

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.27320 of 2010

and

M.P.No.1 of 2010

1. C.Raju
2. Sundar Murugesan
3. Balusamy @ Arulmurugan
4. Chinnaiyan ... Petitioners

Vs

M.K.Palanisamy ... Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to quash the complaint in P.R.No.2 of 2007 on the file of the learned Judicial Magistrate, Tiruchengode.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.C.D.Johnson

ORDER

The petitioners have filed this original petition under Section 482 of the Criminal Procedure Code to quash the complaint in P.R.No.2 of 2007 on the file of the learned Judicial Magistrate, Tiruchengode.

2. The facts in a nutshell are as under: The petitioners are accused 1 to 4 in Crime No.247 of 2005 registered on the file of the Pallipalayam Police Station for the alleged offences under Section 147 of the Indian Penal Code and Section 3(i)(x) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 on the basis of the complaint lodged by the respondent alleging that they have committed offence on 14.12.2004. The said case was investigated and final report was filed by referring the case as "mistake of fact" on 4.10.2005.

Thereafter, the respondent filed a private complaint in P.R.C.No.2 of 2007 on the file of the Judicial Magistrate, Tiruchengode.

3. It is averred that the first accused and one G.Selvaraj were doing real estate business and there were disputes between them qua land dealings as a result of which the said Selvaraj assaulted the wife of the first petitioner. The wife of the first petitioner, therefore, lodged a complaint against said G.Selvaraj and the same was registered as Crime No.1029 of 2004 on the file of the Pallipalayam Police Station under Sections 323, 354 and 506(ii) of the Indian Penal Code.

4. It is stated that as a counter blast, the said G.Selvaraj, set up his associate, the respondent herein, and lodged a complaint against the petitioners and as a result Crime No.247 of 2005 was registered and the Investigating Officer filed a report before the Court concerned on 4.10.2005 to treat the case as "mistake of fact" and accordingly, the case was closed. The said finding had attained finality and it has not been challenged till date.

5. It is stated that the respondent herein filed a private complaint under Section 200 of the Criminal Procedure Code before the Judicial Magistrate, Tiruchengode against the petitioners on the basis of the very same set of allegations mentioned in Crime No.247 of 2005. The said complaint was taken on file in P.R.No.2 of 2007 and three persons have given sworn statements, including Jayakumar and Selvaraj, who have categorically admitted the statements given to the police during the investigation in Crime No.247 of 2005.

6. It is the case of the petitioners that in the absence of any additional material evidence on record, the learned Judicial Magistrate, Tiruchengode, ought not to have taken cognizance against the accused petitioners for the alleged offences under Section 147 of the Indian Penal Code and Section 3(i)(x) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.

7. It is further submitted that when the Deputy Superintendent of Police, Tiruchengode, being an officer competent under Rule 7 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Rules gave a report that it is a false case, the learned Judicial Magistrate, ought not to have issued process, since the complainant has given the private complaint to unleash vendetta to harass the petitioners.

8. It is also submitted that when the alleged occurrence is said to have taken place on 14.12.2004, the complaint has been

lodged to the police only on 25.4.2005 and there is no explanation given by the complainant for the delay in reporting the incident to the police authorities.

9. I heard Mr.N.Manokaran, learned counsel for the petitioners and Mr.C.D.Johnson, learned counsel for the respondent and perused the documents available on record.

10. At the outset, it needs to be noted that at the time of admission of this petition an order of interim stay was granted and the same is in force even as on today and the respondent has not taken any steps to vacate the same or file a counter affidavit.

11. A bare perusal of the documents available on record shows that the entire issue revolves around the incident alleged to have taken place on 14.12.2004 at the land in Survey No.139 of Kalianur Village, where the respondent complainant (M.K.Palanisamy), G.Selvaraj and Jayakumar were present. It was based on the complaint lodged by the respondent herein that Crime No.247 of 2005 was registered on the file of the Pallipalayam Police Station for the alleged offences under Section 147 of the Indian Penal Code and Section 3(i)(x) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.

12. On receipt of the complaint in Crime No.247 of 2005, the Deputy Superintendent of Police, Tiruchengode took up investigation and visited the spot and examined the witnesses and ultimately came to the conclusion that the complaint is false. The Assistant Director of Prosecution, Namakkal, on perusal of the materials available on record and the report of the Deputy Superintendent of Police, Tiruchengode also opined that the case may be referred as "mistake of fact".

13. It is the specific statement of the Deputy Superintendent of Police, Tiruchengode that one Jayakumar, who is the sole eye witness to the occurrence even as per the FIR, had not supported the complainant and it is his case that there was no insult on the ground of caste. That apart, it is noted that there is no satisfactory explanation forthcoming from the complainant for the long delay of more than four months in lodging the complaint.

14. In my considered opinion, in order to entertain the second complaint, it should come within the three categories of the cases, as ruled by Hon'ble Supreme Court and they are (i) where the previous order was passed on an incomplete record; or (ii) on a misunderstanding of the nature of complaint; or (iii) it was manifestly absurd, unjust.

15. In the instant case, a reading of the first complaint and the second complaint and the records placed before me, failed to show that the second complaint falls within the above said exceptional circumstances. The first complaint was investigated in detail. It is not the case of the complainant that the first complaint was not appreciated in the right perspective by the Police authorities. In fact, the Investigating Officer filed a report before the Court concerned on 4.10.2005 to treat the case as "mistake of fact" and accordingly, the case was closed. The said finding had attained finality and it has not been challenged till date.

16. In *Gorige Pentaiah v. State of Andhra Pradesh and others*, (2008) 12 SCC 531, the Hon'ble Supreme Court having interpreted the provisions of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the scope of Section 482 Criminal Procedure Code, held as under :-

"6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27.5.2004, 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."

17. In *Asmathunnisa v. State of Andhra Pradesh*, (2011) 11 SCC 259, the Hon'ble Supreme Court reiterated the law laid down in the above said decision.

18. In the case on hand, the report of the Deputy Superintendent of Police, Tiruchengode shows that one Jayakumar, who is the sole eye witness to the occurrence even as per the FIR, had not supported the complainant and it is his case that there was no insult on the ground of caste. That apart, it is also recorded in the report that the place of occurrence is a

patta land, "public vicinity", the essential ingredient of Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is totally absent.

19. That apart, as stated above, there is no satisfactory explanation for the long delay of over four months in lodging the complaint.

20. In such view of the matter, this Court feels it just and proper to accept the contention of the learned counsel for the petitioner as such, because without showing the exceptional circumstances, enumerated by the Hon'ble Supreme Court and satisfying essential ingredients of Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the complaint is not maintainable.

For the foregoing reasons, the criminal original petition is allowed and the complaint in P.R.No.2 of 2007 on the file of the learned Judicial Magistrate, Tiruchengode, is quashed. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate,
Tiruchengode.

+1cc to Mr.N.Manoharan, Advocate SR.NO.16676

sm:2.11.2018

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