

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.No.2973 of 2013

and

M.P.Nos.1 to 3 of 2013

1.B.Vaiko @ Govindaraj

2.G.Kavitha

3.B.Iyyappan

..Petitioners

Vs.

State Rep.by

The Inspector of Police,

Thalainaiyuru Police Station,

Vedaraniyam Taluk,

Nagapattinam District.

..Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying, to call for records in P.R.C.No.8 of 2012 on the file of Judicial Magistrate, Vedaranyam Taluk, Nagapattinam District, and quash the same.

For Petitioners: Mr.J.Rajakalifullah

For Respondent : Mr.B.Ramesh Babu

Government Advocate (Crl. Side)

O R D E R

Petitioners seek quash of proceedings in P.R.C.No.8 of 2012 on the file of learned Judicial Magistrate, Vedaranyam, Nagapattinam District.

2. Heard learned counsel for petitioners and learned Government Advocate (Crl. Side) for respondent.

3. Pursuant to registration of case in Crime No.46 of 2012, charge sheet has been filed which reads as follows:

"Petitioners 1 and 2 went to complainant's village at Pirinchumoolai village under the jurisdiction of Thailainayiru Police station, and promised that complainant's wife Kavitha's job as Midday Meals Worker is ready and demanded Rs.1,00,000/- for the same. The complainant has given Rs.50,000/- as part payment and promised to pay balance amount after getting the job. Since no job is procured and as the

accused cheated the complainant. A1 and A2 are punishable under Section 420 IPC."

4. Learned Counsel for petitioner submitted that the entire material gathered did not inform when, where and how money came to be handed over by the defacto complainant to petitioners/accused. Further allegation is of commission of offences under section 3(1)(x) of the SC/ST Act 1989. Admittedly, the alleged offences have taken place within the house of the petitioners. Even if, for the purpose of argument such allegation is taken to be true, the offence would not stand attracted.

5. The learned counsel for petitioners relied on the decision of the Apex Court in Gorige Pentaiah V. State of A.P. & Ors. [(2009) CrI.L.J.350] wherein paragraph 9 reads as follows:

"9. In the instant case, the allegation of respondent No.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 accused-appellant was not a member of the scheduled caste or a scheduled Tribe and he (respondent No.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 accused-appellant was not a member of the Scheduled Caste or a scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No.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." (underling supplied)

6. Learned counsel for petitioners submitted that as regards allegation of criminal indimination, there is no material to inform that the defacto complainant suffered any alarm.

7. Learned Government Advocate (CrI. Side) submits that upon completion of investigation, a charge sheet was filed and petitioners would have to face the trial.

8. The learned counsel for defacto complainant submitted that in the least, money paid over by the defendant to the accused persons must be returned to him.

9. On considering the rival submissions, this Court passes the following order:

1. As rightly contended by learned counsel for petitioners, the prosecution has not informed particulars regards payment of money by the defacto complainant to the accused persons. The entire material gathered does not inform when, where and how money came to be handed over by the defacto complainant to petitioners/accused.

2. As it is admitted prosecution case that defacto complainant was abused using his caste name within the premises of the accused, offences under section 3(1)(X) of SC/ST Act would not stand attracted as there is no allegation of occurrence having taken place in public place/view.

3. Offence under Section 506 I.P.C is not attracted in as much as there is nothing to indicate that the defacto complainant suffered any alarm owing to alleged conduct of petitioners.

This Criminal Original petition is allowed. The proceedings in P.R.C.No.8 of 2012 on the file of learned Judicial Magistrate, Vedaranyam, Nagapattinam District are quashed. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rli/jv

To

1 The Judicial Magistrate,
Vedaranyam, Nagapattinam District.

2 The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate sr.no.42477

Cr1.O.P.No.2973 of 2013

NR 19/12/2017