



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:04.01.2018

Pronounced on: 10.01.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.13213 of 2017

and

Crl.M.P.(MD) .No.8940 of 2017

1.Thangaraj
2.Pandi
3.Karuthammal
4.Murugaiahpandian

... Petitioners/Accused Nos.1 to 4

-Vs-

1. The State through the Inspector of Police,
Rajapalayam South Police Station,
Rajapalayam,
Virudhunagar District.
(Crime No.687/2017)

2. Rajalingam ... Respondents/complainants

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the FIR in Cr.No.687 of 2017, on the file of the Inspector of Police, Rajapalayam South Police Station, Rajapalayam, the first respondent herein and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai, Senior Counsel,
for Mr.M.Thirunavukkarau

For Respondent 1 : Mr.K.Anbarasan,
Government Advocate(Crl.side).

For Respondent 2 : Mr.A.S. Vaigunth
for Mr.G.Thalaimutharasu

**ORDER**

This Criminal Original petition has been filed by the accused Nos.1 to 4 under Section 482 Cr.P.C to quash the FIR in Cr.No.687 of 2017 under Sections 147, 448, 294(b), 323, 506(i) and 109 of I.P.C and Section 3(i)(r) and 3(i) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2.The learned counsel for the petitioners submitted that the first respondent has registered a case in Cr.No.687 of 2017 under Sections 147, 448, 294(b), 323, 506(i) and 109 of I.P.C and Section 3(i)(r) and 3(i) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, based on the complaint given by the second respondent. He further submitted that to constitute the offence under Sections 3(i)(r) and 3(i) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the alleged offence should have been committed in public view, in other words, the occurrence would have been occurred in a place, where public could view the incident. But, in this case, in the complaint, the second respondent has not stated that any person has seen the occurrence and as such, the aforesaid sections will not attract and therefore, he prayed to quash the F.I.R in respect of the offences under Sections 3(i)(r) and 3(i) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3.In support of the aforesaid contentions, the learned counsel for the petitioners has relied upon the following decisions:

- (i) **Victor Paul and another Vs State [(2002) M.L.J. (Crl.) 202]**
- (ii) **Mani @Balasubramaniam Vs Moorthy @ Thirumoorthy [2011-1-L.W (Crl.) 350]**
- (iii) **Periyasamy and another Vs State, represented by the Deputy Superintendent of Police, Avinashi Sub Division, Kovilpalayam Police Station, Coimbatore District [(2015) 3 M.L.J. (Crl.) 573]**

4. The learned Government Advocate (Crl.Side) has submitted that in the F.I.R, it is clearly stated that the alleged occurrence took place within the temple and the accused persons have assaulted the defacto complainant and when he tried to escape from that place, the persons who were working in the said temple saved him and therefore, it cannot be said that no one has seen the occurrence and hence he prayed to dismiss the above petition.

5. The learned counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate (Crl.Side)



6.In the F.I.R, the second respondent has stated that he belongs to scheduled caste and on 07.03.2017, at about 01.30 p.m, he was supervising the renovation work in the Kaliyamman temple at Rajapalayam and at that time, the petitioners herein along with some other persons came in a Qualis Car bearing Regn.No.TN 60 B 2787 and attacked him and intentionally insulted him by saying his caste name. He also stated that when he tried to escape from that place, the persons who were working in the said temple came and rescued him. So, it appears that some persons have witnessed the occurrence.

7.In the decisions cited by the learned counsel for the petitioners, no doubt, it was held that the occurrence should have been taken place in a place within public view. The aforesaid decisions were rendered in the criminal appeals i.e after full trial, the cases were disposed of and ended in conviction against which, appeals were filed before this court. In the said appeals, this court has passed judgments, after perusing the evidence on record. Whereas the present case is at the investigation stage. Only after full trial, it can be said that whether the prosecution has proved that the occurrence took place within public view or not. At the investigation stage, no view can be expressed as to the alleged occurrence.

8.The learned counsel for the petitioners has also relied upon the decision in **Surendran Vs. Ramachandran (2005 M.L.J (Cr1.) 20** in support of his contention. In that case, the accused has filed a petition under Section 482 Cr.P.C to quash the case, which was taken on file by the Judicial Magistrate of the First Class, Payyanur. In that case also, the High Court of Kerala has held that though the occurrence took place in a private property, that to attract Section 3 of the SC & ST (Prevention of Atrocities) Act, 1989, it should be in a place, where the public could view the incident. After so observing, the High Court of Kerala, has dismissed the quash petition.

9.In view of the above facts and circumstances of the case, this Court is of the view that the present case is at investigation stage and at this stage, it would not be proper to quash the proceedings. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar



To

1. The Inspector of Police,
Rajapalayam South Police Station,
Rajapalayam,
Virudhunagar District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

vs

MV:GT:SAR3:19/02/2018/4P/3C

order made in

Cr1.O.P. (MD) No.13213 of 2017

and

Cr1.M.P. (MD) No.8940 of 2017

10.01.2018