



Bail Slip

Mr.Kannan@Pattamuthu, S/o.Poothapandi. Was released on bail vide Order dated 30/04/2010 in MP(MD)No.2 of 2010 in Crl.A(MD). No.157 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.157 of 2010

Kannan@Pattamuthu

... Appellant/1st Accused

Vs.

State represented by
The Inspector of Police
Ambasamudram Police Station
Crime No.74/2008
Tirunelveli District

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, against the Judgment and order passed on 22.02.2010 by the learned II Additional Sessions Judge, (PCR Court) Tirunelveli in S.C.No.119 of 2008 wherein the appellant was convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- in default to pay the fine to undergo R.I for one month for the alleged offence U/s. 506(ii) I.P.C and also convicted and sentence to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- in default to pay the fine to undergo R.I for one month for the alleged offence U/s. 3(1)(X) of SC/ST Act (POA) Act, 1989 and also ordered that the above sentences to run concurrently and ordered for the set off period underwent by the appellant during trial U/s 428 of Cr.P.C.

For Appellant : Mr.AR.Jeya Rhuthran

For Respondent : Mr.A.Robinson,

Govt. Advocate (Crl. Side)

JUDGMENT

The appellant was convicted for the offence under Section 506 (ii) I.P.C and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. He was sentenced to undergo six months rigorous imprisonment for the offence under Section 506(ii) I.P.C and six months rigorous imprisonment for the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. Fine was also imposed. Questioning the same, this appeal has been filed.



2. The learned counsel appearing for the appellant who submitted that the Judgment under challenge will have to be reversed.

3. Per contra, the learned Government Advocate(Crl. Side) submitted that the Judgment passed by the Court below is well reasoned one and must be sustained.

4. I carefully considered the rival contentions and perused the evidence on record.

5.The case of the prosecution is that on 22.04.2008 at about 11.00 a.m, the accused blocked P.W.1 from proceeding further and thereby, committed the offence under Section 341 I.P.C. The second charge is that as the continuation of this incident, accused Nos.2 and 3, on the instigation of accused No.1, abused P.W.1 by referring to his community. The third charge is that all the three accused indulged in criminal intimidation and thus committed the offence under Section 506(ii) I.P.C. Since the accused had abused P.W.1 by referring to his community, they had committed the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused denied all the charges and claimed to be tried.

6. Before the trial Court, the prosecution examined as many as 7 witnesses and marked Ex.P.1 to Ex.P.9. On the side of the accused, no evidence was adduced.

7.The learned trial Judge, after consideration of the evidence on record, acquitted accused Nos.2 and 3 and convicted the appellant herein, namely, the first accused only in respect of offence under Sections 506(ii) of I.P.C and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

8.The learned counsel appearing for the appellant submitted that to hold a person guilty of the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the occurrence must have been taken place in public view. In this case, even though the prosecution had claimed that the occurrence had taken place in a road, except the cousin brother of P.W.1, there is no one to support the prosecution case. In this regard, the appellant counsel drew my attention to an unreported decision of this Court in Crl.A.No.474 of 2009, dated 18.11.2016. The expression of "public view" had been interpreted in the said decision, which reads as follows:

32.In Victor Paul and another vs.State (2002) MLJ (Crl) 202) with regard to the phraseology "public view" employed in Section 3(1) of SC/ST Act, a learned Judge of this Court observed as under:



"4.the word " public view" is not defined in the Act. The dictionary meaning of the word "public" is "open to the people as whole", the dictionary meaning of the word " view" is vision or sight as from a particular position. Reading these two meanings together in the context of the words' public view" , it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place with " public view" or in any other place within "public view". In either situation, the essential element that requires to be established is that it was in "public view". The work " public view" in the Section is preceded by the word" in any place within". Therefore, it is clear to my mind that insult or intimation should be in a place within public view".

35.In *E.Krishnan Nayanar vs.M.A.Kuttappan* (1997 Crl.LJ 2036) it was held as under:

"18.As stated by me earlier the words used in Sub Sec (x) are not " in public place, but within the public view which means the public must view the person being insulted for which he must be presented and no offence on the allegations under the said Section gets attracted"

37.In *Victor Paul*(Supra), the learned Single Judge of this Court took the view that for the purpose of the phraseology "public view" employed in Section 3(1)(x) of SC/ST Act, public must present and view the occurrence.

38.The expression "public view" employed in Section 3(1)(x) of the SC/ST Act, came for consideration in a case before a Division Bench of the Delhi High Court. In the said case, the defacto complainant is a member of Scheduled Caste. He was staying in a flat along with his family. The accused were residing in the same flats. They were alleged to have called the defacto complainant and his wife by their caste. It was contended that the occurrence did not take place in public view as no public person was present. Justice V.S.Agarwal (as His Lordship then was) took the view that for the purpose of "public view" employed in Section 3(1)(x) of SC/ST Act, it is not necessary that a huge crowd must present, it is enough two or more members of the public were present, heard and viewed, as four persons residing in the same flats viewed the occurrence, the occurrence had taken place in public view.

39.However, Justice B.A.Khan (as His Lordship then was) took the view that the persons who were present and viewed must be independent persons, it will not include his



friends, Associates, neighbours and thus the residents of the same flats will not be independent persons, so the occurrence had not taken place in ' public view'.

40.The said tangle was referred to a third Judge, namely, Hon'ble Justice S.K.Agarwal (Daya Bhatnagar Vs.State of Delhi (2004 (109 DLT 915))

41.Hon'ble Justice S.K.Agarwal endorsed the view of Hon'ble Justice B.A.Khan and observed as under:

19.The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (I) to (xv) of Section 3(1) of the Act enumerate various kinds of atrocities that might be perpetrated against scheduled casts and scheduled tribes, which constitute an offence. However, sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of 'Insult', " intimidation' and ' humiliation' of a member of the Scheduled Caste or Scheduled Tribe in any place within " public view". Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression " public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be) should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression ' public view' by learned brother Mr.Justice B.A.Khan. The relevant portion of his judgment reads as under:

" I accordingly hold that expression within ' public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, or a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people compromise any one of these, it would not satisfy the requirement of ' public view' within the meaning of the expression used"

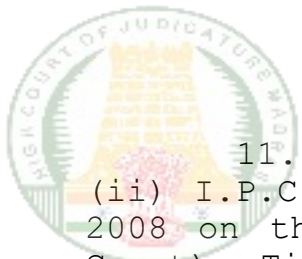


42. Thus from the language used in Section 3(1)(x) of the Act and the above survey of case-laws, it is very clear that for an offence under Section 3(1) 3(x) of SC & ST Act, at the time of occurrence, some independent members of the public should hear and view the utterances made by the accused towards a member of the scheduled Caste / Scheduled Tribe Community.

9. In this case, the prosecution has not established that members of the general public were present and viewed the alleged occurrence. Since the occurrence has not been proved to have taken place within public view, this Court has to necessarily hold that the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, is not made out.

10. As regards the offence under Section 506(ii) I.P.C, this Court cannot hold against the appellant which has not been established. It is true that P.W.1 has deposed that the appellant herein had strongly intimidated him. But then, it does not appear that the P.W.1 felt intimidated. The Madras High Court in the decision reported in (1988) L.W.(Crl.) 178 (Noble Mohandass V. State) held as follows:-

"7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws.3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does not exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out."



11. In this case the essential ingredients of Section 506 (ii) I.P.C are not present. The impugned Judgment in S.C.No.119 of 2008 on the file of the learned II Additional Sessions Judge(PCR Court), Tirunelveli, is set aside and the appeal is allowed. The appellant is acquitted of the offence under Section 506(ii) I.P.C and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. The fine amount, if any, paid by him shall be refunded, forthwith. The bail bond, if any, executed by the appellant shall stand cancelled. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The II Additional Sessions Judge,
(PCR Court), Tirunelveli.
- 2.The Principal Sessions Judge, Tirunelveli.
- 3.The Judicial Magistrate, Tirunelveli.
- 4.The Chief Judicial Magistrate, Tirunelveli.
- 5.The Inspector of Police, Ambasamudram Police Station,
Tirunelveli District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Crl.A. (MD) No.157 of 2010

11.07.2019

CS (30.09.2019) 6P 9C