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Bail Slip

Sakthivel, Appellant/Petitioner, S/o.Samithurai, is released on Bail vide Court order dated 06.07.2010 made in MP(MD)No.1 of 2010 in Crl A(MD)No.210 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.07.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl.A.(MD)No.210 of 2010
and
M.P(MD).No.1 of 2010

Sakthivel .. Petitioner/Sole Accused

Vs

State represented by

1.The Deputy Superintendent of Police
Pattukkottai
Thanjavur District

2.The Inspector of Police
Athirampattinam Police Station
Thanjavur District
(Crime No.189 of 2009) .. Respondents/Complainants

PRAYER: Petition filed under Section 374(2) of Criminal Procedure Code, to set aside the Judgment and Conviction dated 02.07.2010 by the learned I Additional Sessions Judge (PCR Court), Thanjavur in Spl.S.C.No.16 of 2010, and acquit the Appellant.

For Petitioner : Mr.S.Deenadhayalan

For Respondents : Mr.A.Robinson
Government Advocate (Crl.Side)

ORDER

The appellant was convicted for the offence under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo 18 months rigorous imprisonment and levied with a fine of Rs.2000/- vide Judgment dated 02.07.2010 in Spl.S.C.No.16 of 2010 on the file of the learned I Additional Sessions Judge (PCR Court), Thanjavur. Questioning the same, this appeal has been filed.

2.The case of the prosecution is that on 30.07.2009 at about 10.30 a.m, when P.W.1 and P.W.2 were sitting in the market bus stop, the accused is said to have abused them by referring to their community. Therefore, P.W.1 lodged Ex.P1 complaint leading to registration of Crime No.189 of 2009 (Ex.P4) on the file of the

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Adirampattinam Police Station, Thanjavur District. Since the case arose under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, investigation was taken over by the Deputy Superintendent of Police, Pattukkottai. After completing all the usual formalities, final report was laid and cognizance of the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was taken. The appellant denied the charge and claimed to be tried. The prosecution examined as many as 9 witnesses and marked Ex.P.1 to Ex.P.8. On the side of the accused, no evidence was adduced. The learned trial Judge, after consideration of the evidence on record, convicted and sentenced the appellant as mentioned above.

3.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and wanted this Court to reverse the impugned Judgment.

4.The learned Government Advocate (Crl.Side) appearing for the respondents submitted that the impugned Judgment deserves to be sustained and wanted this Court to dismiss the appeal.

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

6. P.W.1 had deposed in support of the prosecution case that the appellant abused P.W.1 and P.W.2 by referring to their caste. The prosecution examined four witnesses in all. P.W.1 and P.W.2 are said to be victims in the complaint itself. But then, two other witnesses, namely, P.W.3 and P.W.4 admitted that they are close relatives. Even though the offence is said to have taken place in a public place, namely, market bus stop, it does not appear to have taken place in public view.

7.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, the occurrence must have taken place in public view. In this case, even though the prosecution had claimed that the occurrence had taken place in a road, except P.W.3 and P.W.4, 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*

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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))

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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 protest 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 Casts 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.

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8. Since the prosecution had not established the commission of the offence by examining members of the general public, this Court is of the view that the impugned Judgment of the Court below cannot be sustained. Therefore, the Judgment of conviction passed by the learned I Additional Sessions Judge (PCR Court), Thanjavur in Spl.S.C.No.16 of 2010, dated 02.07.2010 is set aside and the appeal stands allowed. The appellant is acquitted of the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in Crime No.189 of 2009. 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 (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The I Additional Sessions Judge (PCR Court)
   Thanjavur.

2. The Principal Sessions Judge, Thanjavur.

3. The Deputy Superintendent of Police,
   Pattukkottai, Thanjavur District.

4.The Superintendent,
  Central Prison, Trichy.

5. The Inspector of Police
   Athirampattinam Police Station
   Thanjavur District.

6.The Additional Public Prosecutor,
  Madurai Bench of Madras High Court,
  Madurai.

+1 CC to Mr.S.DEENADHAYALAN, Advocate SR-74936.

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CS(30.08.2019) 5P 8C

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