

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.408 of 2020

1. Karuppaiah,
S/o.Ponnaiah

2. Arunkumar,
S/o.Karuppaiah

...Appellants/Petitioners

/versus/

1. The Deputy Superintendent of Police,
Perambalur, Perambalur District.

2. The Inspector of Police,
Perambalur Police Station,
Perambalur, Perambalur District.
(Crime No.2060 of 2020)

3. Dineshkumar,
S/o.Kanagaraj,
No.9th Ward, Vasuki Street,
Thuraimangalam,
Perambalur District.

...Respondents

PRAYER: Criminal Appeal filed under Section 14(A)(2) of Sc/ST Act, 1989, to set aside the order passed by the Sessions Judge, Special Court for Trial Cases under SC and ST Act, Perambalur in E.Bail No.640 of 2020 and the same was dismissed on 22.09.2020 and enlarge the appellants on bail in Cr.No.2060 of 2020 pending on the file of the Inspector of Police, Perambalur Police Station, Perambalur, Perambalur District.

For Petitioners: Mr.C.Prakasam
For R1 & R2 : Mr.C.Raghavan
Government Advocate [Crl. Side]
For R3 : No Representation.

JUDGMENT

The petitioners, who are A1 and A3 in Crime No.2060 of 2020 for the offence under Section 294(b), 324, 307, 506(ii) IPC r/w. 3(1)(r), 3(1)(s) and 3(1)(v) of SC and ST (POA) Amendment Act, 2015, has filed this appeal.

2. The case of the prosecution is that on 07.09.2020, at about 9.30 p.m., the defacto complainant who is practising as an Advocate, along with his friends gone to "Thean Mess", they bought some 'idlis' and asked for some extra side dish, for which the owner of the mess/Karuppaiah/A1, abused the defacto complainant with filthy language called him by caste name. When the same was questioned by the defacto complainant, the first petitioner assaulted the defacto complainant with fire wood due to which the defacto complainant sustained head injury. The wife of the first petitioner/Gandhimathi and son of the first petitioner/A3 had also assaulted the defacto complainant. Thereafter, the defacto complainant was admitted in hospital and took treatment as in-patient. After receiving the complainant the second respondent/Inspector of Police, Perambalur, gone to hospital, recorded the statement and registered a case.

3. Notice was sent to the third respondent/defacto complainant as per Section 15 of the SC/ST Act. The third respondent was served with the notice on 12.10.2020 and the third respondent/defacto complainant has given a letter to the second respondent stating that he was made aware about the proceedings pending in CrI.A.No.408 of 2020 and the same is being listed on 13.10.2020. Affidavit of Service and the letter given by the third respondent is produced before this Court by the second respondent.

4. Though the name of the third respondent is printed in the cause list, there is no representation on behalf of the third respondent either in person or through counsel.

5. The contention of the learned counsel for the petitioners is that the petitioners are the father and son who are running mess near Thuraiamangalam. On 07.08.2020, the third respondent/defacto complainant along with his friends came to the petitioners' mess, purchased some food and refused to pay money. When the same was questioned by the first petitioner, altercation arose between first petitioner and third respondent/defacto complainant. The petitioners were not aware about the third respondent's caste and community. Being in a hotel business, they have to cater to all sections of peoples in the society and they cannot be choosy and made such attempt by questioning the caste name. The third respondent/defacto complainant and his friends were in an inebriated state and after purchasing of food items they refused to pay money, hence wordy quarrel arose. The petitioners had neither assaulted nor stated anything against the third respondent. The third respondent being an advocate, taking advantage of his position falsely implicated the petitioners in this case. The petitioners were called for enquiry and arrested, they are in confinement from 08.09.2020.

6. He further submitted that the Duty Doctor, Government Hospital, Perambalur, recorded in accident register that the third respondent was under the influence of alcohol when he was examined and admitted in hospital. Now R3 is discharged from the hospital. The petitioners are willing to abide any conditions. Hence, prayed for grant of bail to the petitioners.

7. The learned Government Advocate submitted that in this case the third respondent is the defacto complainant who is an advocate by profession. On 07.09.2020, at about 9.30 p.m., the third respondent/defacto complainant gone to the petitioners' mess, purchased some food items and asked for extra side dish, which is normal, for which the first petitioner abused the defacto complainant by calling the caste name of the 3rd respondent and assaulted the defacto complainant using fire wood. Due to the same, the defacto complainant sustained head injury and he was admitted in Government Hospital, Perambalur, took treatment as in-patient for four days. Hence, he opposed for grant of bail to the petitioners.

8. Considering the submission and perusal of the materials, it is seen that the third respondent was in an inebriated condition as found and recorded in the accident register of the Government Hospital, Perambalur. There seems to be some scuffle between the defacto complainant and the petitioners' on a dispute while purchasing food items in petitioners' mess. The petitioners were arrested on 08.09.2020 and confined in prison till date. From the complaint, it is seen that there is nothing to show that the assault both verbal and action was made in public view in the presence of others. In view of the same, this Court is inclined to grant bail for the petitioners, subject the following conditions:

(a) the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each within a period of 15 working days from the date of receipt of a copy of this order with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Trial Cases under SC and ST Act, Perambalur, failing which, the Criminal Appeal for bail shall stand dismissed and on further condition that;

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(c) the petitioners shall report before the respondent Police daily at 10.30 a.m. for a period of two weeks and thereafter as and when required.

(d) the petitioners shall not commit any offences of similar nature;

(e) the petitioners shall not abscond either during investigation or trial;

(f) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

9. With the above directions, this appeal is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1.The Sessions Judge, Special Judge,
For Trial Cases under SC & ST Act,
Perambalur.

2.The Deputy Superintendent Of Police,
Perambalur, Perambalur Dist.

3.The Inspector of Police,
Perambalur Police Station,
Perambalur, Perambalur Dist.

4.The Sub-Jail,
Perambalur, Perambalur District.

5.The Public Prosecutor,
High Court, Madras.

CRL.A.No.408 of 2020

MP(CO)
RV(09/11/2020)