



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

THE HONOURABLE **MRS.JUSTICE R.KALAIMATHI**

Crl.A.No.407 of 2018

A.Nandagopalan

... Appellant

VS

1.Selvam @ Selvaganapathi

2.State represented by:
The Deputy Superintendent of Police
Thiruvarur Sub-Division
Thiruvarur District.

... Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment of acquittal passed by the learned I Addl. District and Sessions Judge (P.C.R), Thanjavur made in S.S.C.No.70 of 2014 dated 04.01.2018 acquitting the 1st respondent herein from the charges under Section 294(b) IPC, Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

For Appellant : Mr.S.Sathia Chandran

For Respondents : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)



JUDGMENT

The defacto complainant, herein, being aggrieved by the judgment passed in S.C.No.70 of 2014 on the file of the first Additional District and Sessions Court (P.C.R), Thanjavur, dated 04.01.2018, is on appeal.

2.The case of the prosecution in brief would run as follows:

2.1.The accused herein belongs to Hindu Thuluva Velalar community.

2.2.The defacto complainant belongs to Hindu Parayan community.

2.3.On 27.01.2013 at about 13.00 hours at Palangudi Village in front of Tamarai Eshwari Amman and Arulmigu Mariyamman temples, the Village Committee meeting was held in a common place.

2.4.The accused herein Selvam @ Selvaganapathy failed to show the accounts for the period he acted as a Chairman of the Village Committee. The defacto complainant demanded that his paternal uncle may be nominated to act as Chairman of the Village Committee.

2.5.The accused Selvam @ Ganapathy herein shouted that post of the Chairman shall not be given to Parayan Community and spoke in abusive words about the chastity of the women belonging to the members of Parayan community by stating that “என் அரைஞான் கயிறு படாத பறப்பயபொண்டாட்டி யார் இருக்கா?”. Thus, the utterances of the accused herein are punishable under Section 3(1)(x) of the Scheduled Caste Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as SC ST (PoA) Act, 1989) and final



report under the said provision of law was laid by the Deputy Superintendent of Police of Thiruvavarur, Special Division, before the learned Judicial Magistrate, Thiruvavarur.

2.6.The said final report was taken cognizance by the learned Judicial Magistrate, Thiruvavarur, and copies of the documents relied on by the prosecution (hereinafter referred as Cr.P.C) were furnished to the accused under Section 207 Cr.P.C and case was committed to the Special Court.

3. The learned First Additional District and Sessions Court, took up the case on file in S.S.C.No.70 of 2014 and on appearance of the accused framed charges against the accused herein under Sections 294(b) Indian Penal Code(hereinafter referred as IPC) and Section 3(1)(x) of SC ST (PoA) Act.

4.When the accused was questioned about the charges, he pleaded not guilty and denied the charges.

Complainant	: State through the Deputy Superintendent of Police, Thiruvavarur Sub Division, Thiruvavarur District
Accused	: Selvam @ Selvaganapathy, Age 50/2013, S/o.Ramasamy, Palangudi, Thiruvavarur Taluk
Charges framed against the Accused	: S.294(b) IPC – uttered obscene words in the public place S.3(1)(x) of SC/ST (PoA) Act – Intentionally insulted a member of Scheduled Caste within public view.
Pleas of Accused	: Not guilty
Finding of the Judge	: Not guilty
Details of Judgment	: The Accused herein is found not guilty of the offences punishable under Sections 294(b) IPC and Sec.3(1)(x) of the SC/ST (PoA) Act and his acquittal from the above charge is recorded under Section 235(1) Cr.P.C.



5. The learned counsel Mr.S.Sathia Chandran vehemently contended that out of total witness examined by the prosecution side P.W1, P.W2, PW9 to P.W13 have supported the prosecution. The trial Court held that as Rule 7(1) of SC ST Rules is mandatory in nature and chosen to pass a judgment acquitting the accused. It is his further arguments that if Rule 7(1) is not followed with, it amounts to irregularity and therefore, it does not affect the merits of the case. He would plead that based on the evidence of prosecution witnesses as mentioned supra, charges have been proved beyond reasonable doubt.

6. Per contra, Mr.S.Udaya Kumar, the learned Government Advocate (Crl.Side) strenuously argued that the trial Court passed an order of acquittal on the ground that the nominated authority did not investigate the matter and the trial Court was correct in not believing the evidence of P.W11 to P.W13, as the said witnesses were examined at the instance of the trial Court by issuing summons under Section 311 of Cr.P.C. The trial Court simply ignored the evidence of ocular witnesses which amounts to perversity.

7. At trial, to substantiate the charges, the prosecution examined 15 witnesses and 8 documents were marked.

8. P.W1 Nandagopalan was the defacto complainant who belongs to Parayan community. P.W2 S.Nagarajan is the junior paternal uncle of P.W1 who also belongs to the same community. P.W4 Murugaiyyan, P.W9 Arumugam, P.W10 Rajendran. P.W11 Kumar @ Subramaniyan. P.W12



Santhanam @ Kalidoss. P.W13 Sivaprakasam are ocular witnesses. P.W3 Sulthan did not support the case and he was treated as hostile witness. P.W5 Subramaniyan, P.W6 Murugesan are the observation mahazar witnesses through whom the in signatures (Ex.P2 and Ex.P10) in the observation mahazar have been marked. P.W7 Somasundaram is the Head Quarters Deputy Tahsildhar who issued community certificate for the accused and for the defacto complainant (Ex.P4 and Ex.P5). On receipt of the complaint Ex.P6, FIR was registered by P.W8 Senthil Kumar, Sub Inspector of Police. P.W14 Thiru.Vaithiyalingam, Deputy Superintendent of Police conducted the investigation. His Successor in Office P.W15 Thiru.Maduraisamy, Deputy Superintendent of Police filed the final report before the Judicial Magistrate Court, Thiruvavur.

9. It is the evidence of P.W1/Nandagopalan, that on 27.01.2013 around 1.00pm meeting of the Village Committee was held at Palayangudi Mariyamman temple so as to verify the accounts of construction of their village Pillayar Koil. The accused was the Secretary of Construction Committee. Issue was raised in the Village Committee. In the matter of Construction of temple to the tune of Rs.4,60,000/- appears to have been misused and he questioned the accused. The Village meeting was headed by the political persons R.P.Subramani and P.C.Nagarajan, the temple administrators, R.Santhanaraman @ Kalidas along with public, verified the accounts. On verification of the accounts, President of the Village Committee R.P.Subramanian told that a big scam is committed and he insisted to change the administrators. When one after another was raising



their voices in this regard, Thiagarajan and Krishna told that let Nagarajan be

President and for that the accused uttered that “ஒரு பறப்பயன அவ்வளவு சீக்கிரம்

தலைவனாக்கிடமாட்டேன் அப்படி தலைவனாகிட்டு வீட்டிற்கு போன என்

பொண்டாட்டி விளக்கமாற்றாள் அடிப்பாள்”. When this was objected by P.W1, the

accused told Nandagopal “நந்தகோபாலன் பறப்பயனு சொன்னதற்கே இவ்வளவு

கோபப்படுறானே பாளங்குடியில் இருக்கும் பறச்சியெல்லாம் என் அருணாக்கொடி படாத

பொம்பள இருக்காளா” . Because of the commotion, the Village Committee

meeting was postponed and Nandagopal lodged the complaint.

10. Since his complaint was not registered, the defacto complainant filed Crl.O.P.No.10056 of 2018 and as per the order of this Court, the present case was registered.

11. From the perusal of the cross-examination of P.W1, it appears that there is enmity between the accused and P.W1 with regard to land issue, when a suggestion was posted to him that the accused did not abuse him by caste name, he answered in negative.

12. P.W2 Nagarajan is the junior paternal uncle of P.W1. From the evidence of P.W2, it is discernible that when the accounts were verified by the Village Committee and for the amounts shown by the president of the Construction Committee (Shanmugam) some persons raised objection and they



were pacified by P.W2, some attendees proposed to nominate P.S.Nagarajan

(P.W2) as the Committee President. For which the accused uttered that “இனி

ஒரு பயலையும் தலைவனாக்க விடமாட்டேன் உன்னையும் உயிரோடு விடமாட்டேன்
உன் சாவு என் கையில்தான்”

13. A deep perusal of evidence of P.W4 Murugaiyyan, P.W9 Arumugam, P.W10 Rajendiran, P.W11 Kumar @ Subramaniam, P.W12 Santhanaraman @ Kalidas and P.W13 Sivaprakasam, they have cogently given evidence and have corroborated the evidence of P.W1.

14. P.W5 Subramaniam and P.W6 Murugesan are mahazar witnesses and they have identified their signatures found in the Observation mahazar (their signature - Ex.P2 & Ex.P3).

15. P.W7 Somasundaram the Head Quarters, Deputy Tahsildhar, has issued the community certificate for the accused that he belongs to Non-Scheduled Case Community(Ex.P4) and the defacto complainant belongs to Parayan Community (Ex.P5).

16. P.W8, the Sub-Inspector of Police, as per the directions of this Court, registered the case in Crime No.39 of 2013 under Section 3(1)(x) of SC ST Act. First Information Report is Ex.P1, complaint is Ex.P6.



WEB COPY

17. P.W14 Thiru.Vaithiyalingam who was officiating as Thiruvarur Deputy Superintendent of Police. It is his evidence that as per the proceedings of the Superintendent of Police, Thiruvarur, he took up the case for investigation on 12.12.2013. He proceeded to the scene of occurrence, visited the place and prepared the observation mahazar and rough sketch in the presence of P.W5 Subramanian and P.W6 Murugesan. Ex.P7 is the observation mahazar. Rough sketch is Ex.P8. Witnesses Nandagopalan, Nagarajan, Raj @ Mathivanan, Sudhakaran, Murugan, and Murugan were examined by him and statements under Section 161 were recorded. On account of his transfer, he handed over the records, to his successor P.W15. During the cross examination of P.W14, suggestions put to him were all denied by him.

18. The successor of P.W14, Thiru.Maduraiswamy, the Deputy Superintendent of Police P.W15 would depose that he took up the case for further investigation, obtained the community certificates for the accused as well as the defacto complainant and after completion of investigation, he laid the charge sheet on 14.03.2014.

19. It appears that P.W9 to P.W13 were not cited as witnesses in the final report. This fact is also spoken out by P.W1. However, the trial Court thought it fit to issue summons to the said witnesses under Section 311 of Cr.P.C and they were examined.



WEB COPY

20. The trial Court has observed that P.W1 has given a list of witnesses in the complainant and P.W9, P.W10, P.W11 and P.W13 were not examined hence their presence is doubtful and not accepted their evidence. It is not mandatory on the part of the complaint to mention the name of the witnesses, who witnessed the incident. Notwithstanding the fact that their names are mentioned in the complaint, the evidence of the witnesses are to be appreciated in terms of cogency and reliability. It is learnt that civil dispute is pending between P.W2 and the accused.

21. Mr.Sathia Chandran, the learned counsel appearing for the appellant would refer to the judgment of Hon'ble Supreme Court in *State of Madhya Pradesh Vs Bhoorajl* reported in *CDJ 2001 SC 487*. In the said case, the charge sheet, which was filed under SC and ST (PoA) Act, 1989, though was presented to the Magistrate Court and without committal order it was sent to Special Court and with regard to this no objection was raised in the trial Court. The objection was, for the first time, taken in the High Court. The Hon'ble Supreme Court held that there is no failure of justice due to procedural lapse and ultimately it was concluded that trial was not vitiated.

22. On the same analogy, the learned counsel Mr.Sathiachandran argued that as Rule 7(1) of SC ST Rules was not followed, it has to be termed as an irregularity and it does not affects the facts of the case.



WEB COPY

23. Whereas Mr.Udaya Kumar, the learned Government Advocate (Crl.Side) would stoutly oppose that not following the procedure contemplated in Rule 7(1) is fatal to the prosecution. For proper appreciation, Rule 7(1) of SC ST Rules is extracted here under:

“As per Section 23 of SC ST Act, 1989, the Central Government framed the rules in the year 1995 vide GSR 316 (e) dated 31.03.1995 should brought into force on the same day. Rule 7 (1) enumerates that if an offence is committed under SC ST Act it shall be investigated by an police officer not below the rank of the Deputy Superintendent of Police, who shall be appointed by the State Government or by the Director General Police or by the Superintendent of Police. The appointment shall be made after taking into account his past experience, sense of ability and justice to perceive implications of the case and investigate it along with right line within the shortest possible time.”

24. In *Mrs.Mariamammal V. State of Tamil Nadu* reported in 1998 MWN (Cr.) 349, this Court had an occasion to deal with Rule 7 of SC St Rules and observed that Rule 7(1) is mandatory in an offence under SC ST Act.

25. This Court in *Sambasivam & Another Vs. State* reported in 2007 (1) MWN (Crl.)69 as regards Rule 7(1) SC ST Rules, made an observation which is



as follows:

WEB COPY

“An offence committed under the Act shall be investigated by an Police Officer not below the rank of Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability justice to perceive the implications of the case and investigate it along with right lines withing shortest possible time”

26. The Andhra Pradesh High court in *Vishwanadhula Chittibabu Vs. State of Andhra Pradesh* reported in 2002 (4) *Andhra Law Times Reports* 456, has held that:

“However, Rule 7 is not complied with, it should be treated as prejudice caused to the accused, as Rule 7 is mandatory not directory”

27. This Court in *H. Thenmozhi Vs. Inspector of Police, P.R.C Unit, St. Thomas Mount Police Station, Chennai-600 016 and Another* reported in 2006 (2) *MLJ (Cr.)* 463, where investigation was done by the Inspector of Police, it was held that the entire proceedings is vitiated for non-compliance of Rule 7(1) of SC and ST Rules.

28. This Court, in *Sekar and others Vs Deputy Superintendent of Police,*



Pudhuchatram reported in *CDJ 2011 MHC 5916*, when the non application of Rule 7(1) was put forth, this Court held that the same Rule is a mandatory one.

29. Even in *A.Sasi Vs. Superintendent of Police, Villupuram & 3 other reported in 1998 3 Crime 279*, this Court held that case under SC ST Act should be investigated by the police officer not below the rank of Deputy Superintendent of Police. This was also reiterated by this Court in *Chinnasamy Vs. State 2000 CrI. Law Journal 956*.

30. In not following the procedure contemplated in Rule 7 of SC ST Rules in the following cases, the trial was said to be vitiated.

- 1) State Vs. Smt.D.Jayamma & Anr. 2002 CRILJ 3872 Karnataka.
- 2) Mantu Kumar Sinha Vs. State of Bihar 2000(1) Crime 529 (Patna)
- 3) Chandra Sekhar Pani & Ors. Vs. State of Orissa 2004 CRILJ 2626
- 4) Tutu Vs. State of Orissa 2003 CRILJ 722 (Orissa)
- 5) Keshav Singh Vs. State of Madhya Pradesh 2007 CrILJ 721

31. Sub rule 1 of Rule 7, clearly imposes an obligation on the part of the State that a case under SC ST Act shall be investigated by an Police Officer not below the rank of Deputy Superintendent of Police.

32. When an information is received by the police either orally or in writing, when it relates to the commission of an offence under Section 3 of the SC and ST Act, the Officer incharge has to receive the same in the manner provided



33. Whereas Rule 7 of the SC ST Rules mandates that the investigating officer shall be appointed by the State Government and he should not be below the rank of Deputy Superintendent of Police. In the process of appointment, the appointing authority shall look into his past experience, sense of ability and justice to perceive implications of the case in order to investigate the matter in a proper perspective within the shortest possible time.

34. The object behind this specific provision for appointment of police officer not below the rank of Deputy Superintendent of Police after taking into account his past experience, sense of ability etc., as the complained issue is very sensitive one.

35. To Hypothetically enumerate if, the Deputy Superintendent of Police is working in an administrative side for a long period and he or she is posted for the first time to head the Taluk, then it may not possible for the officer to handle the issue in an efficient manner and as expected of. Therefore, to achieve the object mandated in Article 15 of our Constitution, this Rule 7(1) is held to be



mandatory in the above said cases.

WEB COPY

36. In this case, P.W14 Thiru. Vaithiyalingam, Deputy Superintendent of Police has deposed that he was duly nominated by the Superintendent of Police as per the proceedings. The same was not marked by the prosecution side. Therefore, it is inferrable that Rule 7(i) was not followed.

37. His successor P.W15, Thiru.Maduraiswamy, has also stated that he took up the further investigation of the said case and he has not spoken about the appointment proceedings. AS per Rule 7(1) of SC ST Rules, it is vividly clear that both the Deputy Superintendent of Police officer investigated the case in derogation of Rule 7 of SC ST Rules.

38. P.W1, the defacto complainant has deposed cogently and his evidence is acceptable despite the reason that he had a land dispute with the accused. Many number of witnesses who belong to SC ST community as well as non SC ST community have spoken in line with evidence of P.W1. Since accused P.W9, P.W11 & P.W13 names are not found in the list of witnesses and they were examined *suo motu* by the trial Court. As the procedure contemplated in Rule 7(1) is mandatory and not directory in nature, the proceedings namely, the trial in respect of the offence under Section 3(1) (x) of SC ST Act gets vitiated.



WEB COPY

39. Another charge was framed under Section 294B of IPC, that the accused uttered obscene words in the public place against the scheduled caste women.

40. I carefully perused the above said charge, it is made on the chastity the schedule caste women. Therefore, it can be taken as insult made to the women belonging to SC ST community and it should be taken as a humiliation. This should have formed part of the charge under Section 31(1)(x) of SC ST Act. Therefore, based on the above said discussions, I am of the considered view that non-compliance of Rule 7(1) of SC ST Rules as it is mandatory and not directory, the entire investigation shall stand vitiated. With these observations, this Criminal Appeal stands dismissed by confirming the judgment of the trial Court rendered in S.S.C.No.70 of 2014 dated 04.01.2018.

27.02.2024

Index : Yes/No
Internet : Yes/No
dpa



WEB COPY



16

R.KALAIMATHI,J.

dpa

To

- 1.The I Addl. District and Sessions Judge (P.C.R),
Thanjavur
- 2.The Deputy Superintendent of Police
Thiruvarur Sub-Division
Thiruvarur District.
- 3.The Public Prosecutor,
Madras High Court, Chennai.

Crl.A.No.407 of 2018

27.02.2024