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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

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THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Cr1.O.P.No.16531 of 2016
and
Cr1.M.P.No.12362 of 2021

D. Dakshinamurthy ... Petitioner

Vs

1. M. Selvam

2. The Deputy Superintendent of Police,
Gingee Taluk,
Gingee, Villupuram District

... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records culminating in SC.No.277 of 2015 on the file of the Sessions Judge, Special Court for Exclusive Trial of cases registered under SC/ST (POA Act, Villupuram), and quash the same.

For petitioner ... M/s. M. Santhanaraman

For respondents ... Mr. S. Sathiachandran, for R1

Mr. C.E.Pratap,
Government Advocate(crl.side)
For R2

ORDER

This Criminal Original Petition has been filed to quash the order passed by the learned Sessions Judge, Special Court for exclusive trial of cases registered under SC/ST (POA) Act, Villupuram in SC No.277 of 2015.

2. The brief facts leading to filing the Original Petition is that, the first respondent herein is said to have filed a complaint before the learned Judicial Magistrate, Gingee alleging that, originally patta in respect of the house site in Survey No.158/13 has been granted in favour of the complainant's parents and they died intestate. Now the petitioner herein is said to have encroached the property and put up construction. When the complainant questioned the same, they criminally



intimidated him and also abused him by calling his caste name as he belongs to schedule caste community. On receipt of the complaint, the learned Sessions Judge, after careful consideration, finding that it is necessary to send the complaint to the District Superintendent of Police, Gingee to investigate the matter, and directed him to submit a report before the Court on or before 30.05.2016. Now, challenging the same, the present Criminal Original Petition has been filed.

3. The learned counsel for the petitioner would submit that earlier, the complainant has filed a police complaint against the petitioner alleging that he has encroached the property, wherein, he has not made any allegation that the petitioner has abused him mentioning his caste name. In which, enquiry has been conducted and the same has been closed as mistake of fact. The petitioner herein has filed a suit for bare injunction against the first respondent herein before the Principal District Munsif Court in O.S.No.234 of 2015 and also obtained an order of interim injunction restraining the first respondent from interfering with the peaceful possession and enjoyment of their property and the said order is still in force and the suit is still pending. Only thereafter, the present complaint has been filed for the very same occurrence making a false allegation as if the petitioner has abused him by calling his caste name. The learned Sessions Judge, without applying his mind in the complaint, has mechanically, directed the Deputy Superintendent of Police to conduct enquiry and file a report before this Court. According to the learned counsel, before passing order, the learned Sessions Judge did not look into the earlier complaint filed by the complainant and passed an order mechanically and in total non application of mind. Hence, the order is liable to be dismissed.

4. Per contra, the learned counsel appearing for the first respondent submitted that based on the complaint filed by the first respondent/complainant under Section 200 Cr.P.C., the learned Sessions Judge directed 2nd respondent police to investigate the matter and only based on the report submitted by the police, the learned Judge has to decide the issue as to whether to take cognizance or not. Hence, this petition has been filed at the pre-matured stage and hence, this criminal Original Petition is not maintainable.

5. This Court considered the submissions made on either side and perused the materials available on records carefully.

6. The complaint has been filed including for the offence under SC/ST Act on the ground that the petitioner has abused the complainant by calling his caste name. The Judicial Magistrate, on receipt of the complaint, thought it fit to send the



complaint to the Deputy Superintendent of Police, who is empowered to conduct the investigation under SC/ST Act, and directed him to investigate the matter, and file a report before the Court to decide whether or not there is sufficient ground to proceeding further, which is permissible under Section 202 of Cr.P.C. As rightly contended by the learned counsel for the first respondent, only after receipt of the report from the 2nd respondent police, the Sessions Judge will decide the issue on merits, i.e., either to take cognizance or dismiss the complaint under Section 203 Cr.P.C, at this stage, this Court cannot interfere with the order passed by the Court below.

7. Today, the Deputy Superintendent of Police is present before this Court and submitted that they have recorded the statement of many witnesses and since there is a stay in this matter, they are not in a position to file a final report and he undertakes to file final report within 2 months.

8. Considering the above circumstances, the Deputy Superintendent of Police, Gingee, is directed to proceed with the investigation and file a report within a period of two months from the date of receipt of a copy of this order. Thereafter, the Special Court for exclusive trial of cases registered under SC/ST (POA) Act, Villupuram is directed to consider the entire materials and take a decision on merits, either to take cognizance or not.

9. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sessions Judge,
Special Court for exclusive trial of cases
registered under SC/ST (POA) Act,
Villupuram.
2. The Deputy Superintendent of Police,
Gingee Taluk,
Gingee, Villupuram District



3. The Public Prosecutor,
High Court, Madras.

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+1cc to Mr. S. Sathiachandran, Advocate, S.R.No.68472

Crl.O.P.No.16531 of 2016 and
Crl.M.P.No.8014 of 2016

SJ(CO)
CT 12/01/2022