

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.P. No.6531 OF 2015

ORDER :

The petitioners are A-1 and A-2 in PRC.No.2 on the file of II Additional Chief Metropolitan Magistrate, Hyderabad

(Committal Magistrate) that is taken cognizance by the police final report under Section 190 read with Section 209 Cr.P.C., for the offences punishable under Sections 3 (1) (x) of Scheduled Caste/Scheduled Tribes (POA) Act (for short "the Act") and Section 509 IPC, which is outcome of the report of the 2nd respondent in Cr.No.328 of 2014 dated 30-05-2014 and from the investigation and final report that was taken cognizance to commit referred supra.

2. The factual background of the case in nut-shell is that *the de facto* complainant presented a written report dated-nil and received and registered on 30-05-2014 at 21.45 hours for the offences supra by the Station House Officer, Afzalgunj Police Station, Hyderabad and the report in Telugu version from English translation reads that she is the *de facto* complainant working as Assistant Librarian Grade-1 at State Central Library, Afzalgunj, Hyderabad residing at Saidabad hailed from Guntur native place having joined as Typist in Guntur in the year 1996, working now from the year 2012 by transfer to several

places as Assistant Librarian Grade-I, State Central Library, that her colleagues V.Srinivas Rao (B.C) (A-1) Gazetted Librarian and Sk.Peer Ahmed (OC) (A-2) working in State Central Library since 2013 respectively. From the date of their joining started harassing her mentally and humiliating since she got promotion in the year 2007 saying “***Thakkuva Kulam Maladhaniki Thondaraga Promotion Vachindi***” and the same was brought to the notice of police. Police conducted counseling, however increased their harassment even insulting her in the presence of other colleagues and the accused persons supra complained to her higher-ups against her by mis-interpreting true facts, due to which her pay fixation was postponing for the past four years, even other colleagues pay fixation was completed who are working along with her and even they got promotion subsequent to her and the higher officials are not taking any action. While things stood thus, within the past four months in March, 2014 one day she attended lately to duty, for which accused abused her in the presence of other colleagues and insulted and she brought it to the notice of Chief Librarian that resulted in issuance of memo to her and a day before the complaint presented, the Chief Librarian endorsed on the leave letter that ‘call for memo’ and these minor matters are reflecting how she was subjected to insult and mental torture. She attempted to commit suicide in March, 2014 by consuming sleeping

pills and at that point of time, their

Director-Pullaiah, Kesari Hanuman, Sajida, Santhosh shifted her to New Life Hospital and with their support she lodged a complaint even earlier tolerated all these, on 30-05-2015 for obstructing her duty, insulting her before other colleagues as she got frustration due to these acts of accused and lost patience and hence to take action.

From the said report, a crime registered for the offences supra and police after investigation, as can be seen from the memo of evidence in the charge sheet examined seven witnesses including LW.7 Tahsildar in obtaining caste certificate from him as complainant belongs to Scheduled Caste. LWs.2 to 6 are the co-employees. The final report speaks from said investigation that in the year 2007, the

de facto complainant got promotion under Scheduled Caste quota and since then, A-1 and A-2 harassing her saying even down trodden got promotion early due to her caste and insulted in the midst of co-employees and harassing in sanction of leave and in discharge of official duties and thereby the offence are made out. It is added in the final report that on 30-05-2014 when the complainant attending duties, A-1 and A-2 abused in the presence of LWs 2 to 6 as “ *Takkuva Kulam Maladhaniki Thondaraga Promotion Vachindi*” from which she made complaint. Thereby, they are liable for the offences and they were arrested and remanded to judicial custody that was taken

cognizance by the learned Magistrate.

4. Notice served on the 2nd respondent-*de facto* complainant, despite it she failed to attend, hence, taken as heard and heard the counsel for petitioners-Accused and the public prosecutor representing the 1st respondent-State and perused the material on record.

5. In the report referred supra of the *de facto* complainant, there is nothing to say on 30-05-2015, he was abused on lines as “*Takkuva Kulam Maladhaniki Thondaraga Promotion Vachindi*” by any of the accused. A reading of the entire report, nowhere even stated she was abused touching her caste name much less with an intention to insult and much less in public view, but for saying A-1 and A-2 told her as even she belongs to down trodden community, she got promotion early, what the other say of her is in discharging of her duties, she was meeting harassment in granting leave or issuance of memos. In all the same infact no way attracts on its bare perusal from the very report any of the offences under Section 3 (1) (x) of the Act or Section 509 IPC. What Section 509 IPC speaks of uttering any word or making any gesture intended to insult the modesty of a woman. There is nothing in this regard from reading of the report, much less from the investigation material covered by the final report described supra. There is nothing in the record on a reading of the report to attract the Section 3 (1) (x) of

the Act from what is referred supra, any intentional insult or intimidation in public view with an intention to humiliate a member of Scheduled Caste or Scheduled Tribe. In the report also, she did not name any other persons even among the staff present at any time while the accused using the word as she belongs to down trodden and thereby got early promotion apart from the fact of said words no way attracts Section 3(1) (x) of the Act and there is no public view. What she stated further is a memo was issued as part of disciplinary proceedings if any required regarding non application of leave or late presence etc., which cannot be brought within the purview of Section 3 (1) (x) of the Act, much less under Section 509 IPC. Apart from any harassment in the work place is covered by the guidelines required to be framed and infact framed as per the Apex Court's expression in **Visakha** for the committee concerned in relation there to enquire and recommend any action on a complaint to the higher-ups. Anything further as an afterthought introduced for the first time in the statements which is lacking in the report of LW.1-*de facto* complainant cannot also be given credence.

6. Having regard to the above, there is nothing for the police from investigation to file the final report for the offences punishable under Section 3 (1) (x) of the Act and Section 509 IPC, much less for the learned Magistrate to take cognizance under Section 190 Cr.P.C. for the

offences to commit the case to the Court of Sessions under Section 209 Cr.P.C. in allotting PRC number 2 of 2015. It is needless to say it is an outcome by proper non-application of judicial mind under Section 190 Cr.P.C. to the material with reference to the penal provisions in allotting P.R.C. number.

7. Therefore, the Criminal Petition is allowed and the proceedings in P.R.C.No.2 of 2015 on the file of II Additional Chief Metropolitan Magistrate, Nampally, Hyderabad are hereby quashed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

11-09-2015

nvl