

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.7496 of 2015  
in Crl.A.Sr.No.59032 of 2014

Karikalan

... Petitioner

Vs.

1.State rep. by  
Assistant Commissioner of Police  
Law and Order (South)  
Coimbatore City.

2.M.Kumar @ Sivakumar  
3.M.Selvaraj  
4.Nataraj

... Respondents

Prayer in Crl.O.P.No.7496/2015:- Petition filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to prosecute the respondents 2 to 4 against the judgment of acquittal dated 12.04.2013 made in Special S.C.No.13 of 2012 on the file of the learned Special Judge/Principal Sessions Judge, Coimbatore.

Prayer in Crl.A.Sr.No.59032/2014:- Appeal filed under Section 372 and 378 of Cr.P.. against the judgment of acquittal dated 12/4/2013 made in Special S.C.No.13 of 2012 on the file of the Special Judge/Principal Sessions Judge, Coimbatore.

For Petitioner : Mr.L.Mouli

O R D E R

This petition is filed for granting leave to the petitioner to prosecute the respondents 2 to 4 against the judgment of acquittal dated 12.04.2013 made in Special S.C.No.13 of 2012 on the file of the learned Special Judge/Principal Sessions Judge, Coimbatore.

2.It is alleged that the respondents 2 to 4 abused the petitioner herein with filthy language by referring to his caste and criminally intimidated him and thereby committed the offences under Sections 3(1)(x) of SC/ST (Prevention of Atrocities) Act and 506(i) IPC. The trial Court has acquitted the respondents 2 to 4 on the

ground that there was a civil suit pending between both the parties and due to enmity, a false complaint was lodged by P.W.1/petitioner herein. The trial Court further held that P.W.2 and P.W.3 are close friends of P.W.1 and they are interested witnesses and hence, there is no evidence to prove that the respondents 2 to 4 are guilty for offences under Sections 3(1)(x) of the SC/ST (Prevention of Atrocities) Act and 506(i) IPC.

3.Learned counsel for the petitioner submitted that P.W.1/petitioner herein in his evidence accepted that there was a delay in preferring the complaint and it was properly explained by the petitioner. But that factum was not considered by the trial Court. Further, the trial Court has erroneously held that eye witnesses namely, P.W.2 and P.W.3 are friends of P.W.1 and hence, their evidence cannot be taken into consideration. Therefore, he prayed for granting leave to prefer the appeal.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.On perusal of the typed set of papers, it reveals that the petitioner herein is in possession of the property as a tenant and he has entered into a sale agreement with the father of the respondents 2 to 4 in the year 1992. After the death of their father, the respondents 2 to 4 have filed a civil suit in O.S.No.775 of 2011 for recovery of possession. It is to be noted that the petitioner herein has not filed suit for specific performance. Due to enmity, the petitioner instead of handing over the possession to the respondents 2 to 4, has given a complaint. So the delay in preferring the complaint played vital role. Hence, I am of the view, delay in preferring complaint is fatal to the case of prosecution and the above aspect has been correctly held by the trial Court.

6.Learned counsel for the petitioner would submit that the trial Court has wrongly considered the decision reported in Sekar v. State (2012) 1 MWN (Cr1) 87 and submits that the above decision is not applicable to the facts of the present case. So it is appropriate to consider the above decision, in para-39, it was held that since there was a civil dispute, legal notice was issued. If the accused failed to withdraw the civil suit, the defacto complainant would prefer a complaint under the SC/ST Act. But the decision is not applicable to the facts of the present case. Because, in the above decision, it was specifically held that the defacto complainant threatened the accused to withdraw the suit otherwise he would prefer complaint under SC/ST Act. In the case on hand, the respondents 2 to 4 have already filed a suit for recovery of possession. So the above decision is not applicable to the facts of the present case.

7.Considering the facts and circumstances of the case, the petitioner herein is in possession of the property belonging to father of the respondents 2 to 4 as tenant without paying rent for so many years. Hence, the respondents 2 to 4 filed a civil suit in O.S.No.775 of 2011. It clearly shows that due to property dispute, false complaint has been given by P.W.1/petitioner. Except the ipse dixit of P.W.1 and the evidence of P.W.2 and P.W.3 who are close friends of P.W.1, no evidence was available to prove that the respondents 2 to 4 abused P.W.1 by referring his caste. In such circumstances, the trial Court has rightly held that the evidence of P.W.2 and P.W.3 are not reliable.

8.Under the above said circumstances, I am of the view, even though the trial Court has wrongly considered the decision reported in Sekar v. State (2012) 1 MWN (Crl) 87, the trial Court has rightly considered that delay in preferring complaint is fatal, due to enmity the petitioner has preferred the complaint and came to the correct conclusion that the respondents 2 to 4 are not guilty for offences under Sections 3(1)(x) of SC/ST (Prevention of Atrocities) Act and 506(i) IPC. Hence, I do not find any merits in this petition to grant special leave to prefer appeal and accordingly, the petition stands dismissed. Consequently, Crl.A.Sr.No.59032 of 2014 is rejected.

kj

-s/d-  
Assistant Registrar(CS-II)  
Dt:31/3/2015

True Copy

Sub-Assistant Registrar

To

- 1.The Special Judge/Principal Sessions Judge,  
Coimbatore.
- 2.The Assistant Commissioner of Police  
Law and Order (South)  
Coimbatore City.
- 3.The Public Prosecutor  
High Court, Chennai.

+ 1 cc to Mr.L.Mouli, Advocate sR 16697

msm(co)  
prk6/4

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