

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

(Orders reserved on 25.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.O.P.No.971 of 2014

and

M.P.No.1 of 2014

1. G.Dinesh Kumar

2. K.Mohanraj

... Petitioners/Accused

.. Vs ..

1. State rep. by
Sub-Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.

Crime No.300/2013.

... 1st Respondent/Complainant

2. J. Kumar.

... 2nd Respondent/De facto
Complainant

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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the F.I.R. in Crime No.300/2013, on the file of Jedarpalayam Police Station, Namakkal District, and to quash the same.

For Petitioners : Mr.G.Karthikeyan

For R-1 : Mr.B.Ramesh Babu,
Government Advocate (Crl.Side)

For R-2 : No Appearance

ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the F.I.R. in Crime No.300/2013, pending on the file of the first respondent police and to quash the same.

2. The brief facts of the case is that on 19.12.2013 at about 8.00 p.m., when a group of people belonging to Christian religion crossed the accused by singing carol songs, the petitioners herein along with other accused have abused them in filthy language by using their caste name. In this regard, the second respondent herein/de facto complainant has given a complaint to the first respondent police and on the basis of the said complaint, the first respondent police has registered a case in Crime No.300 of 2013 for the offences punishable under Sections 147, 294(b), 427, 506(i) IPC r/w. 3(1)(X) of Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Learned counsel appearing for the petitioners/accused has submitted that a false case has been foisted against the petitioners and in order to make the case as more serious, the offence under Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been incorporated in the F.I.R. while the de facto complainant does not belong to either Scheduled Caste or Scheduled Tribe community as he only belongs to Cristian religion and hence, he prayed for quashing of the F.I.R.

4. Learned Government Advocate (Crl.Side) appearing for the first respondent submitted that on 19.12.2013 around 8.00 p.m., the people of Christian faith in connection with ensuing Christmas were crossing the road by singing carol songs, in which, these petitioners are alleged to have involved and the de facto complainant belongs to a member of the Scheduled Caste community and the accused have uttered the caste words to humiliate the de facto complainant in the public place and hence, prayed for dismissal of the petition.

5. There was no representation on behalf of the second respondent. This Court has considered the rival submissions made by the learned counsel appearing for the petitioners/accused and the learned Government Advocate (Crl.Side) appearing for the first respondent. Perused the records.

6. Learned counsel for the petitioners emphasized that the de facto complainant being a Christian cannot claim that he is a member of a Scheduled Caste community. In support of his contentions, the learned counsel relied on a decision of the Hon'ble Supreme Court reported in *CDJ 1993 SC 058 (Palghat Jilla Thandan Samudhaya Samrakshna Samithi Vs. State of Kerala)* and also a decision of this Court reported in *CDJ 2013 MHC 4610 (Udaya Goundan Palayam Village Hindus & others Vs. Udaya Goundan Palayam Village Christian Harijans & others)* and another decision of this Court reported in *CDJ 2008 MHC 4978 (C.Sathiyathan Vs. Veeramuthu)*.

7. After perusal of the decisions relied on by the learned counsel

for the petitioners, this Court finds that a community will be declared as Scheduled Caste only under the constitutional power as notified and a person of Christian religious is not classified as a member of the scheduled caste.

8. On a perusal of the F.I.R., it is seen that the de facto complainant is one Kumar, S/o. Jayapal and described as Hindu and the Investigation Officer, who conducted preliminary investigation, has collected the Transfer Certificate of the de facto complainant and Community Certificate from the Tahsildar, Velur, which are produced before this Court would go to show that the de facto complainant Kumar, S/o. Jayapal is Hindu - Adi Dravidar and belongs to Scheduled Caste Community.

9. Learned counsel for the petitioners contended that the Tahsildar cannot issue a Community Certificate for a Christian declaring him as a member of the Scheduled Caste and the same is violative of Rules, governing issuance of Community Certificate for Scheduled Caste community, he also emphasized upon two phrases contained in the complaint namely **v';fs; rigia rhh;ej tpRthrpf;**

and submitted that the de facto complainant is a Christian and hence, the community certificate now issued by the Revenue Authority itself is per se illegal.

10. Before proceeding further, it is to be noted that the twine ingredients for taking cognizance of the offence under Section 3(1) (X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are that

(a) the de facto complainant should be a member of the Scheduled Caste or Scheduled Tribe and

(b) the accused should not be a member of the Scheduled Caste or Scheduled Tribe and

(c) the accused ought to have uttered the caste word in a public place in a public view.

11. On a perusal of the complaint, it is seen that the de facto complainant has mentioned that he belongs to Hindu - Adi Dravidar community and he accompanied the Christians and singing the carol

songs in connection with celebration of Christmas. At that point of time, the accused alleged to have uttered the caste word in the public street in front of the other public.

12. The short point that needs to be addressed in this criminal original petition is:

whether the validity and genuinity of the community certificate issued by the competent revenue authority to the de facto complainant stating that he belongs to Scheduled Caste can be canvassed in quash proceedings under Section 482 of Cr.P.C.?

13. As submitted by the learned Government Advocate (Crl.Side) that both in the Transfer Certificate issued by the School Authorities and also in the Community Certificate issued by the competent Tahsildar, the de facto complainant is described as Hindu - Adi Dravidar and a member of the Scheduled Caste.

14. The counsel for the petitioners contended that the said community certificate is invalid in the eye of law and relied on three decisions referred above.

15. Whether the correctness of Community Certificate issued by the competent Revenue Authority stating that the de facto complainant belongs to a member of the Scheduled Caste or not on the factual matrix of this case, is a question of fact that has to be gone into during the time of trial. It is always open to the petitioners herein/accused to challenge the Community Certificate before the appropriate Forum for appropriate relief.

16. In the quash proceedings under Section 482 of Cr.P.C., this Court cannot go into the truth and veracity of the fact that the de facto complainant is a member of the Scheduled Caste or not, since the competent authority viz., Tahsildar of the concerned Taluk having issued a Community Certificate stating that the de facto complainant is a member of the Scheduled Caste coupled with the Transfer Certificate, this Court is of the view that prima facie case has been made out that the de facto complainant is a member of the Scheduled Caste community. Further, from the allegations made in the complaint as referred in the FIR that the accused are alleged to have uttered caste word against the de facto complainant in the public street to

humiliate the said de facto complainant in the name of his community. Whether the question that the de facto complainant belongs to Hindu or Christian religion as contended by the petitioners herein, cannot be gone into in the quash proceedings and it can be done only during the course of trial or by independent proceedings in the manner known to law and hence, this Court is of the considered view that the criminal original petition is devoid of merits and liable to be dismissed.

17. In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions is also dismissed.

17.08.2017

Index : Yes / No
Internet : Yes
Jrl

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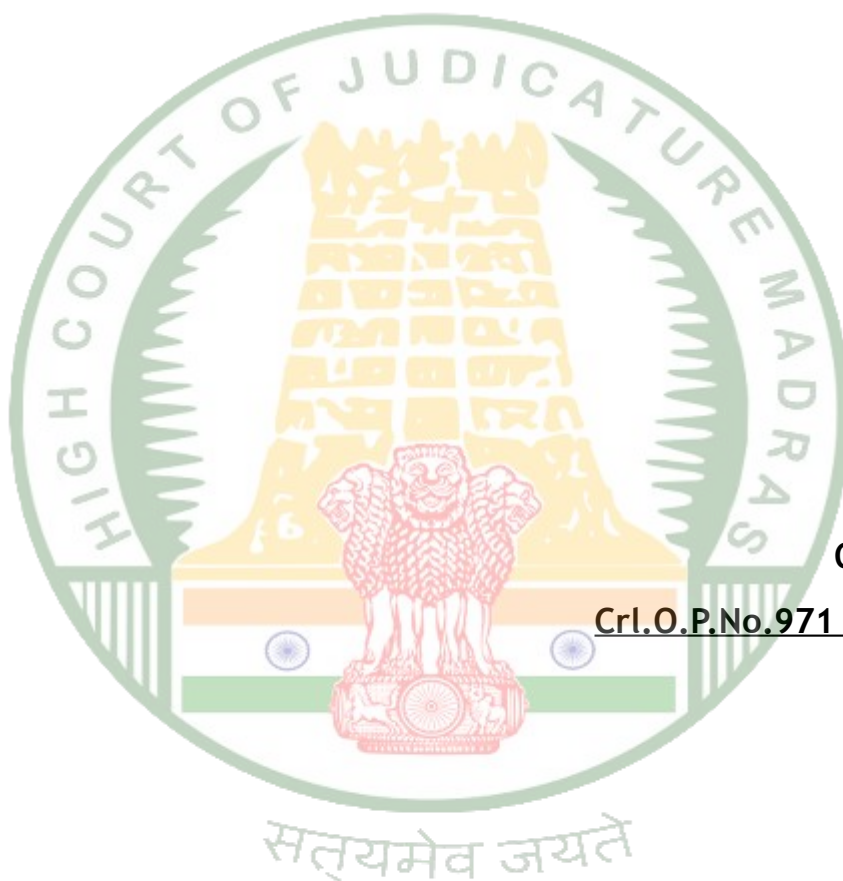
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To

1. The Sub-Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.
2. The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN, J.

Jrl



Order in
CrI.O.P.No.971 of 2014

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