



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 18.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. A. (MD) NO.118 of 2019

WEB COPY

State through the Deputy Superintendent of
Police, Oomachikulam Police Station,
Madurai,
Madurai District,
(Crime No.278 / 2011
on the file of Silaiman PS)

.. Petitioner/Complainant

- Vs -

1.Bava Bhurdeen

2.Vijay

3.A.Muniyammal

(R3 impleaded as per order this Court
made in Crl.M.P(MD)No.6015/2019 in

Crl.A(MD)No.118 /2019 dated 10/07/2019) ... Respondents/Accused

Criminal Appeal preferred under Section 378(1) of the Code of Criminal Procedure seeking to call for the records relating to the judgment pertaining to the compensation part alone in paragraph 61 of the Judgment made in Special S.C.No.8 of 2013 dated 10.02.2017 on the file of the III Additional District and Sessions (PCR) Court, Madurai and set aside the same.

For Appellant : Mr.V.Neelakandan

Addl.Public Prosecutor

For Respondents : Mr.J.Sulthan Basha for

M/s Ajmal Associates (for R1 and R2)

Mr.M.Joseph Thatheus Jerome for

Mr.P.Sivachandran (for R3)

JUDGMENT

This criminal appeal is filed against the order passed by the learned III Additional District and Sessions (PCR) Court in Spl.SC.No.8/2013 dated 10.02.2017 only insofar as the paragraph 61 is concerned, namely, grant of compensation and also payment of pension to the mother of the victim girl, the third respondent herein at Rs.3,000/- per month from 25.11.2011.

2.The only point of challenge in the appeal before this Court is that the incident has occurred on 27.11.2011, whereas the Ministry of Social Justice and Empowerment has issued amended notification only on 23.12.2011 providing for enhanced compensation of Rs.5,00,000/- . According to the learned Additional Public



Prosecutor, since the amended notification came in only on 23.12.2011 and amended Rules came into force only on 14.04.2016, the said enhanced compensation could not have been ordered to be payable to the victim girl and her family for the incident which is said to have occurred before the amended notification was issued. According to the learned Additional Public Prosecutor, the trial Court has failed to appreciate the crucial date of implementation of the amended notification and ordered Rs.5,00,000/- compensation which was illegal and unenforceable and hence, it calls for interference by this Court.

3.Per contra, the learned counsel appearing for the victim respondent would submit that the trial Court has passed final order ordering compensation only on 10.02.2017 and on that date, amended provision was very much in existence and therefore, it is well within the discretion of the trial Court to order Rs.5,00,000/- as compensation as provided under the amended notification. The enactment of the SC/ST Act is a beneficial legislation and this Court has adopted a purposeful interpretation of the same to extend the benefit of legislation to the victim's family. Although the incident appears to have occurred prior to the amended notification, the trial Court order came to be passed only after the amended notification and therefore, there was nothing wrong in the trial Court passing the order awarding the enhanced compensation. The learned counsel for the victim respondent would rely on the decision of this Court made in Crl.O.P(MD)No.9209 of 2017 dated 27.09.2019. The learned counsel would draw the attention of this Court in paragraphs 9 to 11 of the said order, which extracted herein:-

"9. From the above judgment, it is seen that the caste of a person has to be determined only based on the birth and it cannot be changed by virtue of marriage. The real test is that one should have suffered disabilities socially, economically and educationally. There is absolutely no material to show that the petitioner has also converted herself into a Christian. Even if the husband of the petitioner is following Christianity, that does not automatically make the petitioner a Christian and her original status, wherein, she belongs to the Scheduled Caste Community, will continue. The Hon'ble Supreme Court has repeatedly held that the deprivations, indignities and humiliations faced by the member of the Community is the real test and mere marriage or conversion can never be put against a person, who was actually born in the Scheduled Caste Community. The law on this issue is well settled. Another judgment that has been cited by the learned Counsel appearing for the petitioner is in the case of ***P.Vijayabharathi Vs. The District Collector cum District Magistrate*** referred supra. The relevant portion of the order is extracted hereunder:-



"6.The Legislature thought it fit to bring in certain remedial measures in order to safeguard the victims, who suffered due to the backwardness and due to the fact that they belong to the Scheduled Caste and Scheduled Tribe Community. A beneficial piece of legislation must be interpreted in a purposive manner which would effectuate the object of the welfare legislation and the Court must always lean in favour of applying the beneficial measures that have been given to victims, even in cases where the incident had happened before 2016. Therefore, this Court is not in agreement with the submissions made by the learned Government Advocate (Crl. side) to the effect that this rule cannot be taken advantage by the petitioner and the petitioner is not entitled for claim victim compensation in accordance with the rules, which came into effect only in the year 2016."

10. This Court has held that the legislature has brought in certain remedial measures in order to safeguard the victims belonging to the Scheduled Caste and Scheduled Tribe Community and this provision must be interpreted in a purposive manner. In this case, the petitioner has been recognised as a person belonging to the Scheduled Caste Community in the final report and the same has also been committed to the Special Court, dealing with the Scheduled Caste and Scheduled Tribes Act. It is really unfortunate that the District Collector took a complete contradictory stand and deprived the petitioner from claiming compensation.

11. In view of the above, this Court has no hesitation to order the payment of compensation to the petitioner. The first respondent is directed to pay the compensation to the petitioner of a sum of Rs.1,50,000/- (75% total relief of Rs.2,00,000/-) in accordance with Rule 12(4) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 2016. This compensation shall be paid within a period of six weeks from the date of receipt of a copy of this order."

4.In the abovesaid decision, a learned Judge of this Court has held, after referring to two earlier decisions, that the provisions of the SC/ST must be interpreted in a purposeful manner. Therefore, the learned counsel would submit that the compensation ordered does not call for any interference from this Court.



5.This Court after hearing the arguments of the learned counsel and after perusing the provisions of the Act and also after perusing the materials placed referred to supra, is of the considered opinion that the order by the trial Court granting Rs.5,00,000/- as compensation and Rs.3,000/- towards monthly pension to the victim and her family, is well within the framework of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 as amended from time to time when the order was passed by this Court. Although the incident had occurred before the amended notification, yet the order passed by the Judge was only in the year 2017, which is much later to the amendment dated 23.12.2011 and therefore, the trial Court has rightly taken into consideration the fact that on the day when the order was passed, the amended notification was very much in force and in existence. This Court finds there is nothing wrong with the approach of the trial Court in ordering just compensation as per amended notification, which was already become part of the statute.

6.This Court also finds that there is no exclusion clause that the amended notification would not apply to cases which had occurred earlier to the notification and in the absence of such prohibition, there is nothing wrong in the trial Court applying the amended notification on the date when the trial Court passed the order. Even otherwise as the learned Judge of this Court held that being the beneficial legislation the interpretation of the provisions has to receive purposeful and liberal construction.

7.In view of the same, this Court is of the considered view that the ultimate decision of the trial Court in awarding Rs.5,00,000/- as compensation and Rs.3000/- towards monthly pension payable to the victim and her family is perfectly in order and does not suffer from any legal infirmity at all for this Court to overturn the same.

8.For the above said reasons, this Court finds the criminal appeal filed by the State against the compensation ordered by the trial Court is devoid of merits and therefore, the same is dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

skn

To

1. The III Additional District and Sessions Judge, PCR,

<https://hcservices.madras.gov.in/hcservices/>



2. The Judicial Magistrate II, Madurai
3. The Deputy Superintendent of Police,
Oomachikulam Police Station,
Madurai
4. The District Collector,
Madurai
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Section Officer,
Criminal Section Officer, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.P.SIVACHANDRAN, Advocate (SR-99103[F] dated
18/11/2019)

**Order made in
CRL.A. (MD) NO.118 of 2019
Dated: 18.11.2019**

MK (11.12.2019) 5P 9C