taken by the 1st respondent in closing the case as “*mistake of fact*”. The National Commission for Scheduled Castes in their meeting held on 23.09.2019 observed that the 164 statement of victim child along with the other evidences of the child line volunteers *prima facie* discloses the commission of offences and also suggested that action should be taken against the Investigating Officer. The National Commission for Scheduled Castes further recommended that the case be re-investigated and the accused persons should be identified and arrested under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 . The learned Government Advocate (Crl. Side) submitted that therefore the 1st respondent Police had to re-investigate the case and file the impugned final report. The learned Government Advocate (Crl. Side) further submitted that hence, the impugned final report cannot be quashed.



6. This Court on perusal of the impugned final report and the earlier closure report filed by the 1st respondent Police finds that the 1st respondent had given elaborate reasons for disbelieving the case of the de facto complainant. It is needless to state that the Investigating Officer shall not act as a mere Post Office. The purpose of the investigation is to ascertain the truth and form an opinion as to whether the version of the complainant is true or not. The 1st respondent had done such an exercise and closed the case on 04.02.2019. The 1st respondent dealt with each of the allegations made against the petitioner independently, and filed a detailed closure report. Finally, the first respondent concluded as follows:

11... வாதி பிரேமா தாழ்த்தப்பட்ட சாதியைச் சேர்ந்தவர் என்பதால் முனை வளர்ச்சி குன்றிய சுப்பிரமணியின் மகன் ஆதிராம் எனப்பவரை பராமரிக்க இருந்து வந்தவர் சுப்பிரமணியன் வீட்டில் இருந்து தன் தாயார் தங்கமணி வீட்டிற்கு வந்துவிட்டவரை பிரேமாவின் தாயார் தங்கமணி மீண்டும் சுப்பிரமணியின் வீட்டிற்கு அவரது மகன் ஆதிராமை பார்க்க செல்லும்படி சொல்லியதில் வாதி பிரேமாவிற்கு அங்கு செல்ல விருப்பம் இல்லாததால் ஈரோடு சைல்டு லைனை சேர்ந்த சமூக ஆர்வலர் ஜெயமூர் எனப்பவரிடம் தெரிவித்தும், பின்பு ஈரோடு சைல்டு லைனில் பணிபுரியும் அணி



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உறுப்பினர்கள் திவ்யா, புவனேஸ்வரி தன்னார்வலர் புகாரில் ஆகியோரிடம் தெரிவித்ததில் ஜெயலலிதா, திவ்யா, புவனேஸ்வரி, புகாரில் ஆகியோர் வாதி பிரேமா மூலம் சுப்பிரமணியன் மகன் ஆதிராமை அவர் வீட்டில் இருந்து பார்த்துக்கொண்டது பற்றிய தகவல்களை கேட்டு தெரிந்து மேற்படி நபர்கள் ஈரோடு சைல்டு லைனில் பணிபுரிவதால் குழந்தை தொழிலாளர்கள் சட்டம், கொத்தடிமை சட்டம் வன்கொடுமை சட்டம், பாலியல் வன்கொடுமை சட்டம் ஆகிய சட்டங்களுக்கு தகுந்தாற்போல் உண்மைக்கு மாறான மிகைப்படுத்தப்பட்ட சம்பவங்களை எழுதி தயார் செய்து அதில் வாதி பிரேமாவின் கையெழுத்து பெற்று புகார் அளித்துள்ளது தெரியவருகிறது.

வழக்கின் புலன் விசாரணையில் வாதி பிரேமா புகாரில் சொல்லி உள்ளது போல் சம்பவம் நடந்ததாக எந்த சாட்சியும் சொல்லவில்லை. வாதி புகாரின் பேரில் புலன் விசாரணை முடிவில் குறிப்பிட்டு எந்த குற்றச்சாட்டும் தாக்கல் செய்ய இயலாது.

வாதி பிரேமாவின் புகாரில் போதிய சாட்சியம் இன்றி நீதிமன்றத்தில் நீடுபிக்க இயலாத நிலையில் வலுவிலுந்து காணப்படுவதால் இவ்வழக்கில் சம்பவத்தை பொறுத்த மட்டில் பொருண்மை பிழையானது (MISTAKE OF FACT) என வழக்கை முடிவு செய்து கொள்ளலாம் என ஈரோடு மாவட்ட அமர்வு நீதிமன்ற அரசு



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வழக்கறிஞர் சட்ட கருத்துரை வழங்கி உள்ளார், எனவே
வாதி மற்றும் சம்பவம் தொடர்புடைய சாட்சிகளின்
வாக்குமூலம் அனைத்தையும் பரிசீலனை செய்ததிலிருந்தும்
மாவட்ட அமர்வு நீதிமன்ற அரசு வழக்கறிஞரின் சட்டக்
கருத்துப்படியும் இவ்வழக்கு சம்பவத்தை பொறுத்தமட்டிலும்
உண்மைக்கு புறம்பான வழக்கு என முடிவு செய்து
RCS 01/2019 - ன் படி சார்பு செய்து வழக்கில் மேல்
நடவடிக்கை முடிக்கப்பட்டு இறுதி அறிக்கை
சமர்ப்பிக்கப்படுகிறது, வாதி பிரேமா தாழ்த்தப்பட்ட வகுப்பை
சார்ந்தவர் என்பதால் வழக்கு கோப்பினை மாவட்ட
ஆட்சியரின் விழிக்கண்குழுவில் சமர்பித்து மாவட்ட
ஆட்சியரின் செயல்முறை உத்தரவு பெற்று வழக்கு கோப்புடன்
இணைக்கப்படும்.

7. However, the National Commission for Scheduled Castes had recommended re-investigation. Based on the recommendation, the Superintendent of Police sent a letter to the Investigating Officer dated 23.10.2019 which reads as follows:

*"In the reference cited, it is instructed
to re-investigated the FIR No. 476/2018 u/s
352 IPC, Act r/w 3 (1) (w) (i) of SC/ST*



(POA) and identified the accused person in the case and arrest them under POA SC/ST Act.

2) Hence, DSP, Perundurai Sub division is instructed to investigate the FIR No. 476/218 u/s 352 IPC, Act r/w 3(1) (w) (i) of SC/ST (POA) and identified the accused person in the case and arrest them under POA SC/ST Act and send compliance report within 15 days."

On receipt of the above letter the very same Investigating Officer had re-investigated the case and filed a final report, which is exactly opposite to the earlier report. This Court finds that the subsequent report had not stated about the earlier report and as to why the impugned report is contrary to the earlier report.

8. In this case, the following questions arise:

(i) Whether the National Commission for Scheduled Castes has power to direct the Investigating Officer to re-investigate the case?



(ii) *Even if such a direction is issued, whether the Investigating Officer can re-investigate the case without approaching the Superior Courts for permission to re-investigate.*

9. As regards the 1st question, it is seen that the National Commission for Scheduled Castes derives its power from Article 338 of the Constitution of India and the Commissions of Inquiry Act, 1952. The Hon'ble Supreme Court in the Judgement reported in **1996 (6) SCC 606 – All India Indian Overseas Bank SC and ST Employees Welfare Association and others Vs. Union of India and others.**, had an occasion to consider the power of the National Commission for Scheduled Castes, which is traceable to Article 338 of the Constitution of India. The Hon'ble Supreme Court held that though the National Commission for Scheduled Castes had the power of Civil Courts for the purpose of conducting investigation or enquiry, they cannot be termed as Civil Court.

10. The Kerala High Court in the Judgement reported in **2020 SCC Online Ker 2157 – Vimalan and another Vs. Kerala State Scheduled Caste and Schedules Tribes Commission**, had found that the Kerala State



Scheduled Castes and Schedules Tribes Commission had no power to direct the authorities to conduct further investigation as per the provisions of Section 9 of the Kerala State Commission for the Scheduled Castes and the [Scheduled Tribes Act](#), 2007.

11. Rule 7 (4) of the Rules of Procedure of the National Commission for Schedules Castes, provides for the procedure for Inquiry into Specific Complaints. Rule 7 (4) of the Rules of Procedure of the National Commission for Schedules Castes reads as follows:

“7.4 Inquiry into specific complaints

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Castes. In order to enable the Commission to perform this function effectively and efficiently, the Commission would like the members of Scheduled Castes to know that it will be helpful to inquire into their grievances if they substantiate their complaints with supporting documents and quote the relevant provisions of the Act or Rules or directions which have been violated.

[7.4.1](#) The following aspect may be kept in mind while filing complaints before the Commission-



(a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.

(b) The complainants should disclose his full identity and give his full address and should sign the representation.

(c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.

(d) Complaints should clearly disclose the violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation Rules of Reservation.

(e) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).

(f) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.

(g) The cases of Administrative nature like transfer/posting/grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner.



12. The above Rule 7.4.1 (e) and (f) would show that the Commission shall not take up matters which are subjudice or where final orders have been passed by the Courts. Admittedly, in this case, the final report, closing the case, was filed before the Court. Thus, the Act does not confer any power on the National Commission for Scheduled Castes to order re-investigation. The Kerala High Court on the basis of similar provisions had held that, even further investigation cannot be directed by the Commission.

13. Further, it is well settled that the power to direct re-investigation is vested only with the Superior Courts. The relevant portion of the Judgement of the Hon'ble Supreme Court reported in **2016 (4) SCC 160 – Dharam Pal Vs. State of Haryana and others** reads as follows:

“23. In the said case, the question had arisen whether a Magistrate can direct for re-investigation. While dealing with the said issue, the Court has observed:-

“At this stage, we may also state another well-settled canon of the criminal jurisprudence that the Superior Courts have the jurisdiction under [Section 482](#) of the Code or even [Article 226](#) of the Constitution of India to direct



“further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The Superior Courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the Superior Courts very sparingly and with great circumspection.”

[Emphasis supplied]

And again:-

“Whether the Magistrate should direct “further investigation” or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct “further investigation” or “reinvestigation” as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be



a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come



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and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "id'ee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law".



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14. Therefore, this Court is of the view that the power of the Investigating Officer to ascertain the truth cannot be scuttled by such a direction by the Commission. The National Commission for Scheduled Castes has no jurisdiction to direct the respondent to conduct re-investigation. If the de facto complainant or any other person is aggrieved by a report filed by the Investigating Officer, they can challenge the same only by following the procedure prescribed by law. In any case, the respondent Police ought to have approached this Court seeking permission to conduct re-investigation even assuming that he was obliged to do so on the directions of the National Commission for SC/ST as per the law laid down by the Hon'ble Supreme Court referred above. He has not done so.

15. That apart, this Court finds that the reasons for not accepting the version of the de facto complainant in the earlier closure report are well founded and does not call for any inference. Further, in view of the procedural illegality committed by the respondent, the impugned final report is liable to be quashed and accordingly quashed.



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16. In the result, the instant petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

13.06.2023

kan/dk

Index : Yes/No

Internet : Yes/No

Neutral Citation :Yes/No

To

1.The Sessions Judge,
Fast Track Mahila Court,
Erode.

2.The Deputy Superintendent of Police,
Erode Sub Division,
Chennimalai Police Station,
Erode District.



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