

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2016

DELIVERED ON : 26.08.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. Nos.9115 & 9116 of 2016 & CrI.M.P. No.4727 of 2016

1 M.R. Bharath
2 V. Porchezian Petitioners in both CrI.O.Ps.

vs.

1 The Superintendent of Police
Kancheepuram District
Kanchipuram
2 E. Jeyakumar
Deputy Superintendent of Police - Sriperumbudur
Sriperumbudur
Kancheepuram District
3 Balaji, Administrative Officer
4 Tamil Selvan, Administrative Officer
5 Rajesh, Human Resources Officer

(RR 3 to 5 working with Rajalakshmi Engineering College
Thandalam, Sriperumbudur,
Kancheepuram District 602 105)

6 The Director General of Police
Rajaji Salai
Chennai 600 004

7 The Home Secretary
Government of Tamil Nadu
Fort St. George
Chennai 600 009

Respondents in CrI.O.P. No.9115/2016

1 The Superintendent of Police
Kancheepuram District
Kanchipuram

- 2 The Director General of Police
Rajaji Salai
Chennai 600 004
- 3 The Home Secretary
Government of Tamil Nadu
Fort St. George
Chennai 600 009
- 4 Mr. E. Jeyakumar
Deputy Superintendent of Police
Sriperumbudur
Kanchipuram District Respondents in Crl.O.P.9116/2016

Crl.O.P. No.9115 of 2016:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for a direction to the first respondent, Superintendent of Police, Kanchipuram District, to register a FIR based on the complaint given by the petitioners dated 13.02.2016 under the provisions of the SC/ST (Prevention of Atrocities) Act, 1989, IPC and the Protection of Human Rights Act, 1993 and consequently, direct investigation of the same by a police officer of good reputation and unimpeachable integrity and higher in rank to a Deputy Superintendent of Police.

Crl.O.P. No.9116 of 2016:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to direct the respondents 1 to 3 herein to register a FIR against the fourth respondent, DSP, Sriperumbudur, Kanchipuram District based on the complaint given by the petitioners dated 16.02.2016 under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. सत्यमेव जयते

For petitioners in Dr. V. Suresh
both the OPs

For RR 1,6 & 7 in
Crl.O.P. No.9115 of 2016
and for respondents in Mr. C. Emalias
Crl.O.P. No.9116 of 2016 Addl. Public Prosecutor

For RR 3 to 5 in
Crl.O.P. No.9115 of 2016 Mr. N. Anand Venkatesh

COMMON ORDER

While Crl.O.P. No.9115 of 2016 is filed seeking a direction to the first respondent to register an FIR based on the complaint dated 13.02.2016 given by the petitioners under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for brevity "the SC & ST (PoA) Act"), Indian Penal Code and the Protection of Human Rights Act, 1993 and consequently, direct investigation of the same by a police officer of good reputation and unimpeachable integrity and higher in rank to a Deputy Superintendent of Police, Crl.O.P. No.9116 of 2016 is filed for a direction to the respondents 1 to 3 to register a FIR against the fourth respondent, based on the complaint given by the petitioners dated 16.02.2016 under Section 4 of the SC & ST (PoA) Act.

2 For the sake of convenience, the parties will be referred to by their name.

3 Bharath, Karthik and Porchezian were students of Rajalakshmi Engineering College prosecuting B. Tech. course (I.T.). On 13.02.2016, they lodged a complaint to the Deputy Superintendent of Police, Kanchipuram, making allegations against Kumar, Assistant Head of the Department that he was frequently calling them by their caste name and criticising them. They further alleged that on 29.01.2016, Rajesh, Human Resources Officer of the institution prevented them from writing the examination and confined them in a separate room and assaulted them. It is alleged in the complaint that one Balaji and Tamil Selvan of the college also joined in the assault. It is further alleged that the three had abused them by calling them by their caste name. Not content with giving a complaint to the Deputy Superintendent of Police, Sriperumbudur, they also sent complaints to the Government, SC/ST Commission and other authorities for action against the College Management.

4 The Deputy Superintendent of Police, Sriperumbudur, conducted enquiry on the said complaint and by his report dated 22.02.2016, came to the conclusion that the allegations are false and closed the complaint. During the enquiry by the Deputy Superintendent of Police, Sriperumbudur, he had examined several witnesses and it came to light that the said three students were intimidating and bullying not only the other students, but also, the members of the staff and they were also threatening that they would foist false cases against them under the SC & ST (PoA) Act.

5 Under such circumstances, Bharath and Porchezian filed Crl.O.P. No.9115 of 2016 for a direction to the police to register a FIR on the complaint dated 13.02.2016 under the

provisions of the the SC & ST (PoA) Act against the College Management, Balaji, Tamil Selvan and Rajesh. They have also filed Crl.O.P. No.9116 of 2016 for a direction to the Superintendent of Police to register an FIR against the Deputy Superintendent of Police, Sriperumbudur, under Section 4 of the SC / ST Act for not registering FIR on their complaint.

6 Heard Dr. V. Suresh, learned counsel for the petitioners, Mr. C. Emalias, learned Additional Public Prosecutor appearing for the respondent-State and Mr. N. Anand Venkatesh, learned counsel for the College Management.

7 At this juncture, it may be relevant to state that out of the three students, only M.R. Bharath and V. Porchezian have approached this Court. Further, at the commencement of arguments, Dr. Suresh, learned counsel, submitted that V. Porchezian is withdrawing the petitions and that only M.R. Bharath wants to prosecute the petitions further.

8 At the outset, Dr. Suresh placed strong reliance on the judgment of the Constitution Bench of the Supreme Court in Lalita Kumari vs. Government of Uttar Pradesh and others [(2014) 2 SCC 1] and submitted that when once a complaint disclosing commission of a cognizable offence is given to the police, they have to necessarily register an FIR and only thereafter, proceed with the investigation. In this case, enquiry done by the Deputy Superintendent of Police, Sriperumbudur, without registering a formal FIR stands vitiated and therefore, a positive direction, as prayed for, should be given. He built up his arguments by laying emphasis on the statement of law in paragraphs 83,96,97,106 to 109 and submitted that the police have no other option but to register an FIR when the complaint discloses commission of a cognizable offence and that they cannot conduct preliminary enquiry. He also submitted that mere registration of FIR will not ipso facto lead to the arrest of the accused, inasmuch as the Supreme Court itself has dealt with this aspect in paragraph no.109 which reads as under:

"109 The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation" and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against

arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence."

9 Dr. Suresh further submitted that had the police registered an FIR and closed the case, then, the petitioners would have had a remedy to file their protest application before the concerned Magistrate in terms of the law laid down by the Supreme Court in *Bhagwant Singh vs. Commissioner of Police* [(1985) 2 SCC 537].

10 Per contra, Mr. Anand Venkatesh, learned counsel for the College Management submitted that the allegation against these petitioners by co-students and teachers is that they have been playing the Dalit card to intimidate and bully others and when the College Management proposed to conduct enquiry against them, they have given the present complaint in order to pre-empt disciplinary action against them. He further submitted that in a case of this nature, preliminary enquiry is essential, because, under the SC & ST (PoA) Act, there is no provision for anticipatory bail. That apart, according to him, there are more than 100 Dalit students studying in the college and none of them have come forward to give any such complaint. It is his further submission that the parents of the three students applied for Transfer Certificate and requested the Management to give a good Conduct Certificate and accordingly, after they were issued with Transfer Certificate and Conduct Certificate on 12.04.2016, they have filed these petitions before the High Court on 15.04.2016, which only shows their mala fide intention.

11 However, the learned Additional Public Prosecutor produced the entire enquiry file to show the number of witnesses that were examined by the police and submitted that only thereafter, the police have concluded that the complaint given by the petitioners is false and closed the case.

12 This Court gave its anxious consideration to the rival submissions.

13 It is true that in *Lalita Kumari* case (supra), the Supreme Court has mandated the registration of FIR when the complaint discloses commission of cognizable offence. However, the Supreme Court has also struck an harmonious balance and has permitted preliminary enquiry in certain circumstances in paragraph 120.6 which reads as under:

"120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are

as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

14 At this juncture, it is pertinent to point out that the judgment of the Supreme Court should not be read as Euclid's theorem to be applied in a pedestrian manner. This is not a case where members of a dominant caste in a village are tormenting the Dalits in the village for the police to immediately swing into action. The College Management runs a public institution wherein students of all communities, including Dalits, are studying. The Management is also required to maintain discipline for the well being of the students. Dr. Suresh, learned counsel, very fairly submitted that Rajalakshmi Engineering College is known for enforcement of strict discipline.

15 This Court is not going into that aspect also. As contended by Mr. Anand Venkatesh, learned counsel, admittedly, there are more than 100 Dalit students studying in the college and none of them has come up with any such allegation. Even amongst the three complainants, only two have approached this Court with the present petitions and even out of the said two petitioners, as stated above, V. Porchezian has withdrawn the petitions and only M.R. Bharath is now prosecuting these two petitions. It is felicitous to point out that these two petitions were filed on 15.04.2016 after the petitioners had taken Transfer Certificate from the College Management on 12.04.2016, which fact does make this Court to pause for a moment and doubt the bona fides of the petitioners.

16 This Court perused the enquiry records and found that the Deputy Superintendent of Police, Sriperumbudur, has conducted a detailed enquiry and this Court cannot sit in judgment over the opinion arrived at by the Deputy

Superintendent of Police, Sriperumbudur, as an appellate authority.

17 As held by the Supreme Court in Lalita Kumari's case (supra), this Court is of the considered view that in the facts and circumstances of the present case, non-registration of FIR on the ipse dixit of the petitioners, cannot be faulted. Hence, this Court is of the view that this is not a fit case to direct the respondent police to register an FIR on the complaint dated 13.02.2016 given by the petitioners. Ergo, no direction, as prayed for by the petitioners, to the respondent police, to register an FIR against the Deputy Superintendent of Police, Sriperumbudur, needs to be given.

In the result, both the Criminal Original Petitions are dismissed. Connected Crl.M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cad

To

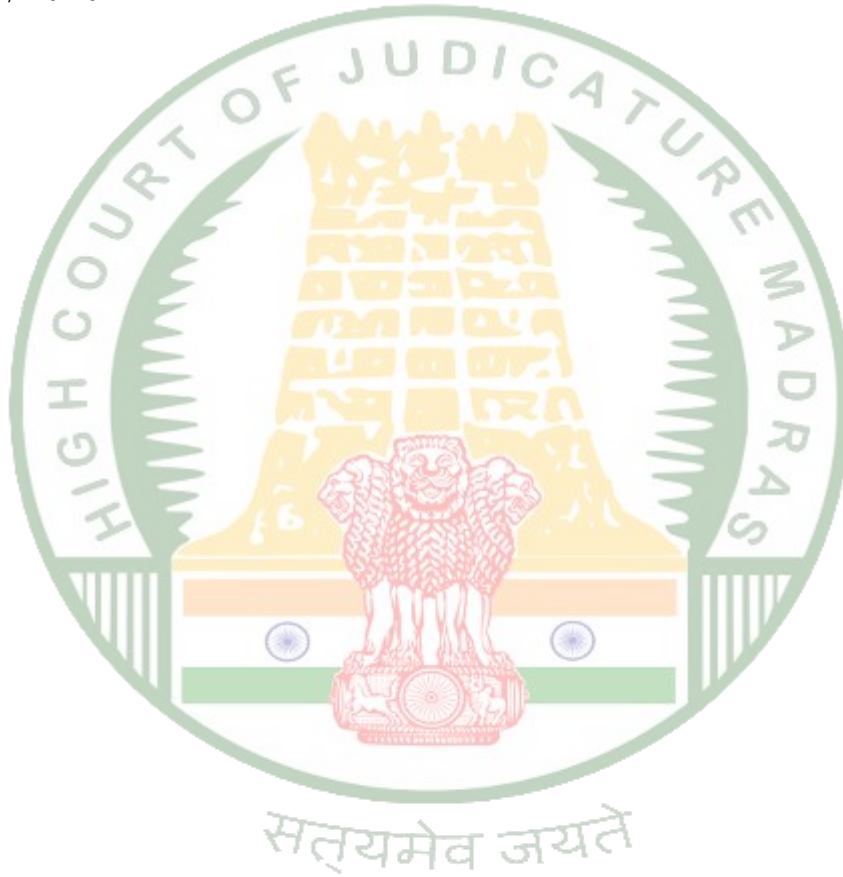
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+1 CC to Mr. N. Anand Venkatesh, Advocate, Sr.No.48429
+1 CC to Mr. D. Nagasaila, Advocate Sr.No.48317

CrI.O.P. Nos.9115 & 9116 of 2016

ACA (CO)
MD : 12/09/2016



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