

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on
10.10.2018Delivered on
22.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
CRL.OP (MD).No.6705 of 2016andCrl.MP.Nos.3372 & 3373 of 2016 & 7485 of 2018

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1.M.James

The Correspondent and Head Master,
C.E.Primary School,
Vannarapettai, Thiruchirapalli,
Thiruchirapalli District-620 017.

2.M.Mary Stella (Aged 40 yrs),

Secondary Grade Teacher,
C.E.Primary School,
Vannarapettai, Thiruchierappalli,
Thiruchierappalli District-620 017.

3.Pandi (Aged 25 yrs),

Record Clerk,
C.E.Primary School,
Vannarapettai, Thiruchierappalli,
Thiruchierappalli District-620 017.

..Petitioners/Accused No.1 to 3

.Vs.

1.The State of Tamil Nadu,

Rep.by Inspector of Police,
Government Hospital Police Station,
Thiruchirapalli District. ..1st Respondent/ Complainant

2.K.Periyasamy

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to Quash the FIR in Crime No.90 of 2015 dated 08.03.2015 on the file of the 1st respondent Police.

For Petitioner : M/s. Isaac Mohanlal, Sr counsel
for Mr.T.Cibi Chakraborty

For Respondents : M/s.S.Bharathi, for R1
Govt. Advocate (Crl.Side)

Dr.D.Gnanasekaran for R2

ORDER

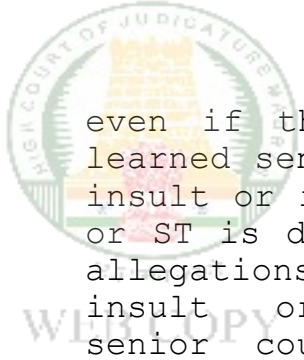
This petition has been filed seeking to quash the FIR registered by the respondent Police in Crime No.90 of 2015 for an alleged offence under Section 294 (b), 506 (i) IPC r/w 3(1) (r) &

(s) and 3 (2) (va) SC/ST (POA) Amendment Ordinance Act, 2014.

2.The case of the prosecution is that the 1st petitioner is the Correspondent and Headmaster of the School, the 2nd petitioner is the Secondary Grade Teacher and the 3rd petitioner is the Record Clerk in the School. On 27.01.2015 at about 11.05 a.m., when the de-facto Complainant was talking with the other teachers, the petitioners had abused him referring to his caste name and by using filthy language and had also threatened with dire consequences. Therefore, the 2nd respondent had given a complaint against the petitioners and based on the same the respondent Police have registered an FIR against the petitioners for the offences mentioned herein above. It is further stated in the complaint that even in the year 2010, the petitioners had behaved in the same manner against the de-facto Complainant and the de-facto Complainant had given a complaint to the Inspector of Police, Uraiyur Police Station. Therefore, according to the de-facto Complainant, the petitioners are repeatedly involving in abusing and threatening him by using his caste name.

3. M/s. Isaac Mohanlal, learned Senior counsel for Mr.T.Cibi Chakraborty appearing on behalf of the petitioners would submit that the respondent Police have registered a case under Section 3(1) (r) & (s) and 3 (2) (va) SC/ST (POA) Amendment Ordinance Act, 2014. By virtue of this Ordinance, these provisions were inserted by Act No.1 of 2014, in exercise of the powers under Article 123 (2) of the Constitution of India. This Ordinance came into force on 04.03.2014 and according to the learned Senior counsel, under Article 123(2) of the Constitution of India, the Ordinance shall cease to operate at the expiration of six weeks from the re assembly of the Parliament. According to the learned senior counsel the Parliament re assembled on 04.06.2014 and the Ordinance expired on 16.07.2014. Thereafter, a new Act was brought into force with effect from 01.01.2016 inserting these provisions by way of an Act. Therefore between 16.07.2014 and 01.01.2016, the provisions that were brought in by way of Ordinance, was not in force. The alleged incident is said to have taken place on 27.01.2015. Therefore, the respondent Police ought not to have registered a case under Section 3 (1) (r) & (s) and 3 (2) (va) since they were not in force on the date of incident. Placing reliance on Article 20 (1) of the Constitution of India, the learned senior counsel would submit that no person can be convicted for any offence except for violation of a law in force at the time of commission of the alleged Act charged as an offence. According to the learned senior counsel on this ground alone, the FIR registered by the respondent Police under the ST/SC Ordinance Act should be quashed.

4.The learned senior counsel further submitted that Section 3 (1) (x) was the provision which was sought to be amended by the Ordinance. Therefore, even if the respondent police wants to bring in the alleged offence under Section 3 (1) (x) of the SC and ST Act, the ingredients as provided under the provision is not satisfied



even if the allegations are taken as it is. According to the learned senior counsel, the provision will be attracted only if the insult or intimidation with intention to humiliate a member of a SC or ST is done within public view. In this case, even as per the allegations in the complaint, there is nothing to show that the insult or intimidation was done in a public view. The learned senior counsel would further submit that the complaint must specifically say that the accused persons do not belong to the SC and ST category and without such an averment in the complaint, the complaint itself is not maintainable in law. In order to substantiate his arguments, the learned senior counsel placed reliance on the judgments of the Hon'ble Supreme Court in *Gorige Pentaiah .vs. State of Andhra Pradesh And Others* reported in (2009) 1 SCC 446 and *Asmathunnisa .vs. State Of Andhra Pradesh* represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and *Another* reported in (2011) 11 SCC 259.

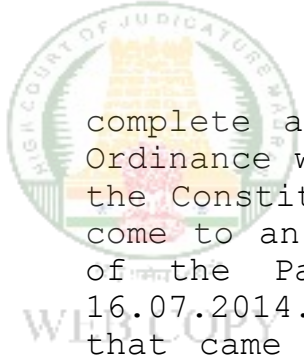
5. The learned senior counsel would further submit that the allegations in the complaint also does not satisfy the requirements under Section 294 (b) of IPC since the alleged incident has not taken place in a public place. The learned senior counsel would further submit that the offence under Section 506 (i) of IPC is also not attracted since the Act complaint does not satisfy the requirements of criminal intimidation under Section 503 of IPC.

6. Therefore, the learned senior counsel would submit that the FIR registered by the respondent Police deserves to be quashed since it amounts to abuse of process of law.

7. Per contra, Mr. S. Bharathi, the learned Government Advocate (Crl. side) appearing for R-1 would submit that the investigation is almost completed by the respondent Police. The learned counsel would further submit that the allegations made in the complaint will clearly attract the provisions of Section 3 (1) (x) of the SC & ST Act and also Section 294 (b) and 506 (i) of IPC. The learned counsel would therefore submit that this Court should not interfere with the FIR at this stage.

8. Dr. D. Gnanasekaran, learned counsel appearing for the 2nd respondent would submit that Section 3 (1) (r) & (s) of the Ordinance Act merely expanded the scope of Section 3 (1) (x) of the SC/ST Act. Therefore, according to the learned counsel, even if the Ordinance is deemed to have lapsed, the existing provision under Section 3 (1) (x) of the SC/ST Act will continue to be in force on the date of the incident and the allegations made in the complaint will attract the provision under Section 3 (1) (x) of the SC/ST Act. The learned counsel would further submit that the allegations made in the complaint also attracts the provisions of Section 294 (b) and 506 (i) of IPC.

9. This Court has carefully considered the submissions made on either side. <https://hcservices.ecourts.gov.in/hcservices/> Insofar as the ground raised by the learned senior counsel with regard to the lapse of the Ordinance, this Court is in



complete agreement with the said submission. In this case, the Ordinance was promulgated in exercise of powers under Article 123 of the Constitution of India. Any Ordinance that is promulgated, will come to an end on the expiration of six weeks from the re assembly of the Parliament. In this case, the Ordinance expired on 16.07.2014. Thereafter, the legislature brought in an Amendment Act that came into force on 01.01.2016. Therefore between the period from 16.07.2014 to 01.01.2016, the provisions under Section 3 (1) (r) & (s) and Section 3(2) (va), were not in existence. The alleged incident is said to have taken place on 27.01.2015, on which date these provisions were not in force. Therefore, by operation of Article 20 (1) of the Constitution of India, the petitioners cannot be said to have committed an offence of a law that was not in force on the date of the alleged incident. In view of the same, the registration of the FIR by the respondent Police for an alleged offence under Section 3 (1) (r) & (s) and 3 (2) (va) of SC/ST Amendment Ordinance Act, 2014, is not sustainable.

10. It must be borne in mind that as on the date when the alleged incident took place, Section 3 (1) (x) of the SC/ST Act was in force. The amendment merely wanted to elaborate the scope of Section 3 (1) (x) of the existing Act. Therefore, if the allegations made by the de-facto Complainant against the petitioners fall within the scope of Section 3 (1) (x) of the existing Act, as on the date of the commission of the offence viz; on 27.01.2015, the respondent Police can always alter the FIR and proceed further with the investigation for an offence under Section 3 (1) (x) of the SC/ST Act.

11. It therefore important for this Court to see that if the allegations made against the petitioners fall within the scope of Section 3 (1) (x) of the SC/ST Act.

12. Section 3 (1) (x) of the SC/ST Act is extracted hereunder:

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

13. It will be relevant to consider the judgments cited by the learned senior counsel in this regard.

14. The Hon'ble Supreme Court in *Gorige Pentaiah .vs. State of Andhra Pradesh And Others* reported in (2009) 1 SCC 446 dealt with the scope of the above said provision. The relevant portions in the judgment are extracted hereunder:

"5. Learned counsel appearing for the appellant submitted that even if all the allegations incorporated in the complaint are taken as true, even then, no offence is made out under Section 3(1)(x) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and under Sections 447, 427, 506 of the Indian Penal



Code, 1860. As far as Section 3(1)(x) of the Act is concerned, it reads as under:

"3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

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(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

6. 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".

15. It will also be relevant to consider the judgment of the Hon'ble Supreme Court in *Asmathunnisa .vs. State Of Andhra Pradesh* represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and Another reported in (2011) 11 SCC 259. The relevant portions in the judgment are extracted hereunder:

2. The appellant is the Headmistress in the Little Star School located at Gayatri Hills, Yousufguda, Hyderabad has preferred this appeal against the impugned judgment and order passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No.2127 of 2006.

3. It may be pertinent to mention that her husband Mohd.

8. In this connection, learned counsel for the appellant has placed reliance on a judgment of the Kerala High Court in *E.*



Krishnan Nayanar v. Dr. M.A. Kuttappan & Others
1997 CrL. L.J. 2036. The relevant paragraphs of this judgment are paras 12, 13 and 18. The said paragraphs read as under:

"12. A reading of Section 3 shows that two kinds of insults against the member of Scheduled Castes or Scheduled Tribes are made punishable - one as defined under sub-section (ii) and the other as defined under sub-section (x) of the said section. A combined reading of the two sub-sections shows that under section (ii) insult can be caused to a member of the Scheduled Castes or Scheduled Tribes by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc. need not necessarily be done in the presence of the person insulted and whereas under sub-section (x) insult can be caused to the person insulted only if he is present in view of the expression "in any place within public view". The words "within public view", in my opinion, are referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in sub-section (ii) of Section 3 of Act 3/1989. By avoiding to use the expression "within public view" in sub-section (ii), the Legislature, I feel, has created two different kinds of offences an insult caused to a member of the Scheduled Castes or Scheduled Tribes, even in his absence, by dumping excreta etc. in his premises or neighbourhood and an insult by words caused to a member of the Scheduled Castes or Scheduled Tribes "within public view" which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the Legislature would have avoided the use of the said expression which it avoided in sub-section (ii) or would have used the expression "in any public place".

13. Insult contemplated under sub-section (ii) is different from the insult contemplated under sub-section (x) as in the former a member of the Scheduled Castes or Scheduled Tribes gets insulted by the physical act and whereas in the latter he gets insulted in public view by the words uttered by the wrongdoer for which he must be present at the place.

18. As stated by me earlier the words used in sub-section (x) are not "in public place", but "within public view" which means the public must view the



person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view, the entire allegations contained in the complaint even if taken to be true do not make out any offence against the petitioner".

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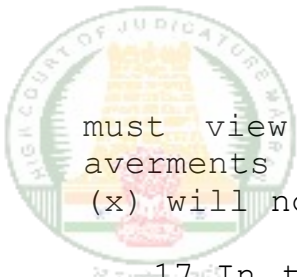
9. The aforesaid paragraphs clearly mean that the words used are "in any place but within public view", which means that the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present.

11. The Learned counsel for the appellant has also drawn our attention to a judgment of this Court *Gorige Pentaiah v. State of Andhra Pradesh & Others*. The relevant paragraph of this judgment is as under: (SCC p.534, para6)

"6. .. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 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 appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 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.

26. When we apply the ratio of the settled principles of law to the facts of this case, then, in our considered opinion, the High Court ought to have exercised its jurisdiction under section 482 of the Code of Criminal Procedure and quashed the complaint qua the appellant only to prevent abuse of the process of law.

16. The above referred judgments of the Hon'ble Supreme Court would clearly state that the complainant ought to have alleged that the accused persons are not the member of a schedule caste or a scheduled tribe and they intentionally insulted or intimidated the accused persons to humiliate him in his caste name, in a place within public view. The fundamental ingredient is that the public



must view the person being insulted and if there is no such averments in the complaint, then the provisions of Section 3 (1) (x) will not be attracted.

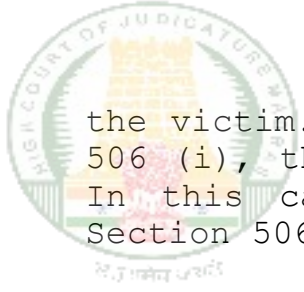
17. In this case, the de-facto Complainant is said to be working in the School as an Office Assistant from the year 1989 onwards. The de-facto Complainant also states in his complaint that even in the year 2010, the petitioners had abused and intimidated him using his caste name upon which a complaint was given against the petitioners. It is stated that this complaint was closed after enquiry. The complaint nowhere states that the petitioners are not members of a schedule caste or a schedule tribe. This basic ingredient is missing in the complaint.

18. That apart, the other important ingredient, namely that the intentional insult or intimidation of the complainant should have taken place within a public view, is also not present in this case. The complainant is working in the School from the year 1989 onwards, and therefore, the complainant could have easily stated in the complaint, in whose presence the petitioners had abused him. It is important to note that the Act uses the word public view and not public place. Therefore, even if the incident had taken place in an enclosed place, if it had happened in the presence of others namely general public, even then it will attract the provisions of Section 3 (1) (x). In this case, the de-facto complainant is not even stating in his complaint, in whose presence the petitioners had abused him and intimidated him using his caste name.

19. In view of the above, the judgments of the Hon'ble Supreme Court cited supra squarely applies to the facts of the case. The offence under Section 3 (1) (x) of the SC/ST Act is not attracted, even if the allegations made in the complaint are taken as it is. Therefore, the FIR is not sustainable insofar as the offence under SC/ST Act is concerned.

20. A reading of the complaint shows that the petitioners have not abused or used obscene words against the de-facto Complainant in a public place. Therefore, the offence under Section 294 (b) of IPC is also not attracted in this case.

21. Insofar as the offence under Section 506 (i) is concerned, the complaint merely extracts the alleged words used by the petitioners to abuse or intimidate the 2nd respondent. In order to attract the provisions of Section 506 (i), the mere usage of words is not enough. It must have been used with an intent to cause alarm to the person and therefore a further Act is required in order to bring the case within the ambit of criminal intimidation under Section 503 of IPC. The entire complaint only talks about the abusive words used by the petitioners and there is absolutely no allegation to show that there was an intention on the part of the petitioners to cause alarm to the victim. The gist of the offence is the effect which the threat is intended to have upon the mind of



the victim. In short for qualifying to be an offence under Section 506 (i), the threat should be a real one and not just mere words. In this case the complaint does not make out an offence under Section 506 (i) of IPC.

22. This is a case where the allegations made in the First Information Report, even if they are taken at their face value and accepted in entirety, do not make out a case under Section 204 (b), 506 (i) IPC r/w 3 (1) (r) & (s) and 3(2) (va) SC/ST Amendment Ordinance Act, 2014. In the considered view of this Court, filing of such a frivolous complaint in the instant case is a total abuse of process of law. Consequently, the FIR in Crime No.90 of 2015, on the file of the first respondent Police is hereby quashed. Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Inspector of Police,
Government Hospital Police Station,
Thiruchirapalli District.

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

• 1 CC TO Mr.T.Cibi Chakraborty , ADVOCATE IN SR No. 91221.

KP

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Order in
CRL.OP(MD).No.6705 of 2016

22.10.2018