

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2020

PRONOUNCED ON : 07.09.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Crl.R.C.No.289 of 2020
and Crl.M.P.No.2151 of 2020

1.Murugesan
2.A.Jayaraman

.. Petitioners/Accused 1 & 2

Vs.

1.State represented by
The Deputy Superintendent of Police
Gingee Sub-Division
Gingee
Villupuram District
(Crime No.581 of 2018)

.. Respondent/Complainant

2.V.K.Elumalai

.. Respondent/de facto
Complainant

(R2 impleaded as per order
in Crl.M.P.No.3059/2020 in Crl.R.C.No.289/2020
Dated 10.03.2020)

Criminal Revision Petition filed under Section 397 r/w 401
Cr.P.C. to set aside the order dated 06.02.2020 passed in
Crl.M.P.No.1321 of 2019 in Spl.S.C.No.7 of 2019 on the file of
the Sessions Court, Special Court for the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 2015 (for
brevity "the SC/ST Act") Cases, Villupuram.

For Petitioner : Mr.S.T.Raja

For R1 : Mrs.P.Kritika Kamal
Govt. Advocate
(Crl.Side)

For R2 : Mr.Selvam Sounther

O R D E R

This case was taken up through video conferencing.

2. This criminal revision has been filed seeking to set aside the order dated 06.02.2020 passed in Crl.M.P.No.1321 of 2019 in Spl.S.C.No.7 of 2019 on the file of the Sessions Court, Special Court for SC/ST Act Cases, Villupuram.

3. The petitioners are facing prosecution in Spl.S.C.No.7 of 2019 before the Sessions Court, Special Court of SC/ST Act Cases, Villupuram, for the offences under Section 304 (II) IPC r/w 3 (2) (v) of the SC/ST Act .

4. The petitioners filed a petition in Crl.M.P.No.1321 of 2019 under Section 227 Cr.P.C., for discharge, which has been dismissed by the trial Court on 06.02.2020, aggrieved by which, the petitioners have preferred the present criminal revision petition.

5. Heard Mr.S.T.Raja, learned counsel for the petitioners, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the first respondent/State and Mr.Selvam Sounther, learned counsel for the second respondent/de facto complainant.

6. This Court is aware of the legal position that an accused can be discharged under Section 227 Cr.P.C from a prosecution, only if "the Judge considers that there is no sufficient ground for proceeding against the accused". Judicial precedents are a legion for the legal proposition that, the Court should accept the prosecution case as disclosed in the final report and accompanying documents, without any addition or subtraction, and even after that exercise, if the facts obtaining in the case do not fall within the four corners of the alleged penal provisions, only then, can the accused be discharged. Bearing this salutary principle in mind, this Court now proceeds to analyse the facts stated in the final report.

7. The deceased Sivaraman S/o. Sivalingam, was a Dalit and was studying in VIII standard in Raja Desingh Higher Secondary School, Gingee. The school authorities were constructing a new building adjacent to the main building in the same campus and a water tank was built nearby for storing water. On 18.07.2018, Sivaraman came to school as usual around 8.30 a.m. and it is stated that he had fallen into the water tank and lost his precious life. The death of the Dalit boy stirred a hornet's nest in the locality and on the complaint lodged by the second respondent/de facto complainant, the police registered a case in Crime No.581 of 2018 on 18.07.2018 for the offence under Section

304 (II) IPC r/w 3 (2) (v) of the SC/ST Act, against Murugesan (A1) and Jayaraman (A2), who were the Contractor and Supervisor, respectively, for the construction work. Both of them were arrested on 18.07.2018 and were remanded in custody.

8. The police completed the investigation and filed final report, which, on committal, has been taken on file as Spl.S.C.No.7 of 2019 by the Sessions Court, Special Court for SC/ST Act Cases, Villupuram, for the said offences, against Murugesan (A1) and Jayaraman (A2), the petitioners herein. It is alleged in the final report that their failure to put a cover over the water tank had resulted in the Dalit boy falling into it and dying and hence, they are liable to be prosecuted under Section 304(II) IPC r/w 3 (2) (v) of the SC/ST Act.

9. The fact that the boy died due to drowning is apparent from the postmortem report, which says "the deceased would appear to have died due to Asphyxia due to drowning". The community certificates issued by the Revenue authorities show that Sivaraman was a Dalit and the petitioners are Non-Dalits. There is absolutely no iota of material to show that the petitioners had, in any manner, wanted to cause harm to the deceased Sivaraman.

10. The rough sketch and the photographs show that a water tank has been constructed near the new building with parapet walls on all the four sides. It is nobody's case that the petitioners had pushed the boy into the water tank. Records show that the boy had come to school at 8.30 a.m. and thereafter, his body was fished out from the water tank.

11. Mr.Selvam Sounther, learned counsel for the second respondent/de facto complainant made the following submissions:

a. Though the FIR in this case was registered by the Sub-Inspector of Police, the investigation was conducted and the final report was filed by the Deputy Superintendent of Police; while so, the petitioners, in their discharge petition that was filed in the trial Court, have shown the Inspector of Police as respondent and not the Deputy Superintendent of Police;

b. The discharge petition has been signed by an Advocate practising in Villupuram, whereas, before the signature portion, it has been typed as "dated at Chennai on the 2nd day of August 2019"; that apart, the discharge petition does not bear the signature of the petitioners;

c. The counter to the discharge petition has not been filed by the Deputy Superintendent of Police, but has been filed by the Inspector of Police and on the docket of the counter, someone has made the following endorsement "Taken notice. Copy received. No objection.";

d. In the confession given by the petitioners to the police, they have admitted that they had committed the offences in question and therefore, they cannot be discharged;

e. It is the duty of the contractor to close the water tank and he having failed in it, will be liable for the offences set out in the final report.

12. The learned counsel for the petitioners refuted the aforesaid submissions made by the learned counsel for the de facto complainant.

13. It is true that in the discharge petition, the Inspector of Police has been shown as the respondent instead of Deputy Superintendent of Police. It is also true that an Advocate from Villupuram has signed the discharge petition, whereas, the discharge petition reads as if it was prepared in Chennai. It is equally true that the petitioners have not signed the discharge application.

14. In the opinion of this Court, these three grounds, by themselves, will not make the discharge petition defective. The fact remains that the prosecution has understood, for which case, the discharge application has been filed and the counter for the discharge application has been settled by Mr.K.R.Sundaramoorthy, M.Com., B.L., Special Public Prosecutor, Special Court (SC/ST (POA) Act cases), Villupuram. Just because the discharge petition was prepared in Chennai and filed by an Advocate in Villupuram, it will not mean that the same should not have been taken on file by the trial Court. That apart, absence of signature of the petitioners in the discharge petition does not lead to the inference that the Advocate himself has filed the petition without the knowledge of the petitioners. If that be so, the petitioners would not have filed the present revision petition before this Court by signing the vakalat form.

15. Similarly, the endorsement "Taken notice. Copy received. No objection.", which has been made in the docket of the counter filed by the Special Public Prosecutor in the discharge petition takes us nowhere, because, the Special Public Prosecutor has opposed the discharge petition tooth and nail before the trial Court and the trial Court has dismissed the discharge petition and that is why, the petitioners are before this Court in this revision petition. In other words, if the Special Public Prosecutor had stated no objection for discharge of the petitioners, the same would have been mentioned by the trial Judge in his order dismissing the discharge petition. In fact, in his order, the trial Judge has allocated a separate paragraph for the objections raised by the Special Public Prosecutor.

16. The trial Judge has dismissed the discharge application by simply saying that from the final report and from the statements of the witnesses recorded by the police, there are prima facie materials to frame charge under Section 304 (II) r/w 3(2)(v) of the SC/ST Act against the petitioners.

17. Coming to the confession given to the police, the same is irrelevant and inadmissible under Section 25 of the Evidence Act, except for the limited purpose of discovery of a fact as provided under Section 27 of the Evidence Act.

18. In this case, the police have recorded the joint confession of Murugesan (A1) and Jayaraman (A2) and there is no discovery of any fact pursuant to the confession. In the body of the police confession, it is stated "I had appointed one Jayaraman S/o.Appadurai as Supervisor for supervising the construction work; near the building, we had constructed a water tank of 15 feet height for storing water and there was 10 feet height water in it, which we had not closed; we knew that by not keeping it close, there is possibility of school children falling into it."

19. The learned counsel for the second respondent/de facto complainant wanted this Court to rely upon the aforesaid passage in the police confession and dismiss this revision petition.

20. In the opinion of this Court, it will be a travesty of justice to rely upon the aforesaid averment in the police confession to mulct criminal liability on the petitioners. In that school, both Dalit and Non-Dalit children were studying. Even a Non-Dalit boy could have fallen into the water tank and lost his life.

21. After poring over the prosecution records, this Court does not find even a shred of evidence to show that the petitioners had either intentionally or with knowledge caused the death of the Dalit boy Sivaraman on the fateful day. Just because the deceased was a Dalit and the petitioners are Non-Dalits, the latter cannot be prosecuted under the SC/ST Act without anything more. For prosecuting the petitioners under Section 304 (II) IPC, their acts must pass muster Section 299 IPC, which unfortunately, they do not. However, the petitioners can, at the most, be prosecuted under Section 304-A IPC and surely not for the offences enumerated in the final report.

In the result, this criminal revision is allowed. The petitioners are discharged from the prosecution in Spl.S.C.No.7 of 2019 on the file of the Sessions Court, Special Court for SC/ST Act cases, Villupuram. The Special Court is directed to

take photocopies of the final report and the accompanying documents for its file and transfer the entire original records to the Court of the Judicial Magistrate, Gingee, who shall take cognizance of the offence under Section 304-A IPC on the said final report and proceed with the trial against the petitioners. The bail bonds shall also be transferred to the file of the Judicial Magistrate Court, Gingee.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd

To

1. The Sessions Judge,
Special Court for SC/ST Act cases,
Villupuram.

2. The Judicial Magistrate,
Gingee.

3. The Deputy Superintendent of Police
Gingee Sub-Division
Gingee
Villupuram District

4. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

5. The Chief Judicial Magistrate
Gingee

+1 Cc to Mr.OM Sai Ram, Advocate sr 29070.

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Cr1.R.C.No.289 of 2020

PP(CO)
SP(22/10/2020)