

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.6320 of 2021 and
Crl.M.P.Nos.4190 & 4192 of 2021

1.Zakeer Hussion
2.Ajmeer Kaja
3.Azaruthin ... Petitioners/A1 to A3

Versus

1.State Rep by,
Deputy Superintendent of Police,
Conoor Sub-Division, Nilgiris.
2.The Inspector of Police,
Kothagiri Police Station,
Cr.No.451 of 2020. ... Respondents 1& 2/Claimants
3.Sivakumar ... 3rd Respondents/Defacto Complaint

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with Special S.C.No.1 of 2021 on the file of District Judge cum Chief Judicial Magistrate, Nilgiris and quash the same.

For Petitioners : Mr.Sivakumar for
Mr.V.Chinnasamy

For Respondents 1 & 2: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

The petitioners/accused, who are facing trial in Special S.C.No.1 of 2021, for offence under Sections 3(1)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 109 and 34 IPC before the learned District Judge cum Chief Judicial Magistrate, Nilgiris, have filed the present Quash Petition.

2.The contention of the petitioners is that the petitioners and the 3rd respondent/defacto complaint hail from same village and the community of the 3rd respondent is known to the petitioners and hence, there is no reason for the petitioners to call him by his caste name in public. Since

the petitioners 2 and 3 are the sons of the 1st petitioner, they are falsely implicated in this case. It is the case of the 3rd respondent that the 1st petitioner alone used abusive words and assaulted him and as regards that 2nd and 3rd petitioners, they were only present in the scene of occurrence and no specific overtact against them. The learned counsel further submitted that without any material and without any oral or documentary evidence, the trial Court took cognizance on the basis of the final report filed by the 1st respondent and no prima facie made out against the petitioners. Hence, the charges levelled against the petitioners are to be quashed.

3.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that in this case LW1/3rd respondent and LW2 are the injured witnesses. Further, there are eye witnesses to the occurrence, who are all witnessed the assault and the prohibitory words used by the petitioners in the public. During the occurrence, the petitioners called the 3rd respondent by using his caste name, which would clearly attract the provisions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Immediately after the occurrence, the injured were admitted in the Government Hospital, Kothagiri and the Doctor, Sowmya gave treatment for them and issued the Accident Register to that effect. On receipt of the complaint, the 1st respondent Police visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch, examined the witnesses present in the scene of occurrence, recorded the statement of the witnesses and filed the charge sheet.

4.The learned Additional Public Prosecutor further submitted that the statement of the witnesses are in conformity to the case of the prosecution. The trial Court on satisfying with the materials produced took cognizance of the offence and issued summons to the petitioners. Immediately thereafter, the petitioners have rushed to this Court and filed the above petition to stall the trial and hence, the same cannot be entertained. During trial, the prosecution witnesses would be produced then and there and there would be no delay on the part of the prosecution. Hence, he prays for dismissal of the above Criminal Original Petition and seeks direction for completion of the trial.

5.This Court has considered the rival submissions and perused the materials available on record.

6.A perusal of the charge sheet filed by the prosecution, there are prima facie materials to proceed the case against the petitioners and the points raised by the petitioners are factual in nature which have to be decided only during the trial and this Court cannot go into the same in exercise of its jurisdiction under Section 482 of Cr.P.C. It is left open to the petitioner to raise these grounds before the trial

Court and the trial Court shall consider the same on its own merits and in accordance with law.

7. At this stage, the learned counsel for the petitioners seeks dispensed with of the petitioners before the trial Court and the petitioners may be permitted to appear before the trial Court as and when required.

8. On the plea of the learned counsel for the petitioners, it is made clear that the petitioners are to file a petition under Section 317 Cr.P.C., before the trial Court and also affidavit stating that they would not dispute their identity during the trial; cooperate with the trial; cross examine the witnesses then and there without seeking any unnecessary adjournments and they would not be cause for delay of the trial. The trial Court is to consider the petition under Section 317 Cr.P.C., liberally if any filed. If the above undertaking is not followed by the petitioners, the trial Court is directed to take coercive action against the petitioners including the cancellation of bail and also directed to completed the trial as expeditiously as possible.

9. In the result, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The District Judge cum Chief Judicial Magistrate Court,
Nilgiris
2. The Deputy Superintendent of Police,
Conoor Sub-Division,
Nilgiris.
3. The Inspector of Police,
Kothagiri Police Station.
4. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.6320 of 2021

KJ (CO)

<https://hcservices.courts.gov.in/hcservices/>

GMI (04/06/2021)