

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2016

(Orders reserved on 19.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.5798 of 2016

and

Crl.M.P.No.3002 of 2016

1. Rajkumar
2. K.Govindarajan
3. P.Sabapathy ... Petitioners/Accused 1 to 3

Vs.

1. State rep. by
Inspector of Police,
Vigilance and Anti-Corruption,
Cuddalore. (Crime No.11 of 2015)...1st Respondent/Complainant
2. Chinnadurai ...2nd Respondent/Defacto
Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and quash the alteration report, dated 10.08.2015 filed in Cr.No.11 of 2015 on the file of the first respondent-Police.

For petitioners : Mr.S.Ashok Kumar,
Senior Counsel for
Mr.K.Gandhi Kumar

For respondents : Mr.P.Govindarajan,
Addl.P.P. for R-1
No appearance for R-2

ORDER

This Crl.O.P. is filed to call for the records and quash the alteration report, dated 10.08.2015 filed in Cr.No.11 of 2015 on the file of the first respondent-Police.

2. Brief facts of the case are as follows:

(a) The petitioners are A-1 to A-3 and they are Police Head Constables of Prohibition and Enforcement Wing, Virudhachalam. A complaint was lodged against the petitioners by the second respondent, stating that 03.08.2015 at about 4.30 a.m., when the second respondent-complainant went to field, Virudhachalam P.E.W. police personnel have dragged out the complainant's son C.Surya (studying VII Standard) from his grandmother's residence which is in the vicinity of his house. While taking their son, they had given their cell phone number with instructions to contact them whenever the complainant is back to his residence.

(b) As soon as the second respondent-complainant came from the field, he contacted the Police over cell phone and they demanded Rs.25,000/- as bribe from the second respondent/de-facto complainant to release his son and threatened him that, otherwise, a case will be registered against his son. Then the second respondent-complainant stated that he had quit the illicit trade. In spite of that, they threatened him. Hence, the second respondent gave a complaint over phone, based on which, a complaint was registered in Crime No.11 of 2015 by the Inspector of Police, DVAC, Cuddalore for the alleged offence under Section 7 of the Prevention of Corruption Act.

(c) Thereafter, a trap was laid after completion of formalities and the petitioners/A1 to A3 were caught red-handed on 03.08.2015 at about 19 hours and they were remanded to judicial custody in respect of the offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. During the course of investigation conducted by the Trap Laying Officer (TLO) at the time of trap, it revealed that the juvenile son of the de-facto complainant, namely C.Surya was taken out of his grandmother's house on 03.08.2015 at about 5 hours by the accused persons. During the course of the trap, it was found that the complainant's son C.Surya was under wrongful confinement with the accused persons in the Office of the PEW, Virudhachalam and he was rescued from the wrongful confinement. After completion of procedures, Master C.Surya was safely handed over to his father, the second respondent/de-facto complainant in the presence of the official witnesses by the TLO.

(d) During the course of investigation, the investigating officer came to know that the minor boy Surya belonged to Scheduled Caste (SC) community and the accused persons belong to Most Backward Class (MBC) community and as there are enough materials, the said case in Crime No.11 of 2015 was altered for commission of the offences under Sections 364-A, 365 and 384 IPC, Section 3(1)(xv) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Sections 7 and 13(2) read

with 13(1)(d) of the Prevention of Corruption Act and accordingly, alteration report was filed before the Court below. Challenging the said alteration report, the petitioners/A1 to A3 have filed this Crl.O.P. for the relief stated supra.

3. Learned Senior Counsel appearing for the petitioners, while narrating the case of the prosecution, submitted that the first respondent-Police, without proper enquiry, without application of mind and with malicious intention, altered the offences and filed the alteration report. The alteration of the offences was not known to the petitioners, as they were in custody and hence, they could not mention the altered offences in their bail petition. He further submitted that the petitioners were released on bail on 07.09.2015 in Crl.O.P.Nos.22267 and 22376 of 2015 by this Court only in respect of the offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. Learned Senior Counsel further submitted that the alleged occurrence took place on 03.08.2015, but the alteration report is dated 10.08.2015. He further submitted that as per the complaint, no offence is made out for the offences under Sections 364-A, 365 and 384 IPC and Section 3(1)(xv) of the SC and ST (POA) Act. Learned Senior Counsel further contended that in respect of the offence under the SC and ST (POA) Act, the Police Officer not below the rank of Deputy Superintendent of Police must investigate the case, and hence, the alteration report is illegal and in violation of the SC and ST (POA) Act. Learned Senior Counsel further stated that the petitioners belong to MBC community and the second respondent/de-facto complainant's son belongs to SC community, and when there is no allegation in the complaint with regard to the offence under the SC and ST (POA) Act, the first respondent-Police, without application of mind, added the offence under Section 3(1)(xv) of the SC and ST (POA) Act, apart from Sections 364-A, 365 and 384 IPC and Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. Hence, he submitted that the alteration report is not legally sustainable and he prayed for quashing the same.

4. Countering the above submissions, learned Additional Public Prosecutor appearing for the first respondent-Police, by reiterating the contents of the counter affidavit, submitted that the complaint very clearly makes out the offences as filed under the alteration report. Only when the communities of the victim-boy and the de-facto complainant are ascertained during the course of investigation, the SC and ST (POA) Act was invoked by adding the offence under that Act. He further contended that there is no bar in law for investigation of the offences which falls both in the Prevention of Corruption Act and SC and ST (POA) Act by the same Police Officer. Further, the investigation was taken up by the DSP, V & AC, Cuddlore and the bar is only for investigation and not for sending the alteration report.

Hence, learned Additional Public Prosecutor submitted that absolutely, there is no case made out by the petitioners to quash the alteration report and therefore, he prayed for dismissing the petition.

5. Keeping the above submissions of both sides in mind, I have carefully gone through the materials available on record.

6. The only question that falls for consideration in this petition is as to whether the petitioners have made out a case to quash the alteration report.

7. On a perusal of the complaint given by the second respondent/de-facto complainant, it is seen that absolutely no allegation is attracted and no case is made out to include the offence under the SC and ST (POA) Act, but the alteration report was filed under Sections 364-A, 365 and 384 IPC, Section 3(1) (xv) of the SC and ST (POA) Act and Sections 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act. It is stated in the alteration report that during the course of investigation, it came to light that the complainant and his son Master C.Surya, who is a minor (date of birth is 23.03.2003, age 12 years 4 months) belong to Hindu Kuravan Caste, which is a Scheduled Caste (SC) and in support of it, the complainant produced his son's Community Certificate. It is further stated in the alteration report that the discreet enquiry revealed that all the accused personnel belong to Vanniyar Community, which is Most Backward Class (MBC). Thus, it is clear that merely for the reason that the complainant's son belong to SC community and the petitioners/A1 to A3 belong to MBC community, the investigating officer included the offence under Section 3(1)(xv) of the SC and ST (POA) Act.

8. It is further seen that when the investigating officer, after completing the investigation in respect of the offence under the SC and ST (POA) Act, filed final report / charge sheet before the Chief Judicial Magistrate-cum-Special Judge under the Prevention of Corruption Act at Cuddalore, but the Court has returned the charge sheet by raising the following queries:

- "1. How a separate charge sheet is filed.
2. Whether P.C. Act cannot be tried by the same Court which tries SC/ST Act if necessary by taking suitable steps".

9. Subsequently, the charge sheet was re-submitted by the prosecution clarifying the above aspect, but the Court below once again returned the charge-sheet, viewing as follows:

"Prosecution laid a final report in Cr.No.11/2015 and that a charge sheet discloses an offence triable u/s.3(1)(xv) r/w 3(2)(vii) of SC/ST Act. In course of same transaction investigation revealed that offence u/s 7 & 13(2) r/w 13(1)(d) of PC Act, 1988 is also made out and that the prosecution claim that they would file separate report to try for offence u/s. 7 & 13(2) r/w 13(1)(d) of P.C Act 1988 before this Special Court, namely Chief Judicial Magistrate, Cuddalore having found that offence u/s 3(1)(xv) r/w 3(2)(vii) of SC/ST Act and offences of Prevention of Corruption Act is made out in the same transaction, therefore take the charge sheet on file, the prosecution are raise to resubmit the charge sheet u/s.3(1)(xv) r/w 3(2)(vii) of SC/ST Act along with the final report likely to be filed for Prevention of Corruption Act. Both charge sheet may be filed together. So that advisory opinion can be sought either from the Hon'ble Principal District Judge, Cuddalore or from the Hon'ble High Court, Madras by way of advice instruction."

10. It is the further case of the prosecution that further investigation is under progress with regard to the recordings in the cell phone and the recordings were sent to voice analysis in the physical division of Forensic Lab, from where the report is awaited, after which, the charge sheet will be filed with respect of the offences under the Prevention of Corruption Act.

11. In my considered opinion, from a reading of the complaint given by the second respondent, it is seen that absolutely no case has been made out for including the offence under the SC and ST (POA) Act, as there is no averment with regard to the ingredients of offence under Section 3(1)(xv) of the SC and ST (POA) Act. Hence, the alteration report filed by the prosecution with regard to the said offence under Section 3(1)(xv) of the said Act is not legally sustainable.

12. In the above context, a reference could be made to the judgment of the Madurai Bench of this Court, relied on by the learned Senior Counsel appearing for the petitioners, reported in 2015 (2) LW (Cr1) 145 (V.Koilpillai, S/o Vedhamani and another Vs. The State of Tamil Nadu, rep. by its Secretary and others), wherein, it is observed as follows:

"41. The learned counsel would submit that the Police officials, by falsely implicating these accused in the case, have committed offence punishable under Section 3(2)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. I find

no force in this contention at all, because, the petitioners were not roped in as accused on the ground that they belong to a scheduled caste. It is a coincidence that they belong to scheduled caste. Thus, even prima facie, there is no materials warranting any registration of the case under the said Act. In short, I do not find any material even to make out a prima facie case warranting registration of any case against the police officials and the Village Administrative Officer. Therefore, the first relief sought for is rejected."

13. In the case on hand, as observed above, there is no allegation to the effect that the de-facto complainant's boy was forcibly taken from the house since he belongs to SC community. Therefore, adding the offence under Section 3(1)(xv) of the SC and ST (POA) Act is totally unwarranted, as no case is made out to attract the ingredients of Section 3(1)(xv) of the said Act.

14. Therefore, for the reasons stated supra, this CrI.O.P. is partly allowed, by quashing the alteration report only in respect of Section 3(1)(xv) of the SC and ST (POA) Act. So far as the offences Sections 364-A, 365 and 384 IPC and Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, are concerned, I find prima-facie case against the petitioners/A1 to A3. Hence, the first respondent-Police is at liberty to proceed with the investigation in respect of the said offences under the IPC and the Prevention of Corruption Act. CrI.M.P.No.3002 of 2016 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

cs

Copy to

1. Inspector of Police, Vigilance and Anti-Corruption,
Cuddalore. (Crime No.11 of 2015)

+1 cc to Public Prosecutor High Court, Madras
sr 41888

aa12/08/2016

CrI.O.P.No.5798 of 2016

WEB COPY