

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.936 of 2017
and
Crl.M.P Nos.680 & 681 of 2017

Senthil @ Senthil Kumar ...Petitioner

Vs

1.State of Tamil Nadu rep.by
The Inspector of Police
Udumalpet Police Station
Udumalpet.

2.M.Murugan ...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Charges in PRC No.26 of 2016 on the file of the Judicial Magistrate No.I, Udumalpet in Crime No.438 of 2016 on the file of the 1st Respondent police and quash the same.

For Petitioner : Mr.A.R.Karthik Lakshmanan for
M/s.A.L.Ganthimathi

For Respondents : Mr.M.Mohamed Riyaz for R1
Additional Public Prosecutor
No Appearance for R2

O R D E R

This Criminal Original Petition has been filed to quash the proceedings pending before the Court below in P.R.C No.26 of 2016.

2. The case of the prosecution is that there was a previous enmity between the petitioner and the 2nd respondent. On 10.11.2012, at about 2.54 p.m, the petitioner is said to have made a phone call to the 2nd respondent and abused him in a filthy language and also criminally intimidated him and used his caste name and forced him to withdraw the complaint that was given by him. Based on the complaint given by the 2nd respondent, an FIR came to be registered in Crime No.438 of 2016 for an offence under Sections 294(b), 506(ii), 170 of IPC and Section 3(1) (x) of SC/ST Act.

3. The investigation went on and a final report came to be filed before the Court below and it has been taken cognizance for an offence under Sections 294(b), 506(ii) and Section 3(1)(x) of SC/ST Act.

4. The learned counsel for the petitioner submitted that even as per the complaint given by the 2nd respondent, the petitioner is said to have abused over phone at 2.54 p.m. The learned counsel submitted that this allegation by itself will not attract the offences under Sections 294(b) and Section 3(1)(x) of SC/ST Act, since the incident had not taken place in a public place. The learned counsel for the petitioner further submitted that the falsity of the complaint given by the 2nd respondent is exposed by the statement of L.W.15 who has categorically said that on verifying two mobile numbers, it was found that there was no such phone call that was received by the 2nd respondent. The learned counsel further submitted that even if the allegations are taken as it is, no offence is made out under Section 506(ii) of IPC. The learned counsel for the petitioner in order to substantiate his submission, relied upon the judgment of the Hon'ble Supreme Court in Hitesh Verma vs. The State of Uttarakhand & Another reported in CDJ 2020 SC 816.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that sufficient materials have been collected by the respondent police and the petitioner has to necessarily establish his defence only in the course of trial and there are no grounds to interfere with the proceedings at this stage.

6. The 2nd respondent has been served with notice and his name has also been printed in the cause list and there is no representation for the 2nd respondent.

7. The specific case of the 2nd respondent is that the petitioner had abused him over phone on 10.11.2012 at 2.54 p.m. Even if this allegation made by the 2nd respondent is taken as it is, it does not make out an offence either under Section 294(b) IPC nor under Section 3(1)(x) of SC/ST Act. Both the provisions will get attracted only when the words are uttered in any place within the public view. Admittedly in this case, the allegation is that the words were uttered during a phone call that is said to have been made by the petitioner to the 2nd respondent.

8. The judgement cited by the learned counsel for the petitioner will squarely apply to the facts of the present case and the relevant portions in the judgement are extracted hereunder:

11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act No.1 of 2016 w.e.f 26.1.2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

"3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view".

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view".

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil Court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that the respondent No.2 is member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgement reported as Swaran Singh & Ors. vs. State through Standing Counsel & Ors., (2008) 8 SCC 435. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be place within the public view. On

the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies".

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaram Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

9. As rightly pointed out by the learned counsel for the petitioner, except for the ipse dixit for the 2nd

respondent, there is absolutely no other material to show that there was in fact a phone call that was made by the petitioner to the 2nd respondent. The statement of L.W.15 makes it very clear that the call details that were taken from two mobile numbers does not show that any such call was made on 10.11.2012 at 2.54 p.m as claimed by the 2nd respondent. Eventhough a finding is not necessary on this aspect, this Court wanted to verify as to whether there is any truth in the allegation that has been made by the 2nd respondent and finds that the allegation is totally unsubstantiated.

10. In order to attract the offence under Section 506(ii) IPC, it is not enough if there is an empty threat unless there are some materials to show that the threat is a real one. Useful reference can be made to the judgement of the Hon'ble Supreme Court in Vikram Johar versus State of Uttar Pradesh and Another, reported in (2019) 3 MLJ (Cr1) page 295.

11. In view of the above, this Court has absolutely no hesitation to interfere with the criminal proceedings pending in P.R.C No.26 of 2016 and the continuation of the proceedings will clearly amount to abuse of process of court. Accordingly, the proceedings in P.R.C No.26 of 2016 on the file of the Judicial Magistrate No.I, Udumalpet, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Udumalpet.
- 2.-Do- Thro' The Chief Judicial Magistrate,
Tiruppur.
3. The Inspector of Police
Udumalpet Police Station
Udumalpet.

4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.A.L.Ganthimathi, Advocate Sr.7378

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&
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