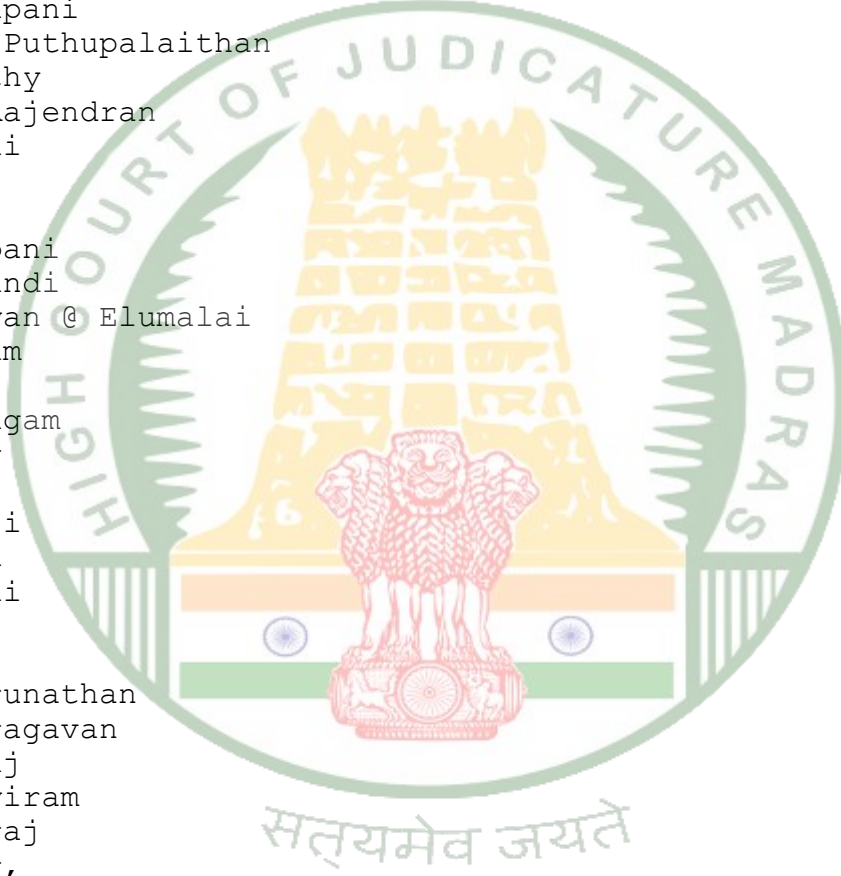


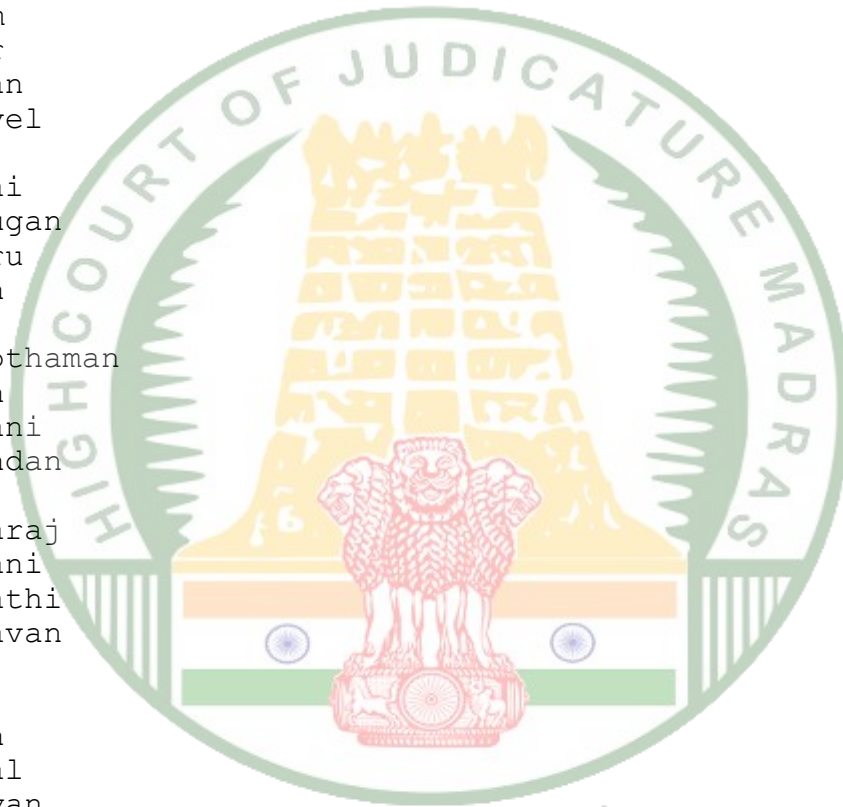
IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.08.2018
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
CRL.O.P.No.10985 of 2018

- 1.Palani
- 2.Ethiraj
- 3.Palani
- 4.Balan
- 5.Soundararajan
- 6.Kothandapani
- 7.Kumar @ Puthupalaithan
- 8.Ponmoorthy
- 9.Baloon Rajendran
- 10.Elumalai
- 11.Kumar
- 12.Kumar
- 13.Dhandapani
- 14.Sadaiyandi
- 15.Kattaiyan @ Elumalai
- 16.Arumugam
- 17.Kumar
- 18.Sivalingam
- 19.Manokar
- 20.Selvam
- 21.Anjapuli
- 22.Aasalan
- 23.Elumalai
- 24.Mohan
- 25.Palani
- 26.Sivagurunathan
- 27.Vijayaragavan
- 28.Selvaraj
- 29.Kannaiyiram
- 30.Thangaraj
- 31.Iyyanar,
- 32.Iyyanar,
- 33.Sanjai
- 34.Velu
- 35.Kathavarayan
- 36.Vasudevan
- 37.Venkatesan
- 38.Seenuvasan
- 39.Paramasivan
- 40.Murugan
- 41.Krishnan
- 42.Raja
- 43.Ramakrishnan
- 44.Sankar
- 45.Manikandan
- 46.Elumalai
- 47.Inirupatti



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48.Periyanasamy
49.Venkatesan
50.Elumalai
51.Thirupathi
52.Ayyanar
53.Murugan
54.Manikandan
55.Varadarasu
56.Murugan
57.Palani
58.Murugan
59.Radha
60.Rajaram
61.Panneer
62.Govindan
63.Sakthivel
64.Apparaj
65.Elumalai
66.Velmurugan
67.Balaguru
68.Kaliyan
69.Ramesh
70.Purushothaman
71.Murugan
72.Subramani
73.Manikandan
74.Velu
75.Sathiyaraj
76.Subramani
77.Thirupathi
78.Kathiravan
79.Raja
80.Sankar
81.Iyappan
82.Thirumal
83.Mukkaiyan
84.Radakrishnan
85.Vellaiyan



...Petitioners

Vs

1.State by
Deputy Superintendent of Police,
Ullundurpet Sub Division,
Villupuram District.

2.Inspector of Police
Thiruvannainallur Police Station,
Villupuram District,
(Crime No: 546/2007)

3.Murugan

...Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in S.C No:63 of 2016 on the file of Learned Sessions Judge for SC/ST cases, Villupuram, Villupuram District and quash the same.

For Petitioners : Mr.K.Balu

For Respondents : C.Iyyappa Raj,
Additional Public Prosecutor

O R D E R

The learned counsel for the petitioners submitted that the petitioners have come forward with this petition seeking to call for the records in S.C No.63 of 2016 on the file of Learned Sessions Judge for SC/ST cases, Villupuram, Villupuram District and quash the same.

2. It is the case of the petitioners that on the complaint lodged by Murugan (R3), a case in Tiruvennainallur Police Station Crime No.546 of 2007, was registered and after completing the investigation, a charge sheet in PRC No.6 of 2015, was laid before the Judicial Magistrate, Ulundurpet Sub Division, Villupuram District against 97 accused for the offence under Sections 147, 148, 188, 294(b), 232, 324, 427, 506(ii), 307 IPC r/w.7(1) (a) CLA Act, 3 (1) TNPPDL Act r/w.3 (1)(x) SC/ST Act on 31.12.2009. The case has been committed to the Court of Principal Sessions Court, Villupuram in S.C.No.63 of 2016. Under such circumstances, the petitioners/accused are before this Court, for quashing the prosecution.

3. Mr.K.Balu, learned counsel for the petitioners/accused submitted that no such incident as alleged in the charge sheet had taken place, inasmuch as the villagers in the locality were objecting to a particular name board being installed therein and therefore, they had peacefully gathered to protest. He would further submit that out of 97 accused, 13 persons belong to Dalit Community and therefore, they cannot be prosecuted for the offence under SC/ST Act.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondents refuted the contentions.

5. To appreciate the submissions of Mr.K.Balu, learned counsel for the petitioners, it may be necessary to state the allegations in the charge sheet. It is alleged in the charge sheet that on 22.09.2007 at around 16.00 hours, A1 to A97 trespassed into Saravanampakkam Colony, where dalits were residing and damaged their houses, household articles and abused them by their caste name and assaulted them with deadly weapon. Thus, there are prima facie materials against the accused in the charge sheet and the same cannot be quashed at

the threshold. However, the learned counsel for the petitioner admitted that out of 97 accused, 13 persons belong to Dalit Community.

6. As rightly pointed out by Mr.K.Balu, learned counsel for the petitioners / accused, these 13 persons, viz., 1.Selvam (A23), 2.Anjapuli (A24), 3.Kannayiram (A33), 4.Murugan (A81), 5.Subramnai (A82), 6.Manikandan (A83), 7.Sathiyaraj (A85), 8.Subramani (A86), 9.Thirupathi (A87), 10.Kathiravan (A88), 11.Raja (A89), 12.Mukkaiyan (A95) and 13.Vellaiyan (A97), cannot be prosecuted under the provisions of SC/ST Act, 1989 and Section 3(1) of the Act reads as follows:

"3.Punishments for offences of atrocities:

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

® intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view:

(s)abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;"

Hence, no charges against them can be prosecuted for the said offence. However, they can be tried for the other IPC offences and for the offence under TNPPDL Act.

7. Mr.K.Balu, learned counsel for the petitioners contended that the investigation in this case has not been done in accordance with Rule 7 of the ST/ST Rules inasmuch as the necessary consent for investigation has not been obtained.

8. He placed strong reliance on the judgment of this Court in the case of VADIVEL V. POLICE STATION in Crl.A.No.1076 of 2007, dated 16.02.2016, wherein paragraph - 17, this Court held as follows:

"17. Now, in the instant case, as per the rule framed under SC/ST (PA) Act, the investigation has to be done by a DSP, who should be specifically empowered by a competent officer as specified in the Rules. It cannot be a matter of oral instructions. There must be a written order passed under the Rules framed under the SC/ST (PA) Act specifically empowering the DSP. The DSP has to state in chief examination that he has been so empowered. But in this case, he did not say so. Further, during his cross examination, he was specifically asked whether he was so

empowered. But, the prosecution could not establish the same. No records to show that he has been so empowered. In the circumstances, the principles laid down by this Court squarely applies in this case. Thus, the prosecution under Section 3(1) (x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vitiates."

It may be necessary to state here that the above judgment has been rendered by this Court in a regular criminal appeal, after the accused was convicted by the trial Court. If a quash application, this disputed question of fact cannot be gone into, since it should be gone into during trial.

9. In fine, this Court directs the trial Court not to frame charges against the said 13 persons under the provisions of SC/ST Act. If the charges have already been framed, those charges under SC/ST Act stand quashed qua the aforesaid 13 persons.

10. With the above direction, this Criminal Original Petition is closed.

11. Mr. K. Balu, learned counsel for the petitioners/accused sought permission of this Court to dispense with the personal appearance of the accused / petitioners before the trial Court.

12. Accepting his submission, the petitioners / accused are directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On their appearance, they shall execute a bond under Section 88 Cr.P.C, for Rs.5,000/- without sureties. Thereafter, the petitioners / accused shall appear before the trial Court for receiving the charge sheet, for answering the charges, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioners / accused shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the accused adopt any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused abscond, the trial Court shall direct registration of an FIR against them under Section

13.The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order provided as there is no legal impediment.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

kal

To

1.The Deputy Superintendent of Police,
Ullundurpet Sub Division,
Villupuram District.

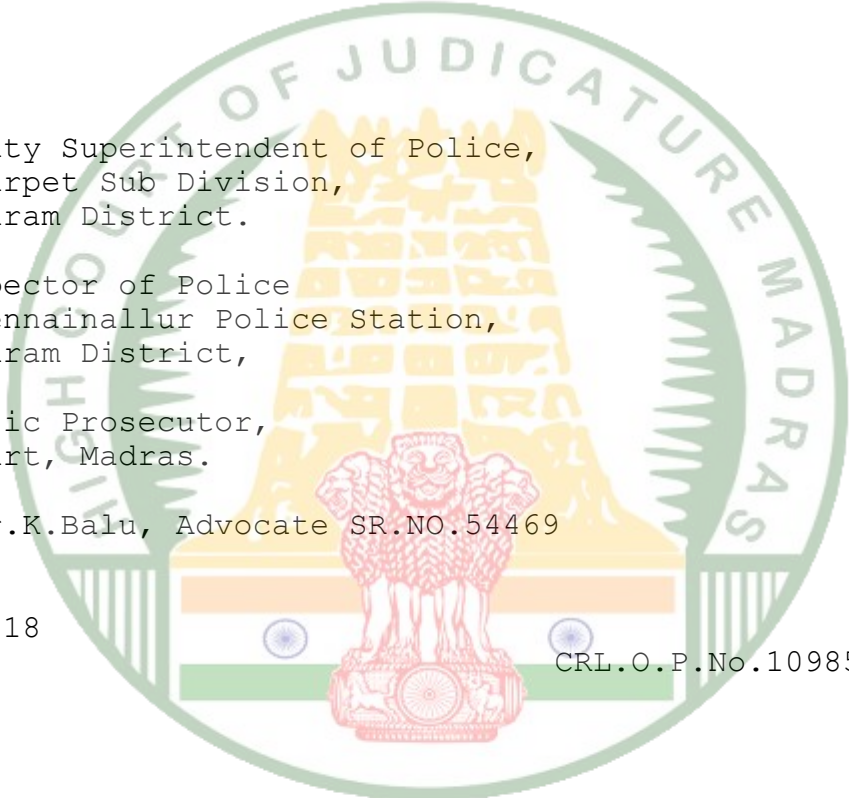
2.The Inspector of Police
Thiruvannainallur Police Station,
Villupuram District,

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Balu, Advocate SR.NO.54469

NM(CO)
sm:30.8.2018

CRL.O.P.No.10985 of 2018

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circle around the central image. Below the gopuram is a red lion capital on a base. At the bottom of the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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