



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CRL.O.P. (MD) No. 7931 of 2017

and

Crl.M.P. (MD) Nos. 5403 and 5404 of 2017

Poosari Murugan

: Petitioner/Respondent

-Vs-

The State represented by
The Sub-Inspector of Police,
Koodalpudur Police Station,
Madurai.

: Respondent/Petitioner

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order passed by III Additional District and Sessions Judge (PCR), Madurai on 17.04.2017 as well as his consequential notice in connection with the case in Crl.M.P.No.655 of 2017 in Spl.S.C.No.39 of 2015 pending on his file.

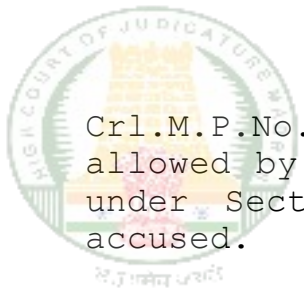
For Petitioner : Mr.R.Anand

For Respondent : Mr.K.Anbarasan
Government Advocate (Crl.Side)

O R D E R

The petitioner is facing prosecution in Spl.S.C.No.39 of 2015 before III Additional District and Sessions Judge (PCR), Madurai for the offences under Sections 147, 323, 427 I.P.C., r/w Section 4 of TNWH Act and 3(1) (X) of SC/ST Act.

2. The crux of the allegation against the petitioner is that the defacto complainant in this case is a dalit and that the petitioner had assaulted and abused her. Hence, the aforesaid offences were registered. During the course of investigation, the police had recorded a statement under Section 161(3) Cr.P.C. of Vincent Xavier, Tahsildar, to the effect that he had issued the said Community Certificate to the defacto complainant. The name of Vincent Xavier was included in the memo of evidence filed along with the charge sheet. Vincent Xavier also came to the Court for giving evidence. Before getting into the witness box, Vincent Xavier examined the Community Certificate and told the Public Prosecutor that he had not issued the said Community Certificate and that he was not the Tahsildar (West) Taluk at the relevant point of time. It appears that Vincent Xavier had told the Public Prosecutor that the said Community Certificate must have been given by Mr.Ashokan, Tahsildar of Madurai West. On the strength of this information, the prosecution filed an application to give up the examination of Vincent Xavier and instead, to examine Mr.Ashokan in order to prove the Community Certificate. The said petition was numbered as



Crl.M.P.No.299 of 2017 in Spl.S.C.No.39 of 2015 and the same was allowed by the trial Judge on 07.03.2017 in exercise of the powers under Section 311 Cr.P.C., despite the strong objection by the accused.

3. Thereafter, Ashokan came to the Court and on seeing the Community Certificate stated that he had not issued the said Certificate and that it must have been issued by one Sathiyaseelan. Therefore, the prosecution filed an application under Section 311 Cr.P.C., in Crl.M.P.No.655 of 2017 to examine Sathiyaseelan, which was allowed by the trial Court by the impugned order dated 17.04.2017, despite the opposition of the accused, challenging which, the accused is before this Court.

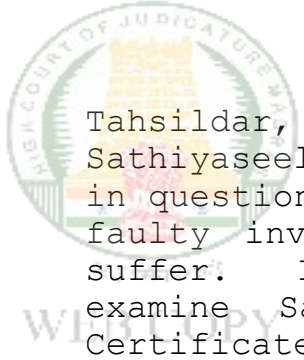
4. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

5. The learned Counsel appearing for the petitioner submitted that the prosecution cannot be permitted to fill up the lacuna time and again as that would cause undue prejudice to the case of the accused.. He further submitted that it is the specific case of the accused that the defacto complainant is not a dalit and therefore the prosecution cannot be allowed to examine one or other Tahsildar at their whims and fancies. He further submitted that it is the specific case of the prosecution that Vincent Xavier only had conducted the enquiry through his subordinates in order to find out the community of the defacto complainant. But strangely, the prosecution is seeking to examine Sathiyaseelan because the Community Certificate itself has been wrongly obtained.

6. Per contra, the learned Government Advocate (Crl.side) refuted the allegations made by the learned Counsel for the petitioner.

7. This Court gave its anxious considerations to the rival submissions.

8. In a prosecution under the SC/ST Act, it is *sine qua non* for the prosecution to establish beyond reasonable doubt that the victim is a dalit and the accused is a non-dalit. Therefore, the Community Certificate issued by the Tahsildar assumes great importance. The prosecution cannot be allowed to blow hot and cold by saying that they are not sure as to who had issued the Community Certificate. However, in this case, the Community Certificate forms part and parcel of the charge sheet. It was also supplied to the accused under Section 207 Cr.P.C. It is not the case of the prosecution that they are seeking to substitute the Community Certificate. On the contrary it is their case that they want to prove the Community Certificate by examining the Tahsildar who had issued the same. Admittedly the signature found on the Community Certificate is indecipherable for anyone to find out the actual name of the



Tahsildar, who had issued the same. Therefore, the examination of Sathiyaseelan, who is said to have issued the Community Certificate in question is essential for the just decision of the case. For the faulty investigation conducted by the police, the victim cannot suffer. It is always open to the accused to thoroughly cross-examine Sathiyaseelan and pick holes in the said Community Certificate.

9. Under such circumstances, this Court does not find any merits in the contention of the accused warranting interference to quash the impugned order passed by the trial Judge. It is always open to the accused to examine Vincent Xavier as a defence witness by giving satisfactory reasons relating to the relevancy of his evidence before the trial Court.

10. With the above observations, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. III Additional District and Sessions Judge (PCR), Madurai.
2. The Sub-Inspector of Police,
Koodalpudur Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SSL

JS/KP/SAR.1/10.07.2017/3P-4C

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