



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.08.2021

Pronounced on : 16.09.2021

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CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGO VAN**

Crl.O.P.(MD)No.6307 of 2021

and

Crl.M.P.(MD)Nos.3610 and 3613 of 2021

1.Akkammal
2.Raja
3.Saravanan
4.Santhosh @ Santhosh Kumar
5.Gopi @ Gopinath
6.Vairavel @ Vairavelpandi
7.Poornavel @ Yogesh ... Petitioners

Vs.

1.State represented by
The Deputy Superintendent of Police,
Periyakulam Range,
Theni District.

2.The Inspector of Police,
Periyakulam Police Station,
Theni District.

3.Aravindan ... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned charge sheet in Spl.S.C.No.4 of 2021 on the file of the Special Court for Trial of cases under SC/ST (POA) Act, Theni and quash the same illegal.

For Petitioners : Mr.K.Sivabalan
For Mr.M.Prabhu

For Respondents : Mr.K.Sanjai Gandhi,
Govt. Advocate (Crl. Side)
for R1 & R2



ORDER

This petition is filed seeking quashment of the proceedings in S.C.No.4 of 2021 pending on the file of the learned Special Court for Trial of cases under SC/ST (POA) Act, Theni.

2.The case of the prosecution is that on 14.11.2020 at about 03.30 pm, the defacto complainant had seen the persons, who put the fire crackers in front of the first petitioner's shop. On seeking them, the first petitioner alleged to have scolded the defacto complainant namely, Aravindan by mentioning his caste name. He informed the presence of the defacto complainant in Muthalamman temple festival on that date in the place of occurrence to the second petitioner and the second petitioner and others came to the place of occurrence and threatened the defacto complainant and another and questioned the father of the defacto complainant. At that time, they were alleged to have attacked the father of the defacto complainant with bare hands. He fell down and thereafter died. On the basis of the complaint given by the defacto complainant, a case in Crime No.1712 of 2020 for the offences under Sections 147, 294(b), 323, 302 and 109 of I.P.C., and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, was registered and after completing the formalities and investigation, final report was also filed before the learned Special Court for Trial of cases under SC/ST (POA) Act, Theni and the same was taken on file in S.C.No.4 of 2021. Seeking quashment of the aforesaid final report, this petition is filed mainly on the ground that none of the allegation mentioned in the final report attract any of the ingredients of the offences against the petitioners.

3.Heard both sides.

4.The FIR was registered for a case of murder and other allied offences under Section 294(b), 323, 147 and 109 of I.P.C. and the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The facts are simple as narrated in the pleading portion. There was previous enmity between the petitioners and the defacto complainant and his father. On the previous occasion namely on 14.11.2020 at about 03.30 pm, when the defacto complainant was standing in front of the house of the first petitioner and watching the fire crackers, one Akkammal scolded the aforesaid person in filthy language by including the defacto complainant's father. He replied that he did not involve in fire cracking. This was intimated to others by Akkammal and others came to the place of occurrence and assaulted the defacto complainant's father, when he tried to intervene into the quarrel.



He sustained injuries and on the way to hospital, he died. According to the prosecution, it is a clear case of murder. But the learned counsel for the petitioners would submit that as per the postmortem report, there was no evidence of any external antemortem injuries were found. Similarly, no antemortem internal injuries were also found. As per the opinion of the doctor, it was a case of myocardial infarction. So according to the learned counsel for the petitioners, the deceased was already suffering from acute myocardial infarction and so the alleged assault did not cause the death. Hence, the offence under Section 302 of I.P.C. is not attracted.

5. Section 300 of IPC is as follows:-

"300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustration

(a)

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death."



6. Section 304 of IPC is as under:-

"304. Punishment for culpable homicide not amounting to murder - Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CLASSIFICATION OF OFFENCE

Para I: Punishment-Imprisonment for life, or imprisonment for 10 years and fine-Cognizable-Non-bailable-Triable by Court of Session-Noncompoundable.

Para II: Punishment-Imprisonment for 10 years, or fine, or both-Cognizable- Non-bailable-Triable by Court of Session-Non-compoundable."

7. No doubt, it is the allegation on the prosecution that the petitioners alleged to have assaulted the deceased with bare hands and no external injuries as well as internal injuries were found but it is stated by the prosecution that these petitioners were very well aware of the heart disease, which was suffered by the deceased/defacto complainant's father. Having known that the deceased was having heart disease, they have assaulted the deceased. Therefore, the offence under Section 302 of I.P.C. is clearly attracted. There is an allegation to the effect that when they assaulted the deceased, they have stated that they would have killed the defacto complainant's father on the previous occasion itself. When there is a specific allegation with regard to motive and intention, without proper undertaking of trial, it may not proper on the part of this Court to quash the criminal proceedings. Whether, the offence under Sections 302 or 304(ii) of I.P.C. is attracted in the facts and circumstances of the case is also a matter for consideration by the Trial Court at the time of framing the charges. The petitioners are at liberty to make all the defences that are available to them at the time of framing of charges. Any more discussion as to the relevant penal provision that would be attracted in the facts and circumstances of the case may not proper exercise on the part of this Court to undertake in this petition. Any observation if made on that aspect, ultimately will affect the charge framing proceedings before the Trial Court. This Court also confine itself only to the report, for the limited consideration, leaving the defences and can be raised at the time of framing charge.



8. With this liberty, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Court for Trial of Cases Under SC/ST(POA) Act,
Theni District.
2. The Deputy Superintendent of Police,
Periyakulam Range,
Theni District.
3. The Inspector of Police,
Periyakulam Police Station,
Theni District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RK/PM(25/11/2021) 5P 5C