



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CRIMINAL APPEAL(MD)No.425 of 2018

WEB COPY

Mathialagan

: Appellant/ P.W.1/De facto
Complainant

Vs.

1.S.Lingeeswaran

2.T.Sekar

3.S.Dhanalakshmi

: Respondents 1 to 3/
Accused No.1 to 3

4. The State Rep. by
The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.

(Crime No.278 of 2017)

: Respondent No.4/Complainant

PRAYER : Criminal Appeal is filed under Section 14 A(1) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 r/w Section 372 of the Code of Criminal Procedure, to call for the records and set aside the judgment dated 06.08.2018 made in S.S.C.No.136 of 2017, on the file of I Additional District and Sessions Judge(P.C.R), Thanjavur.

For Appellant

: Mr.C.Muthusaravanan

For R-4

: Mr.A.Robinson

Government Advocate (Crl.Side)

JUDGMENT

The criminal appeal is filed against the Judgment dated 06.08.2018 made in S.S.C.No.136 of 2017, on the file of the learned First Additional District and Sessions Judge(P.C.R), Thanjavur.

2.Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.side) appearing for the fourth respondent.

3.The trial Court has acquitted the respondents 1 to 3/accused, who faced the trial for offence under Sections 294(b), 352, 506(ii) and 34 IPC r/w Section 3(2)(va) of SC/ST (PoA) Act and Section 3(1)(r)(s) of the SC/ST (PoA) Act, on three grounds, (i) delay in registering the First Information Report; (ii) Counter complaint given by the accused persons has been suppressed by the investigation agency; and (iii) offence of abusing the victim using their caste name, was not within the public view.



4. The learned counsel appearing for the appellant would submit that the trial Court has erred in acquitting the respondents 1 to 3 on the above said grounds since there are contra evidence to the facts on records. As far as the delay in First Information Report is concerned, it is submitted by the learned counsel that the complaint was given to the respondent police on 12.06.2017 itself, i.e., the day on which the occurrence took place. Since, the police took three days time to register the information, the delay caused cannot be attributed to the victim/appellant herein. As far as the counter case is concerned, the learned counsel would submit that the complaint given against P.W.1, P.W.4 and P.W.5 by the accused persons is in fact belated one and to counter-blast the genuine complaint of the victim given to the police on 12.06.2017. The said complaint lodged after four days of the occurrence has rightly been closed as 'mistake of fact' by the investigation officer and there is no intention and suppression of the same by the investigation agency. Therefore, the judgment of the Hon'ble Supreme Court in **Lakshmi Singh Vs State of Bihar**, reported in **(1976) 4 SCC 394** has no application in the present case, so far the third ground for acquittal.

5. The learned counsel for the appellant would submit that it is the specific case of the de facto complainant/appellant that the incident took place in the public road in view of the general public. Therefore, factually the trial Court has erred on this point. Hence, the appeal has to be entertained.

6. A perusal of the records and the evidence let in by the prosecution, clearly indicates that there was a wordy dual between the two groups and both have gone to the police station and lodged complaints against each other. Since they belong to two different community, the complaint of the appellant herein had been registered under SC/ST Act in addition to offences under IPC. The Court below after considering the evidence had acquitted the accused for the reasons stated above. Though, two of the reasons may need reconsideration, the third reason that is suppression of the complaint given by the accused persons as against P.W.1, P.W.4 and P.W.5 is sufficient to uphold the judgment of the Trial Court. It is a specific mandate of the Hon'ble Supreme Court as laid down in the judgment of **Lakshmi Singh Vs State of Bihar**, reported in **(1976) 4 SCC 394** that when there is a case and counter case, it is for the Court to decide the merits of the complaint and not the investigation officer. In all fairness, he should have placed the counter complaint and findings of his investigation. Having suppressed the counter case it is difficult for the Court to decide who is the aggressor. In the said circumstances, naturally benefit of doubt has to be extended to the accused persons. Therefore, considering the suppression of the counter complaint given against P.W.1, P.W.4 and P.W.5, while setting aside the judgment of the trial Court, the matter is



remanded back for fresh consideration. The fourth respondents shall file the material papers regarding the complaint given by respondents 1 to 3 against the P.W.1, P.W.4 and P.W.5 and have a de novo joint trial in the matter and pass appropriate orders.

7. Accordingly, this Criminal Appeal is allowed. The Judgment dated 06.08.2018 made in S.S.C.No.136 of 2017, on the file of the learned First Additional District and Sessions Judge (P.C.R), Thanjavur is set aside and the matter is remanded back for de novo joint trial as pointed above. P.W.1, P.W.4 and P.W.5 who have shown as accused in the complaint given by the accused persons shall be tried in accordance with law along with this case.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. First Additional District and Sessions Judge(P.C.R),
Thanjavur.
2. The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.C.Muthusaravanan, Advocate Sr.No.83740

CP

VB/PM/SAR1/03.10.2018/3P/7C

**JUDGMENT MADE IN
CRIMINAL APPEAL (MD) No.425 of 2018
11.09.2018**