



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2017

ORDERS RESERVED ON 15.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

Cr1.O.P. (MD) No.20301 of 2015

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K.Rukumani

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep.by its Chief Secretary,
Fort St.George, Chennai.

2.The Government of Tamil Nadu,
Rep.by its Home Secretary,
Fort St.George, Chennai.

3.The Director,
Central Bureau of Investigation,
5B-C, G.O. Complex, Lodhi Road,
New Delhi-110 003.

4.The Joint Director,
Central Bureau of Investigation,
3rd Floor, EVK Sampath Building,
College Road, Chennai-600 006.

5.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai-600 004.

6.The Superintendent of Police,
Thoothukudi District.

7.The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.

... Respondents

PRAYER: The Petition filed under Section 482 of Code of Criminal Procedure to direct the 7th respondent to register FIR within stipulated time in respect of petitioner's complaint dated 01.09.2015 and thereafter, to transfer the investigation before the respondents 3 and 4.

For Petitioner : Mr.T.Robert Chandra Kumar

For Respondent : Mr.P.Kandasamy G.A.(Cr1.side)

**ORDER**

The petitioner and his family members, who are the resident of Navaladiyur Village, Thoothukudi District, belong to Hindu Pallar Community and it is a Scheduled Case. The petitioner is a widow and her husband expired in the year 2010 leaving four sons. The elder son of the petitioner is working as a Scientist in abroad, the third son was working in USA and now settled at Chennai and the fourth son is at Delhi and her second son namely, Arumuga Raja was a Diploma holder in Mechanical Engineering, looking agricultural land owned by his family at Vellore Village and he was living with the petitioner at Navaladiyur Village. The said Vellore Village is 1.30 kms fare away from Navaladiyur Village at Thoothukudi District.

2. One Kasi, who is the resident of Vellore Village, belongs to Devar community. Due to some wordy quarrel arose between the said Arumuga Raja on 22.04.2013, the said Kasi along with his associates belonging to Devar community, entered into the house of the petitioner armed with deadly weapons, abused them by using her caste name and also attempted to murder the petitioner's son. However, her son escaped from the said attempt and based on her complaint, on 22.04.2013 a case in Crime No.77 of 2013 under Sections 147, 148, 452, 294(b) & 506(ii) IPC and Sections 3(i)(x) of SC ST (POA) Act, 1989 was registered by the 7th respondent Police herein.

3. The learned counsel appearing for the petitioner would submit that on the next day, four persons namely, Kasi, Esakkimuthu, Kannan, Balamurugan, Thalavaiperivan and Duraimuthu, who are the resident of Navalakurichi Village, destroyed the petitioner's plantain crops and also caused damaged to the petitioner's house and hence, the petitioner once again lodged a complaint before the 7th respondent Police and also with the higher police officials. However, no case was registered against the accused persons. A copy of the petition dated 27.04.2013 is filed along with this petition.

4. The learned Government Advocate (Crl.side) appearing for the respondent Police based on the counter of R6 & R7 would submit that for damaging the properties of the petitioner, no complaint was made before the respondent Police and no proof is filed by the petitioner for sending the same to the higher police officials. It would further submit that the petitioner submitted a petition on 25.08.2013 to the District Collector, seeking protection to her life and also her properties. Besides, the petitioner also submitted a representation to R6 and other police officials in person and also by registered post with acknowledgement.

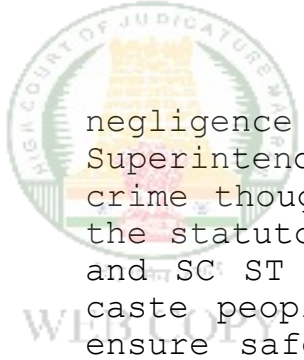
5. The learned Government Advocate (Crl.side) based on the counter of R6 would submit that the representation of the petitioner dated 25.04.2013 was meticulously considered and necessary protection was provided to the family members of the petitioner and other minority people residing at Navalaidyur by posting picketing. However, the copy of the representation dated 25.04.2013 is not

filed for perusal of this Court.

6. The learned counsel for the petitioner would submit that as no action was taken on the representation of the petitioner, she filed a Writ petition in W.P.(MD)No.8399 of 2013 before this Court, seeking police protection and on 23.05.2013, this Court has directed the respondents therein more particularly, the District Collector, Thoothukudi and the Deputy Superintendent of Police, Srivaikundam to give adequate protection to the petitioner as and when she makes her grievance of harassment at the hands of the named persons and also directed to conduct peace committee, if so requires. In support of his contention he relied on two decisions reported in **2012(3) MLJ 572 (Thol Thirumavalavan and others Vs. State of Tamil Nadu rep.by its Secretary) and AIR 1994 MP (Dr.Ram Krishna Balothia Vs Union of India and others)**.

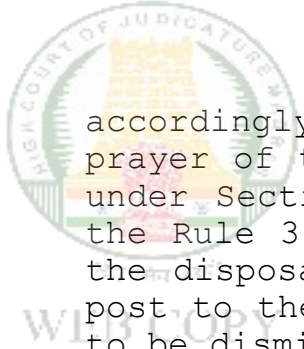
7. Pursuant to the above said directions, on 31.05.2013, a peace committee meeting was conducted by the District Collector, Thoothukudi, by summoning the petitioner and also the persons, those who were not connected with the crime. The learned counsel for the petitioner would submit that the conduct of the District Collector in conducting the alleged peace committee meeting was nothing but an eyewash and also namesake, as the respondents failed to summon the persons, who threatened the petitioner's family members and the petitioner also submitted an objection in writing to the District Collector. However, the then District Collector and the Superintendent of Police, Thoothukudi did not take any care to warn persons, who were purported in the atrocities and particularly those who attacked their family members. The respondents passed a resolution in the peace committee meeting held on 31.03.2013, which was no effect as it was not inclusive of persons, from whom the petitioner feared and apprehended danger. The respondents willfully neglected to do their duty to protect them as they have indulged at their disposal regarding the caste discrimination and the atrocities purported on the scheduled caste people and they know very well with their intelligent tactics. The life of the petitioner and their family members was in danger, but still they failed to take any sincere and serious steps to protect them.

8. He would further contend that such a willful inaction on the part of the Government machinery, particularly, the then District Collector and the then Superintendent of Police, Thoothukudi emboldened the criminal elements within the dominant caste, placing the life in more danger than it was prior to the order of this Court and on 02.04.2015, the said Kasi and others hacked petitioner's son in a place very near to Srivaikundam Police Station, who had registered a case in Crime No.102 of 2015 for the said murder and the atrocities committed by the said Kasi and others. However, the registration of such case giving statutory compensation of Rs.5 lakhs, the prosecution will not bring back the life of the petitioner's son and the said sum would not compensate the death of her son, which happened only due to the willful



negligence on the part of the then District Collector and the Superintendent of Police, Thoothukudi District in preventing the crime though they were directed to do so by this Court. They have the statutory duty under the provisions of the SC ST (POA) Act, 1989 and SC ST (POA) Rules 2005 to identify the areas, where scheduled caste people are subjected to atrocities and to adopt measures to ensure safety to the life of the scheduled caste people and such willful inaction is a punishable offence under Section 4 r/w Section 17 and 21 (ii)(vii) of SC ST (POA) Act, 1989 and the Rules 3(i)(ii) SC ST (POA) Rules, 2005 and hence, the petitioner has come forward with this petition to direct the 7th respondent to register a case within the stipulated time based on the petitioner's complaint dated 01.09.2015 and thereafter, transfer the investigation to the respondents 3 and 4 herein.

9. The learned Government Advocate (Crl.side) would submit based on the counter filed by the respondents 6 and 7 that there are about 25 families, belonging to Adi Dravidar community, residing at Navaladiyar village, that in the year 2013, there are 5 cases, 2014 there are 2 cases and 2015 there are 4 cases were registered against the dominant community members, who are not being the members of SC and ST, in which, the Adi Dravidars are of the victims and more over, preventive actions have also been taken by the law and order machinery by registering 5 cases in the year 2013, 82 cases in the year 2014 and 25 cases in the year 2015 under Section 110 Cr.P.C. against the dominant community persons, who are not being the members of SC and ST, for keeping peace and good behaviour, that on 02.04.2013 a case in Crime No.77 of 2013 was registered by the Srivaigundam Police Station and the same is pending trial before the concerned Court and the deceased Arumuga Raja put down the demand of the accused, not to give evidence before the Court, is the main cause for his murder and due to the said motive, Arumugam Raja was murdered by Kasi and others and a case in Crime No.102 of 2016 was also registered on 02.04.2015 by Srivaigundam Police Station under Sections 147, 148 and 302 IPC r/w Section 3(ii)(v) SC ST (POA) Act, 1989. Followed by the murder of Arumuga Raja, stringent actions were taken against all the accused and the accused Kasi @ Sivaraman, Isakkimuthu, Thalavai were also detained under Goondas Act proceedings dated 14.05.2015, 14.05.2015, 26.05.2015 and 26.05.2015 respectively. He would further submit that investigation was completed in Crime No.77 of 2013 on 26.06.2013 and the case was charge sheeted on 22.07.2013 and it was taken on file in P.R.C.No.47 of 2013 pending before the Judicial Magistrate, Srivaigundam, in which, A2 and A3 were arrested on 23.04.2013, A5, A6 & A7 were arrested on 06.07.2013 and the remaining accused were surrendered before the Court and necessary protection was provided to the family members of the petitioner and others minority people at Navaladiyur by posting picketing based on the representation of the petitioner dated 25.04.2013, that the District Collector issued summons to both community people belonging SC ST minority community and other community people not belonging to SC ST and conducted peace committee meeting on 29.05.2013 and a resolution was also passed

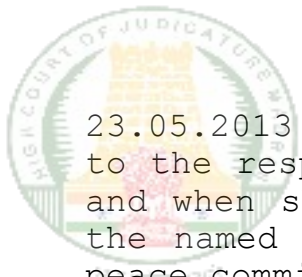


accordingly and as regard to the petition dated 01.09.2015, the prayer of the petitioner deserves no merits to be registered a case under Section 4 r/w 17 and 21 (ii)(vii) SC ST (POA) Act, 1989 and the Rule 3(i)(ii) of SC ST (POA) Rules, 2005 and a memo along with the disposal of the said petition was also sent through registered post to the petitioner's address and hence, this petition is liable to be dismissed as devoid of merits.

10. Perused the materials on record, heard and considered the rival submissions made on either side.

11. It is admitted by the respondent that there are 25 families belonging to Adi Dravidar community residing at Navaladiyar and the petitioner and her deceased son were living in the said village and their family are having agricultural land at Vellore village, which is 1½ km away from Navaladiyur. It is further admitted that enmity has prevailed between the deceased Arumugaraj and the said Kasi son of Vadivu, belonging to Devar community, residing at Vellore village. Ten days prior to the occurrence, ie. on 22.04.2013, a case in Crime No.77 of 2013 was registered based on the complaint lodged by the petitioner. The alleged wordy quarrel arose prior to the registration of the case and the same was not reported to the police either by the deceased or by the petitioner herein. The said case was registered on the same date of occurrence on receipt of the written complaint of the petitioner. The said Essakimuthu / A2 and Kannan / A3 in the said case were arrested on 23.04.2013 at 11.00 hours and they were sent to judicial custody and they were enlarged on conditional bail by the learned Sessions Judge, Thoothukudi on 03.05.2013. A4, A6 and A7 were arrested on 06.07.2013 and the remaining accused surrendered before the Court. Investigation was completed on 26.06.2013 and the case was charge sheeted on 22.07.2013 and the same was taken on file in P.R.C.No.47 of 2013 by the Judicial Magistrate, Srivilliputhur.

12. It is also stated by the respondents that the representation of the petitioner dated 25.04.2013 was considered and necessary protection was also provided to the family members of the petitioner and other minority people at Navaladiyur by posting picketing. No records have been produced by the respondents to substantiate the above fact. But, it is categorically admitted by the respondents that tension was prevailed over the area between the petitioner's community and Devar community people due to the occurrence dated 22.04.2013 and the police picketing was withdrawn only on 08.05.2013. The petitioner moved this Court on 13.05.2013 by filing a Writ petition in W.P.(MD)No.8399 of 2013 for a direction to the District Collector and the police officials, including higher police officials to provide adequate police protection to the petitioner and her family member's life and also filed a petition in W.M.P.(MD)No.1 of 2013 seeking interim direction, directing the respondents to conduct a peace committee and to ensure the petitioner and her family members' life in order to return back to their home. This Court by its order dated



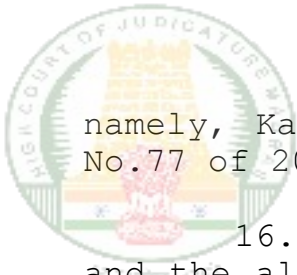
23.05.2013 has disposed of the said Writ petition with a direction to the respondents to give adequate protection to the petitioner as and when she makes out her grievance of harassment at the hands of the named persons. It is also open to the respondents to conduct peace committee meeting, if so required.

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13. In compliance of the said order of this Court, a peace committee meeting was conducted on 31.05.2013 in District Collector Office, Thoothukudi in the presence of the revenue and police officials and also the resident of the Vellore village belonging to Devar community and also SC community including the petitioner. Accordingly, a resolution was passed to protect the life and properties of the petitioner and her family members through police and also to maintain the peace and harmony between these two communities by taking proper steps as per the resolution agreed in the said peace committee meeting. Further, the village representative belonging to Devar community are directed to call them in person to not to disturb the petitioner and her family members and prevent them to create any further disturbance.

14. The petitioner's son was murdered on 02.04.2015 and a case was also registered in Crime No.102 of 2015 on the same date under Sections 147, 148 and 302 IPC and Sections 3(2)(ii)(v) SC ST (POA) Act, 1989 against the accused persons namely, Esakimuthu, Balamurugan, Thalavai, Siva @ Sivarmalaingam @ Periyar and 5 others, who were arrayed as accused in Crime No.77 of 2013 by the 7th respondent. After conducting peace committee meeting, no occurrence has been reported till 01.04.2015 and no complaint has been lodged by the petitioner to the respondents about the continuous harassment at the hands of the named persons till the date.

15. No communal clash or communal disharmony took place in the said villages from the date on which the peace committee was conducted. However, some criminal cases were registered against the dominant caste persons and not against the SC ST people from the year 2013 to 2015. The persons belonging to both villages and the officials have participated in the said peace committee meeting including the petitioner. The said peace committee meeting cannot be said as it is a mere eyewash or namesake. The allegations made against the then District Collector and the then Superintendent of Police do not warrant to registration of a case. The complaint of the petitioner dated 01.09.2015 was considered and the same was closed and a closure report was also communicated to the petitioner herein. There could not be any motive or ill will by the then District Collector and the then Superintendent Police against the petitioner and her family members. They are not responsible for the murder of the Arumugaraj. The decision reported in **2012(3) MLJ 572 (Thol Thirumavalavan and others Vs. State of Tamil Nadu rep.by its Secretary) and AIR 1994 MP (Dr.Ram Krishna Balothia Vs Union of India and others)** relied on by the petitioner are not applicable to the facts of the case on hand. The cause of murder is the wordy quarrel that took place between the deceased Arumugaraja and accused



namely, Kasi and it resulted in registration of the case in Crime No.77 of 2013.

16.Considering the above facts and circumstances of the case and the allegations made against the respondents, do not warrant to register a case under SC ST (POA) Act and SC ST (POA) Rules 2005, this Court is not inclined to grant any direction as prayed for in this Criminal Original petition.

17.In the result, the Criminal Original petition stands dismissed.

Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub Assistant Registrar

To

- 1.The Chief Secretary,
Fort St.George, Chennai.
 - 2.The Government of Tamil Nadu,
Rep.by its Home Secretary,
Fort St.George, Chennai.
 - 3.The Director,
Central Bureau of Investigation,
5B-C, G.O. Complex, Lodhi Road,
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 - 4.The Joint Director,
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3rd Floor, EVK Sampath Building,
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 - 5.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai-600 004.
 - 6.The Superintendent of Police,
Thoothukudi District.
 - 7.The Inspector of Police,
Srivaikundam Police Station, Thoothukudi District.
 - 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1cc to Mr.G.PRABHU RAJADURAI Advocate in SR. No. 88091
NBJ
JS/JC/SAR.1/15.12.2017/7P-10C

order made
in

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