

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021

DELIVERED ON : 30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.No.33356 of 2019

and

Crl.M.P.No.18408 of 2019

M.Karthiga Priyadarshini .. Petitioner

Vs.

1. The State represented by its
Assistant Commissioner of Police (North Range),
Tiruppur.

2. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur.
(Crime No.658 of 2019)

3. R.Vijayakumar .. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in Spl.S.C.No.7 of 2020, on the file of the learned Principal District and Sessions Judge, Tiruppur and quash the chargesheet, in Spl.S.C.No.7 of 2020, on the file of the learned Principal District and Sessions Judge, Tiruppur.

For Petitioner : Mr.S.Anantha Narayanan
SC for Mr.H.Manivannan

For Respondents 1 & 2 : Mr.S.Karthikeyan
Addl. Public Prosecutor

For Respondent 3 : Mr.R.Sankara Subbu,
for Mr.J.Franklin

- - - - -

O R D E R

This petition has been filed seeking to quash the chargesheet in Spl.S.C.No.7 of 2020, on the file of the learned Principal District and Sessions Judge, Tiruppur.

2. By an order passed by the Hon'ble The Chief Justice dated 22.02.2020, this quash petition has been listed before this Court for hearing along with CrI.O.P.No.34420 of 2019, seeking pre-arrest bail for the petitioner.

3. Totally there are five accused and the petitioner is arrayed as A1. Earlier, based on the complaint dated 25.06.2019, given by the third respondent/defacto complainant herein, a FIR has been registered by the second respondent, in Crime No.658 of 2019, for offence under Sections 324, 294(b) and 506(ii) of IPC, against two unnamed accused.

4. The allegation in the FIR was that, the third respondent is a practicing Advocate, on 25.06.2019, at about 08.00 p.m. somebody called the third respondent and wanted to discuss with him regarding a case and asked him to come near a departmental store at Uthukuli road, Tiruppur. The third respondent also went to the said place, and two persons came there in a motorcycle, abused the third respondent in filthy language and attacked him with wooden log. When he raised alarm, they ran away from the scene of occurrence, thereafter the defacto complainant was admitted in a Government Hospital at Tiruppur, and based on his statement FIR has been registered.

5. Subsequently, on the further statement given by the defacto complainant, stating that the petitioner was a client of the third respondent/defacto complainant, and requested him to issue a legal notice to one Mr.Senthilkumar, and also paid the fees. But the third respondent failed to issue legal notice in time, feeling aggrieved, the petitioner approached A2, to attack the third respondent, and also paid Rs.20,000/- to him. Thereafter, A2 engaged A3 to A5 to complete the mission, pursuant to the same, A3 and A4 attacked the defacto complainant.

6. It is further stated that, the third respondent belongs to a Scheduled Castes community, knowing that fully well all the accused have committed the offence. Based on that statement, the FIR was altered and the petitioner was implicated for the offence under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as 'the SC / ST Act'). Thereafter the investigation was transferred to the file of the first respondent and a fresh investigation has been conducted. In the mean time, to quash the FIR, the petitioner has filed the present petition. Pending the same, investigation has been completed and final report was filed before the learned Principal

District and Sessions Judge, Tiruppur and the same was also taken cognizance and pending in Spl.S.C.No.7 of 2020. Thereafter, the petitioner filed, Crl.M.P.No.2377 of 2021, to amend the prayer to quash the criminal proceedings, which was also allowed by this Court.

7. Mr.S.Anantha Narayanan, learned senior counsel appearing for the petitioner submitted that, the allegations made in the final report do not prima facie constitute any offence against the petitioner and the allegations made therein are totally absurd, inherently improbable and the criminal proceedings has been initiated with mala fide intention with ulterior motive. Absolutely there is no material available on record to make out an offence under Section 3(2) (v) of the SC / ST Act.

8. The learned senior counsel further submitted that the petitioner was a client of the third respondent. Admittedly two unknown persons are stated to have attacked the third respondent and based on his own statement compliant has been registered against unknown persons. Subsequently, after a long time, the third respondent falsely implicating the petitioner, except the third respondent statement, there is no other material available on record to show that only on the instigation of the petitioner, the crime has been committed. Even for the offence under Section 3(2) (v) of the SC / ST Act, absolutely, there is no material to show that the petitioner has an intention to humiliate the third respondent on the ground that he belongs to a Scheduled Castes community, in such circumstance, the offence under Section 3(2) (v) of the SC / ST Act should be necessarily quashed. In support of his contentions, the learned senior counsel relied upon number of judgments, which will be referred to in the latter portion of this order.

9. Mr.R.Sankara Subu, learned counsel appearing for the third respondent submitted that the material available on record clearly indicate that the petitioner has engaged the other accused to cause injury to the third respondent, the statement of the third respondent and other witnesses clearly shows that only on her instigation, the other accused have committed the crime. Even for the offence under Section 3(2) (v) of the SC / ST Act, the statement of the third respondent clearly shows the petitioner was fully aware of the fact that the third respondent belongs to a Scheduled Castes community and with an intention to humiliate him, she has committed the offence. Hence, the materials available on record prima facie constitutes an offence for which the petitioner has been charged and there is no reason to quash the criminal proceedings.

10. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that the third respondent is a practicing Advocate and there was enmity between him and the petitioner with regard to issuance of legal notice, and the petitioner engaged the other accused and attacked him and caused serious

injuries. Materials available on record prima facie constitutes an offence and there is no reason to quash the same. He further submitted that the matter is pending for trial and at this stage criminal proceedings cannot be quashed.

11. I have considered the rival submissions.

12. The petitioner has been charged for the offences viz., Sections 294(b), 506(ii), 307, 120B of IPC and Section 3(2)(v) of the SC / ST Act. Originally the crime was registered against unknown persons. However, subsequent investigation reveals that the petitioner has engaged the third respondent, who is a practicing Advocate, to issue a legal notice and also paid his fees. Since the third respondent delayed to issue notice, there was a quarrel, due to which, the petitioner approached A2 for making arrangements to attack the third respondent, and also gave money. In turn, A2, engaged A3 to A5 to carryout the same and A3 and A4 attacked the third respondent and caused injuries. The statement of the third respondent and other witnesses prima facie shows that A3 and A4 attacked the third respondent. The statement of one Mr.Nagaraja (LW-17) would show that the petitioner only engaged A2 and asked him to murder the third respondent. The statements of other witnesses prima facie shows that, A2 engaged A3 to A5 and they have attacked the third respondent, abused him and criminally intimidated him and caused injuries. In the said circumstances, prima facie materials are available on record to implicate the petitioner for offence under Sections 294(b), 506(ii), 307 and 120B of IPC.

13. The petitioner was also charged for an offence under Section 3(2)(v) of SC and ST Act. It is the case of the prosecution that, the third respondent belongs to a Scheduled Castes community, and the petitioner belongs to Backward Classes community, knowing fully well that the third respondent belongs to the Scheduled Castes community, with an intention to humiliate him, petitioner and other accused committed the above said offence. The contention of the petitioner is that there is no material available on record to show that the petitioner knowing the fact that the third respondent belongs to Scheduled Castes and offence was committed by the accused only because the third respondent belongs to the Scheduled Castes and to humiliate him for the reason that he belongs to a Scheduled Caste. Hence the said charge is not maintainable.

14. Before considering the rival submissions, let us look into the relevant provision of the SC and ST Act. Section 3(2)(v) reads as follows:

"Section 3(2)(v): Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or

a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"

15. To attract the provision of Section 3(2)(v) of the SC and ST Act, there must be materials to show that the offence was committed against a person belonging to a Scheduled Castes community, offence must be committed under I.P.C. punishable with imprisonment for a period of 10 years or more against the person or property. Such offence should have been committed against a person or property knowing that such person is a member of a Scheduled Castes or Scheduled Tribes or such property belongs to such member. It should also be established that the offence was committed on the ground that the victim was a member of a Scheduled Caste. It is not enough to establish that the victim belongs to the Scheduled Caste and it should also be established that there is an intention on the part of the accused to commit the offence for the reason that the victim belongs to the Scheduled Castes or Scheduled Tribes community.

16. The Hon'ble Supreme Court in Dinesh alias Buddha Vs. State of Rajasthan reported in (2006) 3 SCC 771, in paragraph 15, has been held as follows:

"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine."

17. Subsequently, the above judgment has been followed in Khuman Singh Vs. State of Madhya Pradesh reported in 2019 SCC Online SC 1104. In paragraph 15 it has been held as follows:

"15.As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act is not sustainable."

18. Recently, a three Judge Bench of the Hon'ble Supreme Court in Hitesh Verma Vs. State of Uttarakhand reported in (2020) 10 SCC 710, it has been held that to establish the offence under the Act, it is not enough to show that the victim belongs to the Scheduled Castes, the offence has been committed with an intention to humiliate a member of a Scheduled Caste and Scheduled Tribe for the reason that the victim belongs to such caste. The relevant paragraphs No.17 and 18, of the judgement is extracted hereunder.

"17. In another judgment reported as Khuman Singh v. State of Madhya Pradesh, this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

"15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."

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."

19. Keeping the above principles in mind, let us consider the instant case. As stated earlier, originally FIR has been registered on 25.06.2019 against unknown accused for offence under Sections 294 (b), 324 and 506(2) of IPC. Thereafter, the second respondent police recorded the statement of the defacto complainant/third respondent, on 18.09.2019. At that time third respondent neither implicated the petitioner nor stated that he belongs to the Scheduled Castes

community and offence has been committed with an intention to humiliate him for the reason that he belongs to Scheduled Castes. Thereafter, further statement of the third respondent was recorded on 22.10.2019, wherein, the third respondent for the first time implicated the petitioner and stated that accused belongs to upper caste community and after knowing that the third respondent belongs to the Scheduled Castes community, they have committed the offence. The relevant portion of the statement of the third respondent is as follows:

"மேற்படி கார்த்திகா பிரியதர்சினி என்பவர் இந்து-கொங்கு வெள்ளாளக்கவுண்டர் வகுப்பை சார்ந்தவர் என எனக்கு நன்கு தெரியும். அதேபோல சக்திவேல் சபரிவிஜய் ஆகியோர்கள் இந்து-பள்ளர் வகுப்பை சார்ந்தவர்கள் என்றும் சந்தோஸ் (எ) சந்தோஸ்குமார் மலையாள நாயர் என்றும் ராயப்பன் என்பவர் கிருஸ்துவ வன்னியர் என்றும் விசாரித்து தெரிந்து கொண்டேன். நான் தாழ்த்தப்பட்ட வகுப்பை சார்ந்தவன் என கார்த்திகா பிரியதர்சினி நன்கு அறிந்து கொண்டு சந்தோஸ் மூலம் சபரிவிஜய் சக்திவேல் ராயப்பன் ஆகியோர்களை ஏவிவிடு என்னை கொலை முயற்சி செய்யும் நோக்கத்தில் ஈடுபட்டுள்ளார்."

20. Thereafter, FIR was altered and the investigation was transferred to the first respondent Assistant Commissioner of Police, and further statement was recorded on 25.10.2019, again third respondent has given a very same statement. Except that statement, there is no other material available on record to show that all the accused have committed the offence fully aware of the fact that the third respondent belongs to Scheduled Caste community and humiliated him for that reason.

21. A perusal of the above statements of the third respondent, it could be seen that in the initial statement recorded by the second respondent, third respondent has not implicated the petitioner, only in the later statement he has implicated the petitioner, simply stating that the petitioner fully aware that the third respondent belongs to Scheduled Castes community and conspired with other accused and attacked the third respondent. It is not the case of the prosecution that petitioner has committed the offence only on the ground that the third respondent belongs to the Scheduled Castes community and she has the intention to humiliate the third respondent for the reason that he belongs to Scheduled Castes community. In such circumstances, this Court is of the considered view that offence under Section 3(2)(v) of the SC / St Act is not made out against the petitioner and it is only liable to be set aside.

22. The next question arises for consideration is whether a criminal proceedings can be quashed in part. The law on this subject is well settled now, and there is no prohibition to quash the chargesheet in part. Even though the accused has been charged for several offences and Court feels that some of the offence has not been made out against him/her, in order to prevent the abuse of process and

in the interest of justice, the chargesheet can be quashed in part so far as the offence, which is not made out against a particular accused. The Hon'ble Supreme Court in Hitesh Verma Vs. State of Uttarakhand (cited supra) in paragraphs 23 and 24 has held as follows:

"23. This Court in a judgment reported as Ishwar Pratap Singh & Ors. v. State of Uttar Pradesh & Anr. held that there is no prohibition under the law for quashing the charge-sheet in part. In a petition filed under Section 482 of the Code, the High Court is required to examine as to whether its intervention is required for prevention of abuse of process of law or otherwise to secure the ends of justice. The Court held as under:

"9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the Criminal Procedure Code or for prevention of abuse of process, or otherwise to secure the ends of justice. A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. There is no requirement that the charge-sheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed."

24. In view of the above facts, we find that the charges against the appellant under Section 3(1)(r) of the Act are not made out. Consequently, the charge-sheet to that extent is quashed. The appeal is disposed of in the above terms."

23. Since no offence is made out against the petitioner, under Section 3(2)(v) of the SC / ST Act, the charge to that extent is quashed.

24. In the result, the criminal original petition is partly allowed and the charge under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, levelled against the petitioner is quashed and the Trial Court is directed to proceed with the trial in respect of other offences against the petitioner. Consequently, the connected miscellaneous petition is closed.

-sd/-

30/03/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
TIRUPPUR.

2 THE JUDICIAL MAGISTRATE,
NO.I, TIRUPPUR.

3 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR [FOR INFORMATION]

4 THE ASSISTANT COMMISSIONER OF POLICE
(NORTH RANGE), TIRUPPUR.

5 THE INSPECTOR OF POLICE
TIRUPPUR NORTH POLICE STATION,
TIRUPPUR.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

7 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

CC to M/S.H.MANIVANNAN Advocate on payment of necessary charges

CRL OP.33356/2019
& CRL.MP.18408/2019

Date :30/03/2021

cs 15/04/2021