



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.11.2021

Coram:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.No. 23222 of 2016

Crl.MP.No.10853 of 2016

S.E.Thangavel Nadar

...Petitioner

Vs.

1.The Inspector of Police,
J.6, Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai-41
Crime No. 372 of 2015

2.The Asst. Commissioner of Police,
Taramani Range, Chennai

3.Saravanan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet filed in S.C.No. 284 of 2016 on the file of Principal Sessions Judge, City Civil Court, Chennai and quash the proceedings.

For Petitioner : Mr.S.Jaganathan

For Respondents : Mr.C.E.Pratap
Government Advocate (R1 & R2)
Ms.J.Prithivi,
Legal Aid Counsel for R3

O R D E R

The present criminal original petition is filed to call for and quash charge sheet filed in S.C.No.284 of 2016 on the file of Principal Sessions Judge, City Civil Court, Chennai.

2. The 3rd respondent/de facto complainant, claiming to be a builder has given a compliant against the petitioner on



23.01.2015, before the respondent police alleging that, the de facto complainant along with one Rajith were engaged in constructing a building in Bharathiyar 4th Street, Thiruvannamiyur, Chennai. On 20.12.2013, at about 06.30 p.m, all the accused had come there and abused him by calling the caste name. Based on the complaint, the respondent police registered an F.I.R. under Section 3 (1) (X) of SC & ST (Prevention of Atrocities Act 1989) Act (for brevity 'SC/ST Act') and after investigation, final report was filed before the Principal District Court, Chennai, and the Court took cognizance, and issued summons. To quash the same the present petition has been filed.

3. Learned counsel appearing for the petitioner would submit that, the de facto complainant is a stranger to the petitioner, and he was not engaged in any building construction. According to him, there is a civil dispute between the petitioner/accused and the owner of the property in the abovementioned address and three civil suites are pending between the parties. In the meantime, the owner of the property has entered into a joint venture agreement with one Rajith to promote a residential apartment therein. The de facto complainant, claiming to be an associate of the promoter namely, Rajith has given a false complaint at the instigation of the land owner. Learned counsel for the petitioner would further state that, the de facto complainant is only an auto driver and has nothing to do with the construction of the building along with Rajith. He further states that absolutely there is no material available on record to show that he has jointly promoting the apartment with said Rajith. Even the statement of the Rajith was not recorded by the respondents to show that the de facto complainant was his partner. That apart, even though the occurrence said to have took place on 22.12.2013, the complaint was given only on 23.01.2015 after more than thirteen months, the delay also not properly explained.

4. The learned counsel further submit that, the occurrence said to have taken place in a common pathway lying between the petitioner's house and the disputed house, and not taken in the public view. Hence, the provisions of the SC/ST Act would not attract.

5. Only on the investigation of the land owner a false complaint has been filed which is in total abuse of process of law and is liable to be set aside. Learned counsel would further submit that, the de facto complainant is totally a stranger to the petitioner and the petitioner was unaware of his community and hence there is no intention on the part of the petitioner to abuse him by calling his caste name.



6. Even though a notice was served on the third respondent/de facto complainant, and his name printed in the cause list, none appeared for him. Hence Ms.J. Prithivi was appointed as legal aid counsel to represent the third respondent.

7. Learned legal aid counsel would contend that, the de facto complainant and Rajith were jointly promoting a residential apartment where, the petitioner has intentionally abused the complainant calling him by his caste name. Apart from de facto complainant two other witnesses were present and they have also given the statement during investigation. That apart, the delay in filing the F.I.R. has been explained by the de facto complaint that, after approaching various authority, finally the complaint has been given by him to the respondent, and whether the delay in filing complaint is fatal or not is to be decided in trial. The learned counsel further submit that, the material available on record clearly make out a case against the petitioner under the SC/ST Act, and on due application of mind the Court has taken cognizance. All the issues raised by the petitioner can only be decided in the trial and it cannot be decided in the present petition.

8. I have considered rival submissions and perused the material. The occurrence said to have taken place on 20.12.2013, for which the complaint has been filed on 23.01.2015, after nearly thirteen months after the occurrence. It is the case of the de facto complainant that he along with one Rajith jointly promoting apartment in the disputed area. But according to the petitioner he is only an auto driver and has nothing to do with the construction of apartment. There is no material available on record to show that the de facto complainant is a partner of Rajith, and the Statement of the Rajith was also not recorded during the investigation by the respondent police. Hence it is doubtful, whether the de facto complainant is a partner of Rajith and promoting the apartment. As rightly contended by the counsel for the petitioner, there is no material available to show that the petitioner already known to the de facto complainant and was aware of his community and intentionally abused him by calling his caste name in order to humiliate him. Even though the delay in filing complaint normally is not a ground to quash a criminal case, in the instant case, in the absence of any plausible explanation for not lodging the complaint for more than thirteen months, which coupled with other circumstances, this Court is of the view that, the criminal case is nothing but an abuse of process of law with a view to harass the petitioner, and it is liable to be quashed.



9. In the result, this Criminal Original Petition is allowed and the complaint under S.C.No.284 of 2016 on the file of the Principal Sessions Judge, City Civil Court, Chennai is set aside. Connected Miscellaneous Petition is also closed.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
City Civil Court, Chennai
- 2.The Asst. Commissioner of Police,
Taramani Range, Chennai.
- 3.The Inspector of Police,
J.6, Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai-41
Crime No. 372 of 2015.
- 4.The Public Prosecutor,
High Court, Madras-104.

+lcc to Ms.J.Prithivi, Advocate SR. No.60749

Crl.O.P.No. 23222 of 2016
Crl.MP.No.10853 of 2016

GPL (CO)
PR (16/12/2021)