

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.24833 of 2017

Uthirayam @ Uthiramaray

... Petitioner

Vs.

The Inspector of Poice,
Arakandanallur Police Station,
Arakandanallur,
Thirukovilur Taluk,
[Cr.No.113 of 2011]

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, directing the respondent herein to alter the case registered under Section 147, 148, 354, 323, 379 (N.P.), and 427 of the Indian Penal Code and under Section 3(x)(i) of SC/ST Act 1989, in Crime No.113 of 2011 dated 15.03.2011 on the file of the respondent police, into under Section 147, 148, 354, 323, 379 (N.P.), 427 and 307 of the Indian Penal Code and Section 3(x)(i) of SC/ST Act 1989 and Section 4 of Woman Harassment Act and Section 3 and 4 of the Protection of Civil Right Act, 1955, and to file the final report before the appropriate Court within the reasonable time limit that may be fixed by this Court.

For Petitioner : Mr.A.Ramalingam
For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

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The prayer sought for in the Criminal Original Petition is to direct the respondent herein to alter the case registered under Section 147, 148, 354, 323, 379 (N.P.), and 427 of the Indian Penal Code and under Section 3(x)(i) of SC/ST Act 1989, in Crime No.113 of 2011 dated 15.03.2011 on the file of the respondent police, into under Section 147, 148, 354, 323, 379 (N.P.), 427 and 307 of the Indian Penal Code and Section 3(x)(i) of SC/ST Act 1989 and Section 4 of Woman Harassment Act and Section 3 and 4 of the Protection of Civil Right Act, 1955, and to file the final report before the appropriate court within the reasonable time limit that may be fixed by this Court.

2.The learned Counsel appearing for the petitioner would submit the respondent filed the charge sheet before the learned Judicial Magistrate, Thirukovilur, but the same was not taken on file by the said Court and hence, the said charge sheet has not yet been concluded and the respondent police can investigate the case further as requested by the petitioner herein and to file charge sheet afresh for the offences under Section 147, 148, 354, 323, 379 (N.P.), 427 and 307 of the Indian Penal Code and under Section 3(x)(i) of SC/ST Act 1989 and Section 4 of Woman Harassment Act and Section 3 and 4 of the Protection of Civil Rights Act, 1955. Hence, in the above circumstances, the petitioner submits that she has no other alternative, speedy, efficacious remedy except to approach this Court by filling this Criminal Original Petition.

3.It is seen that the respondent police had already filed the charge sheet before the Judicial Magistrate, Thirukovilur in Crime No.113 of 2011 on 31.07.2017 for the offences under Sections 147, 148, 323, 324, 325 and 427 of the Indian Penal Code and Section 4 of Woman Harassment Act and 3(x)(i) of the SC/ST Act, 1989, for the reason that the petitioner had converted to Christianity religion after the complaint given by the petitioner.

4.This Court passed an order in a Writ Petition in W.P.No.28507 of 2005 dated 21.08.2007 and the relevant paragraph Nos.4 and 5 are extracted here under:

"4.A counter affidavit has been filed by the 1st and 2nd respondents wherein, while discussing the relevant provisions and some decisions of the Hon'ble Supreme Court, the following statement has been made:

"7.I respectfully submit that the provisions of the PCR Act are applicable to all persons and are not case or religion specific except for Section 7(1)(d) which applies only to a person belonging to a scheduled caste. Therefore, any person can seek relief under this Act for having faced an act of untouchability. On the other hand, the provisions of the POA Act are applicable only to persons belonging to Scheduled Castes or Scheduled Tribes. The terms Scheduled Castes and Scheduled Tribes have been defined under Articles 341 and 342 of the Constitution, respectively....

14.As already stated, the PCR Act is applicable to all persons and is not caste or religion - specific

except belonging to a Scheduled Caste. On the other hand, the provisions of the POA Act are applicable to persons belonging to Scheduled Castes or Scheduled Tribes.

15.As already stated, the provisions of sections 3 and 4 of the PCR Act applies to all persons irrespective of caste or religion. The explanation below section 4 of the PCR Act is given to show that a person of Hindu religion would include persons professing the Buddhist, Sikh or Jaina religion of those professing the Hindu Religion in any of its forms or developments including Virashaivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminaryan Sampraday. Therefore, these sections are also applicable to persons professing Christian religion including persons of scheduled casts converts to Christianity. Therefore, the grievance of the petitioner appears to be baseless. The petitioner has also not in specific mentioned any case for which the relief is prayed.

16.In view of the above I respectfully submit that the explanation to the term persons given under Section 3 and 4 of the PCR Act is neither unconstitutional nor discriminatory."

5.We have also gone through the aforesaid provisions and are of the view that the term "persons" given under sections 3 and 4 of the protection of Civil Rights Act 1955 (Central Act 22 of 1955) cannot be held to be ultra vires and such Provisions are applicable to all persons irrespective of case or religion; all people can take advantage of the provisions of Section 3 and 4 of the Central Act 22 of 1955. If one or the other authority is not acting in accordance with the Act or not lodging complaint, the petitioner or the aggrieved person may move before the appropriate forum. This Writ petition stands disposed of with the above said observations. There shall be no orders as to the costs."

6.In view of the above order passed by this Court, the learned Judicial Magistrate, Thirukovilur is directed to consider the request of the petitioner in the light of the order passed by this Court in W.P.No.28507 of 2005 dated 21.08.2007, while taking cognizance.

7.With this observation, this Criminal Original Petition stands disposed of.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Poice,
Arakandanallur Police Station,
Arakandanallur,
Thirukovilur Taluk,
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Judicial Magistrate, Thirukovilur

+1cc to Mr.A.Ramalingam , Advocate SR.No. 20766

A.SK(07/03/2019)

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