

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.20070 of 2020

and

CRL.M.P.Nos.8318 and 8320 of 2020

R.S.Bharathi

...Petitioner/Accused

Vs.

1.The State rep.by

Assistant Commissioner of Police,
Central Crime Branch,
Bank Fraud Investigation,
Vepery, Chennai-600 007.

... Respondent/Complainant

2.Kalyana Sundaram

...Respondent/De-facto complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to quash the final report filed in Spl.C.C.No.1 of 2020 before the Special Court No.1 for trial of Criminal Cases related to MP's and MLA of Tamil Nadu, Chennai.

For Petitioner : Mr.R.Shanmugasundaram
Senior Counsel

For R1 : Mr.A.Natarajan
Public Prosecutor
Assisted by Mr.M.Md.Muzammil

For R2 : Mr.V.Raghavachari

ORDER

This Criminal Original Petition has been filed to quash the proceedings against the petitioner in C.C.No.1 of 2020 on the file of the Special Court No.1 for Trial of Criminal Cases related to MP's and MLA of Tamil Nadu, Chennai.

2. The brief facts leading to the filing of the charge sheet, are as follows:-

Pursuant to the FIR dated 12.03.2020 registered by the Assistant Commissioner of Police, Teynampet Police Station, the petitioner was charged for the offence under Sections 3(1)(u) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as 'the Act'). It is the allegation of the prosecution that the petitioner belonging to Dravidian Progressive Federation (DMK), political party and a well known leader, on 15.02.2020 had organized an event namely, Kalaignar Vaasagar Vattaram. In the said function, the accused and the

other leaders of the party had addressed the audience of more than 100 numbers consisting of party member, media and general public. The accused made disrespectful remarks on the members of oppressed class stating that the appointment of Hon'ble MR.JUSTICE A.Varadharajan, who belongs to lower caste, and other 7 or 8 appointments of lower caste judges of High Court, were at the alms rendered by the former Chief Minister of Tamil Nadu. Besides, he has also made a statement that even one single harijan was not made as High Court judge in Mathyapradhesh, however, in Tamil Nadu 7 or 8 members of the Schedule Caste were made as High Court Judges by the alms rendered by the Dravidian Progressive Federation. Based on the FIR lodged by one Kalyana Sundaram, investigation was conducted and final report has been laid by the Deputy Superintendent of Police for the offence under Sections 3(1)(u) and 3(1)(v) of the Act.

3. The prosecution has examined as many as 30 witnesses and recorded their statements and final report has been taken on file in C.C.No.1 of 2020. To quash the said proceedings, this petition has been filed.

3. The learned Senior Counsel appearing for the petitioner mainly contended that there is an inordinate delay in filing the complaint and such delay is with mala fide intention. The Defacto complainant selectively extracts few lines from the speech of the petitioner. Further, the entire materials collected by the prosecution would not prove the offence under Sections 3(1)(u) and 3(1)(v) of the Act and the entire prosecution has been made due to political animosity with an mala fide intention, since the petitioner belongs to different political party. The petitioner has simply thought to give credit for the appointment of Judges among the members of the Scheduled Caste. His remarks were not intended to disrespect the Hon'ble Retired Mr.Justice A.Varadharajan or any other Hon'ble Judges. Hence, the speech of the petitioner should not be construed to mean that he has insulted or humiliated other Judges of the Schedule Caste or the members of the Scheduled Caste. Hence, it is the contention that the petitioner being a Member of Parliament and also a leader of Dravidian Progressive Federation, he did not commit any such offence. Hence, prayed for quashing of the FIR.

4. In respect of his submission, he placed reliance on the judgment of the Hon'ble Apex court in Hitesh Varma Vs. The State of Uttarakhand and another [Criminal Appeal No.707 of 2020] .

5. The learned Public Prosecutor appearing for the first respondent submitted that the entire speech of the petitioner not only disrespects the Judges from the Scheduled Caste and Scheduled Tribes, but also insulted the other members of the Scheduled Caste. His entire allegations when read together, the same lead to the conclusion that the accused has intended to

mean that Scheduled Caste members have no merit to hold higher posts. Hence, it is the contention that the prosecution has examined 30 witnesses and collected several materials to prove the charge. Hence, as a matter of right, the charge sheet filed as against the petitioner cannot be quashed.

6. The learned counsel appearing for the defacto complainant / second respondent would submit that the petitioner, being a political leader, had spoken ill not only against the Scheduled Caste but also the Upper Caste. His entire speech is in the way of dividing the people and creating disharmony in the society. If such speeches are taken lightly at the realm of freedom of speech, the same will create hatred among the members of the Scheduled Caste and the general public. Hence, it is the contention that the entire allegations and the materials collected by the prosecution show that this is the case, where the petitioner has to go for trial. Hence, prayed for dismissal of this petition.

7. It is well settled law that the power of quashing of a criminal proceedings should be exercised sparingly, with circumspection and in rarest of rare cases. The court, is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation.

8. The Hon'ble Supreme Court in the case of State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335], has held as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercising of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(1) 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;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(3) where the uncontroverted allegations 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;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute 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;

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

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

(7) where a criminal proceeding is manifestly attended with mala fide 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."

9. Similarly, it is also well settled that while exercising the power under Section 482 Cr.P.C., the Court is not expected to express any views on merits related to the realm of appreciation of evidence to decide the credibility of the case put forward.

10. When the allegations put against the accused carefully perused, the remarks made by the accused prima facie show that he has remarked that the people, except in Tamil Nadu, are idiots. He has also stated that till now, no one from the Schedule Caste become Judge of the High Court of Madhyapradesh. Only the leader Karunanithi, made Mr.Varadharajan, who belongs to Schedule Caste as Judge of High Court of Madras. Similarly, 7 or 8 Judges from the Scheduled Caste were also appointed at the alms rendered by the Dravidian Progressive Federation. The statements prima facie indicate the allegations targeted against Scheduled Caste. This Court restrains itself from expressing any views as to whether such utterance attracts the offence or not.

11. The allegations prima facie show that such statement leads inference as if except the alms rendered by the Dravidian Progressive Federation, the members from Scheduled Caste would not have been become a Judge of the High Court. It is nothing but an humiliation and insult to the oppressed community. The entire statements made by the person are not in good taste. Intellectual debates have been forgotten by the so called leaders. On the other hand, under the guise of freedom guaranteed under the Constitution, the persons claiming to be public leaders spitting venom against opponents. It has become routine affairs. Such debate is not good for the society or the younger generation. The leaders are required to engage with an intellectual debate and not on personal grudge.

12. Be that as it may, the prosecution has also examined as many as 30 witnesses and collected several documents also. With the available materials, whether the offence is made out or not, could be seen only after the appreciation of entire evidence and it is the domain of the trial Court to test the credibility of the case put forward by the prosecution. It is submitted by the learned Senior Counsel appearing for the petitioner that the offence under Sections 3(1)(u) and 3(1)(v) of the Act have not been attracted. It is to be noted that the Investigating Officer has collected several materials. The fact that whether the offence is attracted or not has to be decided at the stage of trial and not at this stage. It is the wisdom of the trial Court to apply its mind to frame charges for the relevant sections on the basis of the available materials in the form of final report and other documents relied by the prosecution, even though some of the offence under other has not been included in the charge sheet. Therefore, this Court at this stage, is not making any enquiry so as to find out whether the materials collected will fit into the ingredients of the sections charged against the accused.

13. As far as the judgment relied upon by the learned Senior Counsel appearing for the petitioner in the case of Hitesh Verma vs. The State of Uttarakhand and another [Criminal Appeal No.707 of 2020], is concerned, in paragraph Nos.10 and 18, the Hon'ble Supreme Court has held as follows:

"...10. The Act was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act. The Act is thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community.

.....18. Therefore, offence under the Act is not

established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

14. The facts in the present case is totally different from the above cases. Herein, remarks have been made in public view and not only against the persons holding high posts but also some other retired Judges stating that they have become judges only at the alms rendered by the Dravidian Progressive Federation, which prima facie insult and humiliate such people. Therefore, this Court is of the view that it is not a fit case to exercise the power under Section 482 Cr.P.C., to quash the proceedings. Accordingly, this Criminal Original Petition is dismissed. The trial Court shall strictly follow the provisions under Section 309 of the Code of Criminal Procedure and the guidelines given by the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab [2015 (1) MLJ (crl) 288] and complete the trial on day-to-day basis expeditiously without any further delay. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Special Court No.1 for
Trial of Criminal Cases related to MP's and MLA of
Tamilnadu, Chennai.

2.The Assistant Commissioner of Police,
Central Crime Branch,
Bank Fraud Investigation,
Vepery, Chennai-600 007.

CRL.O.P.No.20070 of 2020

SS (CO)
GN(24/03/2021)