

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.2036 of 2013

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% Dated 07.12.2015

Chinni Appa Rao S/o.Simhachalam,

65 years and two others

....Petitioners

VERSUS

\$ State of A.P., Rep. by its Public Prosecutor,

High Court of A.P.,

Hyderabad and another

... Respondents

! Counsel for Petitioner: Sri T.V.S.Prabhakar Rao

^ Counsel for Respondent No.1: Public Prosecutor (A.P.)

Counsel for Respondent No.2 : Ms.T.V.Sri Devi

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> HEAD NOTE:

? CITATIONS:

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CRIMINAL PETITION No.2036 of 2013

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Between :

Chinni Appa Rao S/o.Simhachalam,
65 years and two others

... Petitioners

AND

State of A.P., Rep. by its Public Prosecutor,
High Court of A.P.,
Hyderabad and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 07.12.2015

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2036 of 2013

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ORDER :

The petitioners are A.1 to A.3 of P.R.C.No.5 of 2012 on the file

of the II Additional Judicial First Class Magistrate, Anakapalli, Visakhapatnam District, which is out come of protest application of the 2nd respondent-*de facto* complainant, by name K.Srinivasa Rao, and the accused persons A.1-Chinni Apparao, his wife Smt.Chinna Appala Narsamma-A.3 and their son Chinni Appa Rao-A.2, are neighbours to the *de facto* complainant. Originally, Crime No.28 of 2011 of Munagapaka Police Station, Visakahpatnam District, was registered for the offences punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act') and Sections 342, 509 and 506 read with 34 IPC on the report of the *de facto* complainant dated 28.03.2011 against five accused persons including the three quash petitioners supra as A.1 to A.3 and one Maddala Lakshmana as A.4 and Maddala Maheswara Rao as A.5 of T.Sirsapalli Village, Munagapaka Mandal. The caste of A.1 to A.3 is shown as Yatha and the caste of A.4 and A.5 is shown as Gavara and they are not the scheduled castes or scheduled tribes and the *de facto* complainant shown his profession as Church Pastor and still as S.C. Mala in the said report. The police after investigation filed the final report dated 31.08.2011 referring the case as mistake of fact and a notice is also issued to the *de facto* complainant. After receipt of notice, the *de facto* complainant raised the protest application. In the course of investigation by police as many as seven witnesses were examined including the *de facto* complainant as LW.1 and his wife as LW.2 and one K.Lakshmi @ Ruthamma as LW.3, K.Veera Lakshmi @ Jyothi as LW.4, Ch.Lakshmi @ Santhikumari as LW.5, S.Varalakshmi @ Saramma as LW.6 and T.Sanyasamma @ Marthamma as LW.7. The very report of the *de facto* complainant vis-à-vis the statement of him recorded during investigation clearly speaks that he is working as Pastor of the Christ Sangam Church from the year 2004. The *de facto* complainant stated that he constructed the Church having purchased Ac.0.09 cents from one Geddham Bavanarsu and another Ac.0.09 cents from one Pentuboina Govindu and others and firstly he erected the Church in a thatched shed and later in the year 2007-08 he constructed a slabbed Church building and he further saying there is

mettu way to go to the Church from the road. The neighbours are picking up quarrel with him for using the way and that is the root cause for the present crime. The *de facto* complainant claims that he was abused by caste in attracting Section 3(1)(x) of the Act. The wife of the *de facto* complainant and among others also categorically deposed about professing Christianity by the *de facto* complainant. Leave about their statements as to the so-called abuses touching the caste name as S.C., the *de facto* complainant's own statement vis-à-vis of his wife statement, it is clear that they are already converted into Christianity and running a Church and *de facto* complainant is serving as Pastor professing Christianity. It is not a disputed factum to be agitated, much less for a fact finding but the very say in categorical words of he is not only professing Christianity by conversion but also serving in preaching Christianity though basically a Hindu S.C. by caste. It is on that ground the caste certificate issued in favour of the *de facto* complainant as 'S.C.Mala' by the Tahasildar, Anakapalli, is also cancelled vide proceedings dated 20.09.2014 in Rc.No.292/2014/A and that proceedings are not in dispute. The petitioners there from sought for quashing of the private P.R.C. pending for committal supra besides saying the complaint engineered with false allegations to implicate them by abusing the so-called concession as if available under his impression, though otherwise not even available to invoke Section 3(1)(x) of the Act as if member belongs to SC/ST. The other contention is there are no worth ingredients from the case propounded by the complainant to attract Sections 506 or 509 or 342 IPC against any of the five accused.

2. Counter filed by the 2nd respondent-*de facto* complainant speaks, from the material papers while not in dispute, mere conversion to Christianity and/or professing Christianity no way ceases his original birth caste and thereby the proceedings are not liable to be quashed, for the offences taken cognizance by the learned Magistrate and hence to dismiss the quash petition.

3. Heard both sides at length and perused the material on record,

provisions and propositions placed reliance by both sides.

4. Learned counsel for the petitioners placed reliance on the following propositions.

5(i). The Three-Judge Bench of the Apex Court in **Chatturbhuj Vithaladas Jasani v. Moreshwar Parashram and others (three judge Bench)**, addressed on the question, under Section 7(d) of the Representation of Peoples Act, 1951 and Article 341 of the Constitution of India, fallen for consideration as to Chatturbhuj originally an ST by caste was disqualified for being chosen as, and for being, a member of Christian community by conversion.

5(ii). The other important decision placed reliance is in **State of Kerala and another v. Chandra Mohanan**, another Three-Judge Bench expression of the Apex Court. In this case, there was a dispute by caste regarding the status of the de facto complainant from alleged conversion to Christianity by the very parents of the de facto complainant, in saying whether he can continue as a member of the scheduled caste. In fact, basically they were tribals and the tribal after conversion to be continued to follow their customs and traditions to consider as still STs or not, which was the matter for consideration, in saying particularly at para 20 with reference to paras 17 to 19 that 'the question as to whether he ceases to be a member thereof or not must be determined by the appropriate court as such a question would depend upon the facts of each case, thereby remitted to the SC/ST Court to proceed with the trial and decide that question in accordance with law.

5(iii). In **Ganesam v. State of Tamil Nadu and another**, a single-Judge expression of the Madras High Court says a fact finding is required on the disputed question of fact as sought in protest petition after the police investigation referred as mistake of fact on the caste.

6. Here, this is not the case as it is not the mere Tribes by caste to continue and in the very complaint of the *de facto* complainant not only in his report, but also in his statement before police under

Section 161 or 162 Cr.P.C., he categorically stated he has been professing Christianity and serving as a Pastor right from 2004 and established a Church of his own having been constructed not only in thatched shed and later by converted into a pucca building in 2007-08 and continuing the same even as on the date of alleged occurrence by professing and preaching Christianity.

7. It is important to note that in the Three-Judge Bench expression in Chandra Mohanan (2nd supra), the earlier three-Judge Bench judgment of the Apex Court in ***C.M.Arumugam v. S.Rajgopal and others*** referred, which was laid down with reference to the Constitution (Scheduled Castes) Order, 1950 under Article 341 of the Constitution of India. There though the main discussion went in particularly from para 10 was in relation to the caste and it is observed that a caste is more a social combination than a religious group and as pointed out in ***G.Michael v. S.Venkateswaran***, ethics provide the standard for social life and it is founded ultimately on religious beliefs and doctrines, religion is inevitably mixed up with social conduct and that is why caste has become an integral feature of Hindu society. It is observed and approved by saying 'it is no doubt true, and there we agree with the Madras High Court in G. Michael's case that the general rule is that conversion operates as an expulsion from the caste, or, in other words, the convert cases to have any caste, because caste is predominantly a feature of Hindu society and ordinarily a person who ceases to be a Hindu would not be regarded by the other members of the caste as belonging to their fold. This expression covers the earlier expressions including of Chatturbhuj (supra).

8. Here, it is important to note that, in between there is another Three-Judge Bench expression of the Apex Court in ***Soosai v. Union of India***, there referred to the Articles 341 and 14 of the Constitution of India and the Ordinance, 1950 that was since attacked as unconstitutional with reference to Article 14 of the Constitution of India on the disabilities and handicaps claimed do not continue after conversion and otherwise the order is discriminatory, the Apex Court

considered the issue in depth the basis for the ordinance, including from the constitutional assembly debates on the question debated as to whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity. It is the real question formulated there from to decide as to can it be said that in confining the declaration to members of the Hindu and the Sikh religions, paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against members of the Christian religion.

9. In answering the same, mainly at paras 7 and 8, it is observed in Soosai as follows:

“Now it cannot be disputed that the caste system is a feature of the Hindu social structure.....Dr.J.H.Hutton, a Census Commissioner of India, framed a list of the depressed classes systematically, and that list was made the basis of an order promulgated by the British Government in India called the Government of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 is substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes, races or tribes in an attached Schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Castes. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. During the framing of the Constitution, the Constituent Assembly recognized “that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability”, and that “this evil practice of untouchability was not recognised by any other religion and the question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise”. B. Shiva Rao: the Framing of India’s Constitution: ... A Study p.771. The Sikhs however, demanded that some of their backward sections, the Mazhabis, Ramdasias, Kabirpanthis and Sikligars, should be included in the list of Scheduled Castes. The demand was accepted on the basis that these sects were originally Scheduled Caste Hindus who had only recently been converted to the Sikh faith and “had the same disabilities as the Hindu Scheduled Castes”. Supra p.771. The depressed classes within the fold of Hindu Society and the four classes of the Sikh community were therefore made the subject of the post Indian Constitution (Scheduled Castes) Order, 1950. Subsequently in the year, 1956

the Constitution (Scheduled Castes) Order, 1950 was amended and it was broadened to include all Sikh untouchables.

10. It is there from answered by the Apex Court in Soosai (supra) that the Ordinance, 1950, later amended in 1956 no way discriminates against members of Christian religion, from the Hindus conversion into Christianity not entitled to the claim as SC and held it is not sufficient to show that, the same caste continues even after such conversion.

11. The expression of the Apex Court (Three-Judge Bench) in Soosia's case, is thus crystal clear on this aspect. In fact, the Ordinance, 1956 is only elaborate the Sikh community and undisputedly and admittedly, not for Christian community, in a conclusion and in other respects it is as good as Ordinance, 1950 for nothing repealed, more particularly, from the Sub Rule 3, which says "Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, (the Sikh or the Buddhist) religion shall be deemed to be a member of a Scheduled Caste.", included for 'or the Sikh' by Act 15 of 1990 and also substituted by Act 63 of 1956 in the First Schedule. It was categorically observed that the disabilities and handicaps do not continue after conversion. Thus once by conversion of a Scheduled Caste Hindu into another religion, except Sikh and Buddhist, ceases to be a member of Scheduled caste, including to invoke the provisions of the SC/ST (POA) Act, 1989.

12. From the above propositions, needless to repeat the admitted facts, the *de facto* complainant not only professing Christianity by conversion but also his entire family members and not only by conversion and continuing but also preaching Christianity as a Pastor of the Church right from 2004 and even date, for the alleged occurrence took place in 2012 i.e., for more than eight years after conversion and while continuing and professing Christianity, he ceased to continue as member of Scheduled Caste. It cannot be said, much less, not his case, of not recognized by Christianity

community as had it been how he can continue as a Pastor of the Church in professing and propagating Christianity admittedly from the year, 2004 and even date. Suffice to say, had the well considered Three-Judge bench expression including on the object behind the Order, 1950 in Soosai's case, brought to the notice of the subsequent Three-Judge Bench expression in Chandra Mohanan's case (2 supra), the result could have been otherwise. Further, the later Three-Judge Bench expression in Chadra Mohanan simply observed that there is disputed fact to be agitated during trial and to decide by trial Court.

13. Having regard to the above, the *de facto* complainant is not entitled to the concession of claiming as still a member of the Scheduled Caste for the benefit of Act 33 of 1989 as Section 3 sub-section (1) on wording is 'whoever not being a member of Scheduled Caste or Scheduled Tribe, particularly sub sections 9 and 10 uses the word 'a member of Scheduled Castes or a Scheduled Tribe', to mean he must continue as on the date of alleged occurrence as a member of the Scheduled Caste or Scheduled Tribe. Once he is ceased to be a member of Scheduled Caste or Scheduled Tribe by conversion into Christianity from the words discussed particularly from the Order, 1950 amended by Act 63 of 1956 and later by Act 15 of 1990 and covered by the Three-Judge Bench's well considered expression in Soosai's case that was not even referred to the conclusion in another Three-Judge Bench expression in Chandra Mohanan's case, the *de facto* complainant for no longer continues as a member of Scheduled Caste from the facts supra and when not entitled to the benefit of Section 3 of the Act, the prosecution invoking Section 3(1)(x) of the Act is unsustainable and the cognizance taken as P.R.C. is unsustainable and liable to be quashed.

14. Even coming to the other penal provisions by Section 149, 323, 342, 352, 506 and 509 IPC are concerned (protest petition against five accused), *prima facie* there is no wrongful confinement defined under Section 341 IPC punishable under Section 342 IPC as from the very say in the report to the police what was alleged, is they were

obstructed by disputing the entitlement to proceed from their alleged property to enter into the Church from the road, there is nothing to say wrongful restraint or wrong confinement there in. Even undisputedly this is a matter of civil dispute seized by Civil Court. Coming to Section 323 or 504 or 352 IPC, this Court finds that these allegations are included to make a claim mainly to rope under the substantial allegation of abuse on caste name as an after thought to the civil litigation and thereby the cognizance taken for other offences also liable to be quashed. It is needless to say, the paramount consideration under Section 482 Cr.P.C. irrespective of any allegations made to decide is, in rendering substantial justice and not mere enforcement of law. Having regard to the above, this Court is constrained to quash the P.R.C. proceedings to sub-serve the ends of justice.

15. Having regard to the above, the Criminal Petition is allowed and all the proceedings relating to P.R.C.No.5 of 2012 on the file of the II Additional Judicial First Class Magistrate, Anakapalli, Visakhapatnam District, are quashed. The bail bonds of the accused persons including the petitioners/A.1 to A.3, if any, shall stand cancelled

16. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

7th December 2015.

L.R. copy to be marked – Yes.

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