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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CrI.O.P.No.14230 of 2019
and
CrI.M.P.No.6900 of 2019

K.Murali

... Petitioner

Vs.

1. State

Assistant Commissioner of Police,
Meenambakkam Range,
Chennai - 600 027.
Cr.No.360 of 2017.

2. A.G.Vimalraja Sekaran

...Respondents

Prayer: The Criminal Original Petition filed under Section 482 of Cr.P.C., to call for records in charge sheet in S.C.No.133 of 2018 on the file of Principal District and Sessions Judge, Chengalpattu, quash the proceedings as against the petitioner for offences under Section 3(1)(r)(s), The Scheduled Castes & The Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act").

For Petitioner : Mr.A.Ramesh Senior counsel
For Mr.B.A.Sujay Prasanna

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1

: No appearance for R2

O R D E R

The petitioner has filed this petition seeking to quash the proceedings in S.C.No.133 of 2018 on the file of Principal District and Sessions Judge, Chengalpattu, which was registered based upon the complaint given by the informant/R2, by invoking the provisions of The SC/ST Act.

2. The petitioner seeks to quash the proceedings pending against him on the following grounds:-



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- (i) No offence made out as against the petitioner
- (ii) No sanction for prosecution
- (iii) Ulterior motive to wreck vengeance
- (iv) Inherently improbable prosecution
- (v) Delay in lodging FIR

3. The brief facts of the case are as follows:-

The petitioner herein was working as Assistant General Manager in Air India Limited, Chennai and the informant/second respondent herein was working as Senior Manager (Flight Despatch) in Air India, Chennai (as a sub - ordinate to the petitioner). The Petitioner as AGM of the same section was duty bound to prepare, public maintain roaster of the sub-ordinate to delegate the work. It is a vital section and needs to be manned 24 x7 all 365 days on man-to-man replacement basis. Non-availability of technically qualified officers will affect flight services. The misunderstanding crept in between the informant and the petitioner due frequent non-adhering of the published roaster duty and non-cooperation with the Section by the informant. The informant availed unauthorized/unplanned leave/absented, thereby causing inconvenience not only to the petitioner but also to other officers working in the same Section, causing disruption to the office, due to which, the informant in the habit of frequently reporting sick over telephone and making himself unavailable for duty, more so unilaterally i.e., by merely informing the staff of Movement Control/Flight Despatch section, without any prior sanction from the Section of the department on various dates, having note of the above, the department initiated disciplinary proceedings against the informant/second respondent, and through charge sheet dated 14.11.2017 framed five charges. In order to wreck vengeance, immediately the informant has foisted this false case against the petitioner.

4. In addition to the above, the informant is habitually abusing the process of law by preferring false complaint against various other authorities, under SC/ST Act, namely, Capt, S.Velraj (General Manager - Operations), Shri K.Subramanian (AGM Administration), Mr.Balaji (Senior Manager - Personnel), Mr.Anand Stephen, (AGM), and various others, including General Manager (Personnel) also is a member of SC/ST Liaison Officer, General Manager (Commercial), Vigilance Head Southern Region. As per the complaint given by the informant, FIR was registered bearing Crime No.360 of 2017 dated 20.11.2017 for offence under Section 3(1)(r), SC/ST Act against the petitioner herein for an occurrence said to taken place on 06.11.2017. After the completion of investigation, charge sheet was filed on 24.07.2018 against the petitioner for the offence under Section 3(1)(r)(s) of The SC/ST Act.



5. Notice was issued to the second respondent/informant. In spite of receipt, he has not appeared either himself or through his counsel. The learned Additional Public Prosecutor appeared for the first respondent.

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6. Contending that no offence was made out against the petitioner, the learned counsel would submit that the trial Judge took cognizance of the offence and framed charges on 11.12.2018 for offences under Sec.3(1)(r)(s), SC/ST Act. As per the charges, the petitioner while working as the AGM and Supervisory officer of the informant on 06.11.2017, he abused the informant by mentioning his caste name in the office corridor,

”.....என்று கூறி அவரை அவமானப்படுத்துவார் என்றும், இதையெல்லாம் பொறுத்துக்கொள்ள முடியாமல் இம்மாதம் 6ம் தேதி மதியம் சுமார் 01.40 PM மணியளவில் அலுவலக தாழ்வாரத்தில் அவரை பார்த்த போது ஏன் சார் எனக்கு பிரச்சனைக்கு மேல் பிரச்சனை கொடுக்கிறீர்கள் என்று....”

7. The contention of petitioner is that the informant was not abused by him on that day and no such alleged occurrence happened on 06.11.2017. On the other hand, the informant is in the habit of abusing the petitioner and other employees in the office by sending emails to higher officials as if they were abused him by mentioning his caste name. The learned counsel for the petitioner would submit that there is no offence made out as against the petitioner. The ingredients required to constitute an offence under Sec 3(1)(r), SC/ST Act are as follows:-

- (i) The victim should be a member of SC/ST Community.
- (ii) The offender should not belong to a SC/ST Community.
- (iii) Intentionally insults or intimidates with an intent to humiliate a member of SC/ST/
- (iv) The above act must be within public view,

8. The ingredients required to constitute an offence under Sec 3(1)(s), SC/ST Act are as follows:-

- (i) The victim should be a member of SC/ST Community;
- (ii) The offender should not belong to a SC/ST Community;
- (iii) The offender should have abused the victim by the caste name; and
- (iv) That abuse should have been in a place within public view.

9. Relying the above provisions of law, the learned counsel for the petitioner submits that in order to prosecute under Section 3(1)(r)(s) there must be Insulted intimidation with an intention to cause harassment to the member of the SC/ST and the same must be committed within 'public view'. however,



the learned counsel pointed out that the alleged occurrence was said to have taken place in the office corridor during office hours.

10. But as required under the relevant provision, the offence must have been committed within public view; which means the offence must be witnessed by any member of the public. To that effect the allegation made in the FIR are as follows:-

அலுவலகத்தில் தரக்குறைவாக அவருடைய Birth Status யை குறிக்கும் விதத்தில் லாழ்ப்புணர்ச்சியின் காரணமாக பலமுறை. - ---- -, என்று கூறி அவர் அவமானப்படுத்துவார் என்றும், இதையெல்லாம் பொறுத்துக்கொள்ள முடியாமல் இம்மாதம் 6ம் தேதி மதியம் சுமார் 01.40 PM மணியளவில் அலுவலக தாழ்வாரத்தில் அவரை பார்த்த போது ஏன் சார் எனக்கு பிரச்சனைக்கு மேல் பிரச்சனை கொடுக்கிறீர்கள் என்று கேட்டதாகவும், அதற்கு திரு.முரளி AGM - - - - - பதில் சொல்லினும்னு அவசியம் இல்லை என கூறி வேகமாக சென்று விட்டதாகவும்-----

11. Therefore, neither in the complaint preferred nor the FIR registered, nor the charge framed states in whose presence/view the alleged act has taken place. On a perusal of the records, it is seen that the informant has not mentioned any of the member of the public who said to have witnessed the alleged occurrence said to have taken place on 06.11.2017.

12. But the learned Additional Public Prosecutor submitted that after completion of the investigation one Ashokkumar was shown as one of the eye-witnesses. Admittedly, the said Ashok kumar is a co-worker and he is not a member of the public. Furthermore, as per the statement recorded under Section 164(5) of Cr.P.C. given before the Judicial Magistrate, the said Ashok Kumar has deposed that for the past one year, there was dispute between the officers and the second respondent/informant with regard to availing of leave in the office and except that he has not deposed about the alleged abused made by the petitioner.

13. Summing of all these facts, the learned counsel submits that the alleged occurrence was not witnessed by any of the public. Since the main ingredients of the provision that the insult should have been made before public has not been made out and therefore, offence under Section 3(1)(r)(s) is not attracted as submitted by the petitioner.

14. In support of his contentions, the learned counsel relied on the proposition laid down in Gorige Pentaiah vs, State of Andhra Pradesh and Others. The relevant paragraph of this judgment is as under:

''6. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to



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have alleged that the appellant -accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent) 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.''

15. Furthermore, the alleged witness also belongs to informant community and no other individual witnesses are shown by the prosecution to prove the said incident. It is an admitted fact that the petitioner is the AGM, working in Air India Limited. Chennai and he is a public servant as defined under Section 21 IPC and if the petitioner is alleged to have committed the offence in discharge of official duty by misusing his position, then obtaining sanction is necessary to prosecute him under the provisions of The SC/ST Act.

16. The learned counsel then submitted that abuse means, to misuse the position. The charges levelled against the petitioner is that on 06.11.2017 in the office corridor, he abused the second respondent with intention to humiliate him by mentioning his caste name. It reveals that alleged occurrence took place during office hours while he was discharging his official duty. Moreover the entire allegations against this petitioner is that he abused his official position and harassed the second respondent/informant. Therefore, obtaining prior approval for proceedings against the petitioner is necessary for the reason that the alleged occurrence is said to be happened in the office corridor, during office hours. That apart, he was public servant. Assuming that the alleged occurrence is true, thus, prior sanction is necessary under Section 197 Cr.P.C.

17. In support of his contention, the learned counsel relied on the Judgment in N.K.Ganguly vs. Central Bureau of Investigation, New Delhi 2016 (2) SCC 143. The relevant paragraph is extracted here under:-

'Criminal Procedure Code, 1973 ---S.197 Prosecution of public Servants --- Previous sanction from appropriate Government---Essentials of --- Nexus with discharge of public duty ---Examination and Determination of ----



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Prosecution for offences under S.120-B IPC r/w Ss.13(1) (d) and (2), Prevention of Corruption Act, 1988--- Cognizance taken and summons issued to accused public servants --- Allegations in police report showing that alleged offences committed in discharge of official duty i.e., the necessary nexus--- Absence of previous sanction ---Proceedings quashed.''

18. The learned counsel also submits that with an ulterior motive to wreck vengeance against the petitioner, a false case has been given. The informant wanted to avail unauthorized leave and the same resulted in disciplinary proceeding against the informant. The facts reveal that a misunderstanding arose between the petitioner and the second respondent/informant due to frequent unauthorized/unplanned leave/absent availed by the second respondent, thereby causing disruption in the office. Furthermore, the second respondent/informant was in the habit of frequently reporting sick over telephone and making himself unavailable for duty without any prior sanction from the department. Taking note of the habit of the second respondent, the department issued disciplinary proceedings against him by serving him a charge sheet, dated 14.11.2017, by framing five charges. The learned counsel for the petitioner submits that in order to wreck vengeance immediately, the second respondent/informant gave a complaint before the police on 10.11.2017 stating that he was abused in the office corridor on 06.11.2017 by this petitioner.

19. The learned counsel for the petitioner also produced the materials with regard to disciplinary proceedings initiated against the second respondent/informant, a charge No.5 states that it was alleged that the second respondent in the habit of levelling baseless and frivolous allegations against the superiors and other employees. Taking note of the above habit of the second respondent, the department initiated disciplinary proceedings. The second respondent/informant was subsequently removed from service. It is also observed that nearly about 120 letters/emails were sent to senior officials/outside authorities alleging caste-based discrimination and personal bias by supervisors, peers, subordinates, and lot of administrative machinery of the company is wasted in the process.

19 (a) Emphasized ratio laid down Judgment in Union of India vs. State of Maharashtra & Ors (2020) 4 SCC 761, reviewed the directions issued by this Court and held that if there is a false and unsubstantiated FIR, the proceedings under Section 482 of the Code can be invoked. The Court held as under:-

'52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may



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misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 CrPC.''

20. The learned counsel also pointed out that there was a delay in lodging FIR, and the same is an unexplained delay, as per complaint alleged occurrence said to have taken on 06.11.2017 but the complaint was given only on 10.11.2017 but FIR was registered on 20.11.2017.

20 (a) . To support of his contentions, the learned counsel relied on the decision in Kishan Singh (dead) through Lrs vs. Gurpal Singh and others in (2010) 8 SCC 775. The Hon'ble Supreme Court has held as follows

'Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the Fir does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal.''

21. Interference by the High Court in exercise of its jurisdiction under Section 482 CrPC can be made only where a clear case for such interference is made out. The Ratio laid down in M.N.Ojha and Ors vs.Alok Kumar Srivastav and Another (2009) 9 SCC 682 is extracted hereunder

'Interference by the High Court in exercise of its jurisdiction under Section 482 CrPC can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the



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preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time, the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair and minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.''

22. The learned Additional Public Prosecutor would submit that 17 witnesses were examined and charge sheet was filed as there was a prima facie material found against the petitioner. Hence, the proceedings need not be quashed.

23. By way of reply, the learned counsel for the petitioner submits that the provisions of the Act should not be abused or used as a weapon to threaten against other community people by giving false complaint, relying on the ratio laid down in State of Haryana vs. Bhajanlal case 1992 SCC (Cri) 426. The Hon'ble Supreme Court has explained the scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power. The relevant observation is as under.

''(i) where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegation made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where the allegations in the FIR do not constitute a cognizable offence but constitute



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only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code,

(v) Where the allegations made in the FIR or complaint are so absurd and inherently on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the instituting and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievances of the aggrieved party.

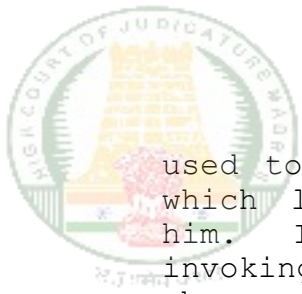
(vii) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

24. It is permissible to look into the materials to assess what the co complainant has alleged and whether any offence is made out, even if the allegations are accepted in toto. There is lacunae on the side of the prosecution with regard to obtain sanction before initiated the proceedings against the petitioner, as he was a public servant of Air India Limited and the enormous delay in lodging FIR also fatal.

25. In R.P.Kapur vs State of Punjab, the Hon'ble Supreme Court has enumerated categories of cases where the inherent power can and should be exercised to quash the proceedings. The Hon'ble Supreme Court stated

'where it manifestly appears that there is a legal bar against the institution or continuance e.g. Want of sanction (R.P.Kabir vs state of Punjab).'

26. On careful scrutiny of entire materials on record, this Court concludes that the complaint of the informant (R2) against this petitioner that he abused him with intention to humiliate by mentioning his caste name in the office corridor is false and mala fide one, The petitioner also able to establish that the defacto complainant/second respondent is in habit of giving such false complaint against the higher officials pertinent to mention that more than 120 letters/emails were sent to senior officials/outside authorities alleged caste-based discrimination against the officials of Air India Limited. Apart from that he is the person of habitually absente and he



used to take leave without prior intimation to the authorities which leads to initiate the disciplinary proceedings against him. Immediately, he lodged a FIR against this petitioner by invoking the provisions of SC/ST Act. It is a clear case of abuse of process of law. Hence, this case in hand, fit in with category (7) of State of Haryana vs. Bhajanlal 1992 SCC (Cri) 426, accordingly, this Court is inclined to quash complaint in S.C.No.133 of 2018 exercised power under Section 482 of Cr.P.C, to prevent the abuse of process of law and secure the ends of justice.

27. Accordingly, this Criminal Original Petition is allowed and the charge sheet in S.C.No.133 of 2018 lying on the file of the Principal District and Sessions Judge, Chengalpattu, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Chengalpattu.

2.The Assistant Commissioner of Police,
Meenambakkam Range,
Chennai - 600 027.

3.The Public Prosecutor
High Court of Madras.

+3cc to M/s.B.A.Sujai Prasanna, Advocate, S.R.No.64191

Crl.O.P.No.14230 of 2019
and
Crl.M.P.No.6900 of 2019

PMK (CO)
KM(21/04/2022)