

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018
Pronounced on : 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5468 of 2011
and
M.P.Nos.1 & 2 of 2011

1.M.Balaraman,
S/o.Munusamy.

2.B.Kirthi,
S/o.Balaraman.

3.A.Anbarasu,
S/o.Arumugam.

4.Raja @ Rajaram,
S/o.C.Kannan.

5.M.Natarajan,
S/o.Munusamy.

... Petitioners/Accused Nos.1 to 5

Vs.

R.Vijayalakshi,
W/o.M.Ragu Palani.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quashing the proceedings in S.C.No.388 of 2010 on the file of the Special Judge, S.C. & S.T. Act, cases, Chennai/Principal Sessions Judge, Chennai.

For Petitioners : Mr.R.Ganesh Kumar

For Respondent : Mr.D.Pariventhan

O R D E R

The respondent has filed a private complaint against the petitioners before the learned XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.38 of 2009 for the offences under Sections 143, 147, 354, 385, 294(b), 506(ii) of the Indian Penal Code and Section 3(i) (x) of the S.C. & S.T. [Prevention of Atrocities] Act.

2.On perusal of the complaint and on examination of the complainant, LW2 to LW4, the XVII Metropolitan Magistrate, Saidapet, Chennai had found that the case is triable by the Court of Sessions i.e. the Special Court for S.C. & S.T. cases. Hence, the XVII Metropolitan Magistrate, Saidapet, Chennai had passed an order under Section 209 of the Code of Criminal Procedure and committed the case to the Court of Sessions. Thereafter, the Special Judge for S.C. & S.T. Act cases/Principal Sessions Judge, Chennai had taken the case on file in S.C.No.388 of 2010.

3.The gist of the case is that on 06.01.2008 at about 06.00 p.m. the respondent/complainant viz., Vijayalakshmi was abused and assaulted by the petitioners herein, who are residing opposite to the house of the respondent/complainant and had also insulted her with an intention by calling her caste name.

4.The first petitioner had assaulted on the head of the respondent/complainant by using the wooden log; second and third petitioners attacked her in the mouth by using their hands; fourth and fifth petitioners attacked her in chest by kicking with their legs. This was witnessed by the relatives of the respondent/complainant viz., Parameswari-LW2, Anandhi-LW3 and Eswari-LW4, who came to rescue her from the attack of the accused persons. On the same day, they took the respondent/complainant to K.K.Nagar Government Peripheral Hospital, Chennai for treatment as out-patient for four days.

5.The respondent/complainant had lodged a complaint before the Inspector of Police, R2 Kodambakkam on 06.01.2008, but the R2 Kodambakkam Police refused to receive the complaint and thereafter, the respondent/complainant sent a complaint to the Inspector of Police, R2 Police Station through RPAD and to the Superior Officers on 04.02.2008. Since, no action was taken, thereafter, she filed a private complaint to the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

6.The learned XVII Metropolitan Magistrate, Saidapet, Chennai had taken the complaint on file in C.C.No.38 of 2009 and recorded the complainant's sworn statement and further, recorded

the statements of the witnesses under Section 202 of the Code of Criminal Procedure. After recording the statements of the witnesses, the learned XVII Metropolitan Magistrate, Saidapet, Chennai had served copies to the accused persons under Section 207 of the Code of Criminal Procedure and committed the case to the Special Court for S.C. & S.T. Act cases under Section 209 of the Code of Criminal Procedure.

7.The contention of the learned counsel for the petitioners is that as per Section 14 of S.C. & S.T. [Prevention of Atrocities] Act, the Special Courts constituted for trying the above cases alone can have jurisdiction to try the offences arising out of the S.C. & S.T. [Prevention of Atrocities] Act and the private complaint entertained by the Metropolitan Magistrate is not proper.

8.The learned counsel for the petitioners further submitted that a trivial dispute among the petitioners and the respondent/complainant has been blown out of proportion and a motivated one. The learned XVII Metropolitan Magistrate failed to look into the fact that the petitioners and the respondent/complainant are living for decades together with harmony.

9.The learned counsel for the petitioners further submits that the learned XVII Metropolitan Magistrate, Saidapet, Chennai failed to look into the fact that the offences under Section 3 (i) (x) of the S.C. & S.T. Act would not be attracted in this case, since, the occurrence had not taken place in public within the public view.

10.The learned counsel for the petitioners submits that it has not been stated by the respondent/complainant that how these petitioners are aware of the community of the respondent/complainant and who are the persons and whether their utterance of the caste name was made in public view or not.

11.The learned counsel for the petitioners further submitted that on perusal of the materials both oral and documentary, it is seen that the respondent/complainant had not produced any Community Certificate that she belongs to Schedule Caste Community. Non-production of the Community Certificate is fatal and the Lower Court had failed to take note of the same and had mechanically committed the case to the Special Court for S.C. & S.T. Act cases.

12.Further, the Lower Court had failed to look into the fact that the alleged occurrence is said to have been taken place on 06.01.2008 and the complaint was given only on 21.02.2008 with the delay of more than a month and no reasons

have been given for the delay, which would go to show that the complaint is a motivated one.

13.The petitioner relied upon the Judgment of the Hon'ble Apex Court of India reported in 2008 (12) SCC 531 in the case of Gorige Pentaiah Versus State of Andhra Pradesh and others, wherein it has held that the complainant in the complaint ought to have specifically mentioned that the petitioners were not the members of the Scheduled Caste or a Scheduled Tribe and they intentionally insulted or intimidated with intent to humiliate the respondent in a place within public view. When the basic ingredient of the offence is missing in the complaint, then permitting such a complaint to continue and to compel the petitioners to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

14.The respondent/complainant filed a counter reiterated what has stated in the complaint and the examination of the respondent/complainant and three other witnesses. On satisfaction of the same, the learned XVII Metropolitan Magistrate, Saidapet, Chennai had committed the case to the Special Judge, S.C. & S.T. Act, cases, Chennai/Principal Sessions Judge, Chennai and refuted the claim of the petitioners that the Metropolitan Magistrate has got no power to entertain a private complaint and to take cognizance of the offence under S.C. & S.T. [Prevention of Atrocities] Act and under Section 14 of the Act, it is only the Special Court can take cognizance, enquiry and try the offence.

15.In support of the same, the learned counsel for the respondent/complainant filed the Full Bench Judgment of Rajasthan High Court in the case of Bhura Lal Versus State reported in 1999 CrI.LJ 3552, wherein it is held that the Magistrate as well as the Special Court have got jurisdiction to entertain a private complaint filed under S.C. & S.T. [Prevention of Atrocities] Act.

16.Considering the rival submission and on going through the materials placed before this Court, this Court finds that the respondent has been examined as LW1, LW2 is the sister of LW1, LW3 and LW4 are the sister-in-laws' of LW1. On close scrutiny of the evidences' recorded under Section 202 of the Code of Criminal Procedure, it is seen that though there is a mention about all the accused along with their wives abused her by calling her caste name and assaulted her. None of the witnesses have stated that who is the person had used the abusive language. Further, it is their case that the use of the abusive words had taken place when LW1 was inside the house and she was not aware of that. Further, LW2 to LW4 had reached the scene of occurrence at a later point of time and they are the

family members of the respondent/complainant. There is no mention that the utterance took place in public view.

17.Further, the respondent/complainant failed to produce the the Community Certificate to prove that she belongs to a Schedule Caste Community and admitted case is that the complaint had been preferred to R2 Kodambakkam Police only after a month and no reasons had been given for the delay, the private complaint came to be filed on 21.02.2008 and there is no proof to show whether the complaints have been sent to the concern Police Officer.

18.Further, it is admitted that the petitioners and the respondent/complainant are residing in the same locality for the years and this Court feels that this is one of the case where for a domestic trivial dispute a communal colour has been given and the Act under Section S.C. & S.T. has been abused.

19.Coming to such conclusion, this Court quashes the proceedings in S.C.No.388 of 2010 pending on the file of the Special Judge, S.C. & S.T. Act, cases, Chennai/Principal Sessions Judge, Chennai and accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Special Judge,
S.C. & S.T. Act cases/
Principal Sessions Judge,
Chennai.

2.The XVII Metropolitan Magistrate,
Saidapet, Chennai - 600 015.

3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.5468 of 2011

SV (CO)
GMY (18/02/2019)