

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2020
Pronounced on : 18.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.No.33505 of 2019
and

CRL.MP.Nos.18487, 18488 of 2019 and 2135 of 2020

1.B.Venkatesan
2.Balaji @ Deenadayalan
3.Balakrishnan
4.S. Saravana Bhava
5.T. Sundaramoorthy
6.G. Raghuraman
7.Sivanesan
8.Sudhagar
9.Sathyanarayanan
Nos.1 to 9

...Petitioners/Accused

Vs.

P. Bakthavatchalam

..Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in Spl.SC.No.2 of 2018 on the file of the Principal Judge, City Civil Court, Chennai and quash the same.

For Petitioners : Mr.D.J. Venkatesan
For Respondent : Mr.V.J. Arulraj

ORDER

This Criminal Original Petition has been filed by the accused Nos.1 to 9 to quash the proceedings against them in Special SC.No.2 of 2018 on the file of the Principal Sessions Judge, Chennai.

2. The respondent herein has filed a private complaint alleging that he belongs to Hindu Adi Dravida Caste/Scheduled Caste Community and he is a retired Regional Manager, United India Insurance Company. He further stated that he purchased a vacant site and constructed a building after getting proper planning permission from the Corporation of Chennai. Adjacent to his house, there is a pathway. The accused Nos.1 to 9 conspired and unlawfully encroached the said pathway and started to

construct a temple. The said temple was built up on the complainant's water pipeline, sewerage pipeline and EB cable and thereby caused obstruction to him to enjoy his property. Questioning the said illegal construction, he has filed a writ petition in WP.No.30326 of 2013 on the file of this court and this court has directed the Corporation of Chennai to issue a stop work notice and also lock and seal notice. Even thereafter, the accused persons did not stop the said illegal construction and thereby committed atrocities on the peaceful living of Dalit family. Further, the accused persons prevented the complainant from putting further construction on his building and also criminally intimidated. They caused damage to his car and also lodged a false complaint before the police and based on the same, the police mercilessly beat the complainant's son and daughter-in-law. Further in the public view, the accused persons have humiliated the complainant and his family members by saying their caste name and hence he lodged a complaint before the police but the police did not take any action and therefore he filed a private complaint before the Principal Sessions Judge, Chennai.

3. The Principal Sessions Judge, Chennai, after receipt of the said complaint recorded the sworn statement of the complainant under Section 200 of Cr.P.C., and also examined the witnesses under Section 202 Cr.P.C who were produced by the complainant and thereafter he has taken cognizance of the case under Sections 3(1) (v) and (V-A) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST (POA) Act') and issued summons to the accused persons. After receipt of the summons, the accused persons have filed the present petition under Section 482 of Cr.P.C., to quash the proceedings against them.

4. The learned counsel for the petitioners/accused Nos.1 to 9 has submitted that the petitioners are the devotees of the temple viz., Arulmigu Sundharamoorthy Vinayagar Temple situated at No.7, Vadivel Main Road, Perambur, Chennai-600011. The said temple is in existence for over and above several decades of at least 50 years. The temple property belongs to one Diwan Bahadur Arunachala Mudaliar and the said land was dedicated to the "Vinayagar Temple" by the said land owner. Kumbabehishekam to the temple was performed once in 12 years regularly. The said Vinayagar Temple is being worshiped by people at large in the locality with religious fervour.

5. The learned counsel for the petitioners has further submitted that when the fact remains so, the nearby resident of the said temple, the respondent herein, who is the follower of Christianity, started objecting to the worshiping of the temple and at one point of time, he even wanted to demolish the temple

with an oblique motive to grab the temple land. By his mischievous motive, he filed a writ petition before this court in WP.No.12172 of 2007 wherein he claimed that the temple had encroached the portion of the road and the temple is situated in the government property. The said writ petition was disposed of by this court on 19.12.2008. Thereafter the respondent has filed another writ petition in W.P.No.30326 of 2013 against the temple and its devotees with false and vexatious averments that the temple is in the public property and has encroached the government land. But the revenue records would show that the temple is in a private land and the same belongs to one Mr.Diwan Bagadur Arunachala Mudaliyar and thereafter the writ petition was disposed of on 23.09.2014. Even after the disposal of the aforesaid writ petition, the concerned Tahsildar has conducted an enquiry and submitted a report on 04.08.2015 stating that the temple is situated in a private land and there is no encroachment as alleged by the respondent and further the said temple is in existence for more than 50 years.

6. The learned counsel for the petitioners has further submitted that the respondent himself has made an unauthorised construction with many deviations in the building. The respondent is adopting all sorts of tactics to disrupt the worship being carried out by the devotees by creating ruckus during any festival conducted by the temple by parking his cars in front of the temple gate and also gave false complaints before the police. He further submitted that the respondent also warned the devotees not to come to the temple. He further submitted that on the instruction of the respondent, the Corporation of Chennai has issued de-occupation and lock and seal notice to the temple and the same was under challenge before this court in WP.No.3322 of 2017 wherein an interim stay has been granted by this court. As a counter blast to the said writ petition, the respondent has filed another writ petition in WP.No.17904 of 2017 against the Corporation of Chennai and the petitioners herein and the same is also pending. Since the respondent himself has put up construction violating the building rules, to over come the legal action to be taken by the Corporation of Chennai, the respondent has lodged a false complaint before the police and National Commission for Scheduled Caste and also filed a private complaint before the Principal Sessions Judge, Chennai. The allegation that the petitioners herein have humiliated the respondent and his family members in public view by saying their caste name, is false. He further submitted that the dispute is purely civil in nature and that the provisions of S.C. & S.T. (POA) Act would not attract and therefore, he prayed to quash the proceedings against the petitioners in Special SC.No.2 of 2018 on the file of the Principal Sessions Judge, Chennai.

7. Per contra, the learned counsel for the respondent/complainant has submitted that the respondent is a Hindu Adi Dravida Community and belongs to Scheduled Caste. The respondent has purchased patta land measuring 1850 sq.ft from one Paranthaman during the year 1992 and obtained planning and building permission from the Corporation of Chennai and constructed a residential house during the year 1997-1998 and since then living in the said house along with his family members. He further submitted that adjacent to the respondent's house, there is a common passage and the said passage has been used by the respondent and his predecessor-in-title from time immemorial. He further submitted that the respondent is not having any other passage to go to his house. He further submitted that on the eastern side of the said passage, there was initially a small unauthorised temple by name Arulmigu Sundharamoorthy Vinayagar Temple, admeasuring 5 ft of 5 ft roughly about 25 sq ft. Only in the year 2013, all the accused persons conspired and expanded the unauthorised temple basement and constructed compound wall on the respondent's EB cable, water and drainage pipeline and thus the EB cable, water and drainage pipeline were damaged.

8. The learned counsel for the respondent/complainant has further submitted that the petitioners have constructed an unauthorised temple and compound wall on the respondent's EB cable, water and drainage pipeline resulting in cable fault and hence the respondent has filed a writ petition in WP.No.30326 of 2013 to remove the said unauthorised construction. Accordingly, stop work notice and lock and seal notice were issued. This court in WP.No.3322 of 2017, by the order dated 27.06.2018 has categorically held it prima facie appears that the additional construction of the temple is not in accordance with the Special Rules for the Multi storeyed and Public Buildings, 1974. The act of the petitioners would amount to atrocities against the Dalit family and hence the provisions of SC & ST (POA) Act would attract. Accordingly, the respondent has lodged a complaint before the police but the police colluded with the accused persons and did not register FIR and hence the respondent was constrained to file a private complaint before the Principal Sessions Judge, Chennai. He further submitted that the learned Principal Sessions Judge, Chennai, after recording the sworn statement of the respondent and also examining the witness under Section 202 Cr.P.C., has taken the cognizance of the offence under Sections 3(1) (v) and (v-A) of SC and ST (POA) Act, 1989. He further submitted that since the petitioners have prevented the respondent/complainant from using the common pathway, the provisions of SC/ST (POA) Act, 1989 would attract. He further submitted that the allegations made in the complaint

would prima facie disclose the offence under the SC/ST (POA) Act and the correctness of the said allegations have to be decided only in the trial. He further submitted that the criminal complaint cannot be quashed only on the ground that the allegations made therein appears to be civil in nature and therefore he prayed to dismiss this petition.

9. In support of the aforesaid contentions, the learned counsel for the respondent has relied upon the decision of the Hon'ble Supreme Court in *Sau. Kamal Shivaji Pokarnekhar Vs. The State Of Maharashtra and Others* in Criminal Appeal No. 255 of 2019 (Arising out of SLP (Crl.) No. 7513 of 2014) dated 12.02.2019)

10. According to the respondent/complainant, the petitioners have encroached the common passage and widened the existing Vinayagar temple and thereby caused obstruction from using the said passage. The case of the petitioners is that the respondent himself has constructed his house deviating the sanctioned plan and as such, he cannot question the construction made by the petitioners.

11. A perusal of the order passed by this court in WP.No.30326 of 2013 dated 23.06.2014 shows that the Corporation of Chennai has filed a report before the court stating that the said temple was constructed unauthorisedly. Further the respondent herein also has constructed a house deviating from the sanctioned plan. Recording the aforesaid report, this court has directed the Corporation of Chennai to proceed further as against the petitioners and also the respondent for removing unauthorised construction.

12. The aforesaid order passed by this court also would show that the petitioners herein have constructed the said temple encroaching the passage without getting any permission from the concerned authorities. So, the said construction itself is illegal, whereas the respondent has obtained sanctioned plan for constructing his house, but he has put up construction deviating the said plan. If there is any such deviation, it is for the concerned authorities to take steps to remove the said offending portion. But since the respondent is having house abetting the common passage, he is entitled to use the said passage. The petitioners cannot prevent the respondent from using the said passage. As per Section 3(v) of SC/ST Act as stood before 26.01.2016, wrongfully interferes with the enjoyment of a member of SC/ST's right over any land is an offence. Section 3 (xiv) of the said Act as stood before 26.01.2016 says that denies a member of a SC/ST any customary right of passage to a place is also an offence.

13. In *Sau. Kamal Shivaji Pokarnekar Vs. The State Of Maharashtra and Others*, (cited supra), the Hon'ble Supreme Court in paragraph Nos.5,6 and 9 has observed as follows:

"5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

14. From the aforesaid decision, it is clear that the complaint can be quashed only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. The correctness or otherwise of the allegation made in the complaint has to be decided only in the trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Further it is clear that the Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be quashed. In this case as already pointed out the allegation made in the complaint would disclose prima facie the offence under Section SC/ST (POA) Act and therefore, this court is of the view that the proceedings cannot be quashed at the initial stage.

15. For the aforesaid reasons, this petition is dismissed. Consequently, the connected miscellaneous petitions are closed. It is open to the petitioners to raise all the defences before the trial court. The trial court is directed to dispose of the case in Spl.SC.No.2 of 2018 on the file of the Principal Judge, City Civil Court, Chennai, on merits uninfluenced by the observations made by this court in this order.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

gv

To

1. The Superintendent of Police,
Krishnagiri.
2. The Inspector of Police,
Kaveripattanam Police Station,
Krishnagiri District.
(Cr.No.358 of 2019)

3. The Public Prosecutor,
High Court, Madras.

4.The Principal Judge
City Civil Court, Chennai

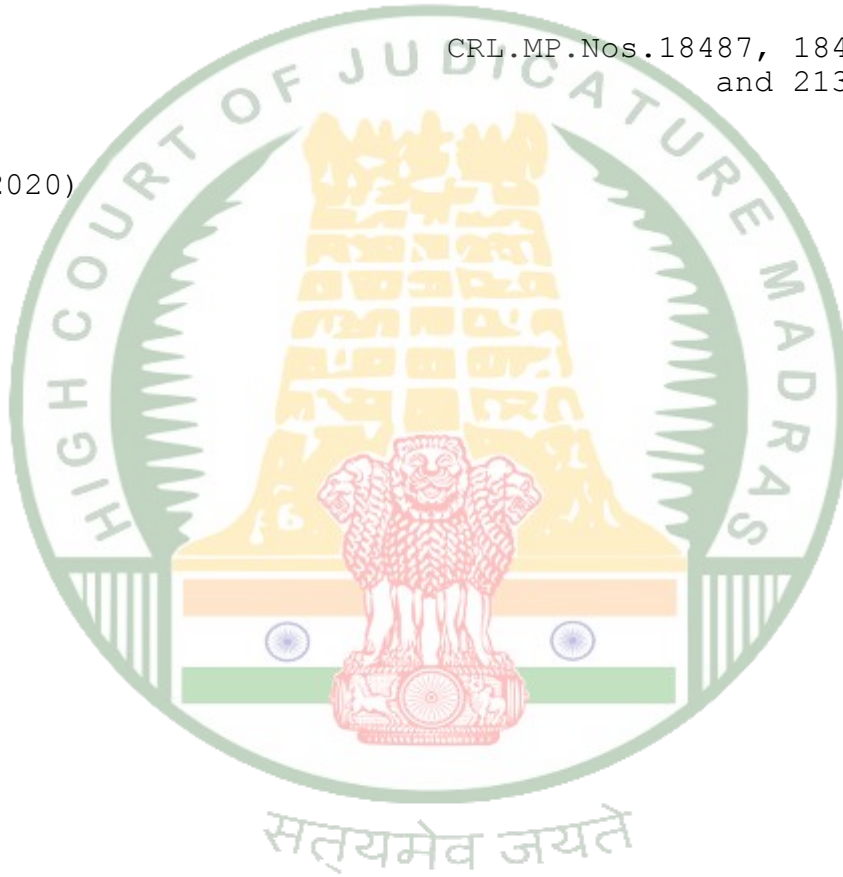
+1 CC to Mr.A.B. Avvai Sangamithra, Advocate sr 23991.

+1 Cc to Mr. Vijay Shankar, advocate sr 24366.

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PP(CO)
SP(19/03/2020)



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