

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.2190 of 2017

ORDER :

This Criminal Revision Case is filed by the petitioner, who is the husband of the deceased, aggrieved by the order dated 17.02.2016 in CrI.MP.No.218 of 2015 in S.C.No.188 of 2015 passed by the learned II Additional District and Sessions Judge, Madanapalle, Chittoor District, dismissing the petition filed by the complainant/Inspector of Police, Madanapalle II Town Police Station, seeking permission to add Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity "SCs & STs Act").

The brief facts of the case are that a murder took place on 27.01.2015 at 1.50 p.m., in front of the house of the deceased at Donthi Street, Madanapalle Town, wherein A.1, who is working as ASI of Police, Mudivedu P.S., and his son Syed Khaja Hussain (A.2), who are residing at Donthi Street, Madanapalle Town, went to the house of the deceased – G. Reddemma, w/o. G. Reddeppa, R/o. Donthi Street, Madanapalle Town, and picked up a quarrel with the deceased with common intention on issue of payment of rent and beat the deceased, as a result of which the deceased died on the spot. Basing on the complaint dated 28.01.2015

lodged by LW.1 – defacto complainant, who is the sister of the deceased, criminal law was set in motion by registering a case in Crime No.24/2015 of Madanapalle II Town Police Station, under Sections 323 and 302 r/w. Section 34 IPC. After completion of investigation and examination of witnesses, A.1 and A.2 were arrested and sent for remand. After filing the charge sheet, the learned II Additional Judicial Magistrate of First Class, Madanapalle, took the case on file as PRC.No.16 of 2015 and committed the case for trial in SC.No.118 of 2015. At that stage, on an application filed by the husband of the deceased before the District Collector stating that Section 3(2)(v) of SCs and STs Act was not added, as the deceased belongs to SC-Mala Community, after obtaining Certificate and legal opinion to the effect that a fresh investigation has to be conducted by the the Deputy Superintendent of Police as contemplated under Rule 7(1) of SCs & STs (POA) Rules, 1995, the complainant – Inspector of Police, Madanapalle II Town PS, has filed an application in Crl.MP.No.218 of 2015 in SC.No.188 of 2015 seeking permission to add Section 3(2)(v) of SCs & STs Act against the accused. The trial Court after hearing both sides and considering the material on record, vide impugned order dated 17.02.2016 dismissed the said petition. Aggrieved by the same, the petitioner/husband of the deceased has filed the present revision.

Heard learned counsel for the petitioner/husband of the deceased and the learned Public Prosecutor. Though, notices have been served on respondent Nos.2 and 3/A.1 and A.2, none appeared on their behalf. Perused the material on record.

Learned counsel for the petitioner contended that since the deceased belongs to SC-Mala Community, the police ought to have referred the matter for investigation by the Deputy Superintendent of Police as contemplated under Rule 7(1) of SCs & STs (POA) Rules. It is contended that instead of conducting investigation by the Deputy Superintendent of Police, the investigation was conducted by the Inspector of Police. It is contended that all through during the course of investigation, the husband of the deceased is making efforts to bring it to the notice of the Investigating Agency that the deceased belongs to SC-Mala Community and, therefore, the provisions of Section 3(2)(v) of SCs & STs Act have to be added to the offences alleged against the accused. It is further contended that, though the Investigation Agency itself filed an application for adding Section 3(2)(v) of SCs & STs Act against the accused, the trial Court erroneously dismissed the application on the ground that the quarrel took place between the accused and the deceased with regard to payment of rents, in which the accused abused the deceased in filthy language and beat her and her children with hands and

kicked with legs on the stomach of the deceased, as a result the deceased died.

Learned counsel for the petitioner submits that as the deceased belongs to SC-Mala Community, as per the provision under Rule 7(1) of SCs & STs (POA) Rules, the Sub-Divisional Police Officer, Madanapalle, has to investigate the matter, however, the investigation was done by the Inspector of Police and hence, great injustice was done to the petitioner.

In support of his contention, learned counsel for the petitioner placed reliance on the judgments rendered by the Supreme Court in DHARAM PAL v. STATE OF HARYANA¹ and NATIONAL CAMPAIGN ON DALIT HUMAN RIGHTS v. UNION OF INDIA².

The main point for consideration in this revision is, whether further investigation can be ordered under Section 173(8) of Cr.P.C. for adding the provisions of Section 3(2)(v) of SCs & STs Act.

In this regard, it is relevant to refer to the provisions under Section 173(8) Cr.P.C., which read as under:

“173. Report of police officer on completion of investigation:--

(1) to (7)

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a

¹ (2016) 4 SCC 160

² (2017) 2 SCC 432

report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

From the material on record, it is a fact that the deceased belongs to SC-Mala Community and that the accused scolded the deceased in filthy language. As per the version of the prosecution, the police filed an application seeking permission from the Court to add Section 3(2)(v) of SCs & STs Act to get the investigation done by the Sub-Divisional Police Officer, Madanapalle, as contemplated under Rule 7(1) of SCs & STs (POA) Rules. However, it is premature to consider the said request of the Investigating Agency, unless the Investigation Agency files a petition before the trial Court under Section 173(8) of Cr.P.C. seeking permission for further investigation in the matter.

It is pertinent to note that the Investigation Agency definitely cannot add the provisions of Section 3(2)(v) of SCs & STs Act without there being any material on record to substantiate those charges. Therefore, unless further investigation under Section 173(8) Cr.P.C. is ordered in this matter, the investigation cannot be taken up by the Sub-

Divisional Police Officer, Madanapalle, under Rule 7(1) of SCs & STs (POA) Rules against the accused.

In view of the decisions relied upon by the learned counsel for the petitioner, since the deceased belongs to SC-Mala Community and in view of the fact that the husband of the deceased has sought for adding Section 3(2)(v) of SCs & STs Act, for conducting of investigation by Sub-Divisional Police Officer, Madanapalle, the trial Court shall consider the same on an application filed by the Investigation Agency under Section 173(8) of Cr.P.C.

In view of the foregoing reasons, this Criminal Revision Case is disposed of giving liberty to the Investigation Agency to move an application under Section 173(8) of Cr.P.C. before the trial Court and on such application being filed, the trial Court shall consider the same and pass appropriate orders in accordance with law, being uninfluenced by any of the observations made in this revision.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

18.12.2018
Msr

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