

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1616 of 2016

1.S.Natesan

2.P.Shanthi

3.Suraikannan @ Palanivel

... Petitioners

Vs.

1.The State rep by
Inspector of Police
Vennandur
(Cr.No.343 of 2011)

2.M.Senthil Kumar

... Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned Principal Sessions Judge, Namakkal passed in Cr.MP.No.506 of 2013 in S.C.No.17 of 2013 on 14.11.2016.

For Petitioners: Mr.V.Raghavachari

For Respondents: Mr.M.Mohammed Riyaz,
Govt.Advocate (Crl.side) for R1

No Appearance for R2

O R D E R

This revision arises against the order of learned Principal Sessions Judge, Namakkal passed in Cr.MP.No.506 of 2013 in S.C.No.17 of 2013 on 14.11.2016.

2. In S.C.No.17 of 2013 on the file Principal Sessions Judge, Namakkal, petitioners are facing prosecution for offence u/s. 420 IPC r/w 3(1)(x) of S.C., S.T. Act 1989. Case of the prosecution is that the complainant/ 2nd respondent is involved in real estate business and he had purchased one acre and fifty cents for a sum of Rs.21,00,000/- and paid Rs.7,00,000/- as first installment to A1/first petitioner. On 26.06.2011, when the complainant went to meet the petitioner to complete the sale transaction, accused threatened him and abused him referring to his caste and thereby committed offence punishable u/s. 3(1)(X) of S.C.S.T Act, 1989. Sums received through the transaction were not returned and hence accusation of offence u/s. 420 IPC. Petitioners moved a petition for discharge before

Court below in Crl.M.P.No.506 of 2013, which came to be dismissed under order dated 14.11.2016. There against, present revision stands filed.

3. Heard learned counsel for petitioner and learned Government Advocate (Crl.side) for first respondent. 2nd respondent/defacto complaint stands served but there is no appearance on his behalf.

4. Second respondent has preferred a Civil suit in O.S.No.43 of 2012 on the file of District Judge, Namakkal seeking specific performance. Therein he has alleged that he initially paid a sum of Rs.7,00,000/- as an advance to first petitioner and received an unregistered sale agreement in his favour on 25.03.2010. Thereafter, he approached first petitioner with the balance sale consideration and asked for execution of a sale deed in his favour. First petitioner received a sum of Rs.1,00,000/- on 18.06.2010 and endorsed the same on the back of the original Sale Agreement. Likewise, after receiving 75% of the sale price, first petitioner delivered possession of the property to second respondent on 20.08.2010. Again, second respondent demanded that first petitioner to execute the sale deed, which was not acceded to by first petitioner. Second respondent caused a legal notice, to which a reply was caused by first petitioner with false and untenable allegations. Second respondent obtained a decree in his favour under judgment dated 08.09.2015. There against, first petitioner has preferred A.S.No.1111 of 2015 before this Court which stands admitted and an interim stay was granted in M.P.No.1 of 2015 under orders dated 05.02.2016.

5. The above position reflects that the transaction is of a civil nature and there has been no deception at inception which when present alone would render one liable for the offence of cheating. A reading of the complaint of the second respondent itself reveals that the alleged abuse using his caste name occurred at the house of the petitioners. To attract offence u/s. 3(1)(X) of S.C.S.T. Act, the offence should have been committed in public view. Hon'ble Supreme Court in Gorige Pentaiah vs State of Andhra Pradesh and others, (2008) 12 SCC 531 held as follows:

".....

6. In the instant case, the allegation of respondent 3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3 (1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled

Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law. "

Besides the possibility of false implication given the admitted dispute between parties, this Court would hold that the allegations even if true do not meet the requirements of Section 3(1)(x) of S.C.S.T Act. Since admittedly, the occurrence took place at the house of the petitioners. Further the requirement in Gorige Pentaiah case of informing that the accused was not a member of Schedule Caste and Schedule Tribe also has not been met.

This Criminal Revision shall stand allowed. The judgment of learned Principal Sessions Judge, Namakkal passed in Cr.MP.No.506 of 2013 in S.C.No.17 of 2013 dated 14.11.2016 shall stand set aside.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge, Namakkal
 2. The Inspector of Police, Vennandur
 3. The Public Prosecutor
High Court, Madras.
- +lcc to Mr.V.Raghavachari, Advocate SR.No.1713

Cr1.R.C.No.1616 of 2016

RK(CO)
GN(11/12/2017)