



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.12.2020

Delivered On : 20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.204 of 2015

and

CrI.M.P.(MD)No.8342 of 2018

WEB COPY

1. Paulraj
2. Sivasami
3. Palanisami
4. Muthu

... Petitioners/Accused 1 to 4

Vs.

- 1.The Deputy Superintendent of Police,
Thirumangaslam Sub-Division,
Madurai District.

(Crime No.260/2020)

...1st Respondent/Complainant

- 2.Manimaran

...2nd Respondents/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in Spl.S.C. No. 70 of 2014 on the file of the III Additional District and Sessions Court PCR Madurai, pending disposal of the above quash petition.

For Petitioners : Mr. N.Mohideen Basha

For Respondents : Mr.K.Suyambulinga Bharathi

Government Advocate (CrI.side) for R1

: Mr.K.Kannan for R2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Spl.S.C. No. 70 of 2014, on the file of the III Additional District and Sessions Court (PCR), Madurai.

2.The crux of the complaint is that on 18.04.2012 at about 11.00 a.m., all the accused persons along with 50 others had trespassed in the Agricultural land belonging to the defacto complainant's uncle and abused and insulted by naming his Caste and damaged Bero, car, Grinder and Motor worth about Two Lakhs. It is further alleged that all the accused persons closed the Well by pouring the sand and looted 10 sovereigns of gold jewels from the defacto complainant.

3.The learned counsel for the petitioners would submit that the petitioners are arrayed as A1 to A4, they owned agricultural land comprising in Survey Nos.49/1, 52/3A, 51/7, 52/1 ad-measuring 5 acres and 8 cents with electrical connection in S.C.No.139 situated in Keezhauranapur Village, Thirumangalam, Madurai District. The first petitioner is in possession and enjoyment of the property. In



respect of very same property, the defacto complainant's uncle claimed tenancy right before the Tahsildar, but the same was dismissed and ordered in favour of the first petitioner herein. Thereafter, the first petitioner also filed a suit in O.S.No.105 of 2012, on the file of the District Munsif, Thirumangalam, for injunction, alleging that the uncle of the defacto complainant along with others have trespassed into the disputed property and destroyed all the Agricultural crops and they also attacked the first petitioner, on 16.04.2012, with the help of the others. Therefore, the first petitioner also lodged a complaint and the same was registered in Crime No.254 of 2012, for the offence under Sections 147, 148, 323, 341, 447, 427 and 506(ii) I.P.C. In fact, the uncle of the defacto complainant was arrested and remanded to judicial custody. Due to the said complaint, the second respondent / defacto complainant, on 18.04.2012 along with six other named accused persons trespassed into the disputed property and also attempted to murder the first petitioner herein. In order to escape from the second respondent / defacto complainant, he went to the Motor room and locked the defacto complainant and others. Even then, they broken the door and attacked the first petitioner herein and as such, he sustained injuries on all over the body. Therefore, again, he lodged a complaint in Crime No.261 of 2012, for the offence under Sections 147, 148, 447, 427, 323, 379 (NP) and 506(ii) I.P.C. as against the second respondent and six others. Therefore, the present complaint has been foisted as against the petitioners is only to wreck vengeance against them. No occurrence was took place, on 18.04.2012, as alleged by the defacto complainant / second respondent herein. He would further submit that even according to the defacto complainant, he had seen the occurrence from the distance away from the place of occurrence. Therefore, there is absolutely no ingredients to attract the offence under the Scheduled Caste and Scheduled Tribes Act. He would further submit that admittedly there is a tenancy dispute in respect of the said property between the uncle of the defacto complainant and the first petitioner herein. Therefore, except the first petitioner, others have no motive against the defacto complainant to commit the alleged offence. He would further submit that the disputed property is in possession and enjoyment of the first petitioner herein and as such, there is no question of trespass into the disputed property. In fact, in the counter case registered in Crime No.261 of 2012, as against the second respondent and six others, in which, they pleaded guilty and also paid the fine. He would further submit that even according to the defacto complainant, the entire allegations are bald and vague and no specific overt act as against each of the accused. Further, he would vehemently contend that the offence under the SC/ST Act is not at all attracted as against the petitioners, for the simple reason that the alleged occurrence did not take place in any place within the public view. Therefore, there is no ingredients to attract under the SC / ST Act.



4. In support of his contention, he relied upon the following judgments:

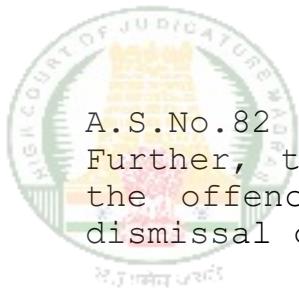
(i) reported in 2009 CRI.L.J.350 [Gorige Pentaiah v. State of A.P. and Others]

(ii) In Criminal Appeal No.210 of 2010 [Sakthivel Vs. The Deputy Superintendent of Police]

(iii) In Criminal Appeal No.707 of 2020 [Hitesh Verma Vs. The State of Uttarakhand and another]

5. Per contra, the learned counsel for the second respondent / defacto complainant would submit that on the complaint, the first respondent registered the case for the offence under Sections 147, 148, 447, 448, 427, 379(NP, 506(ii) I.P.C. and Section 3(1)(x) of SC/ST Act, in Crime No.260 of 2012. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance as Special S.C.No.70 of 2014, III Additional District and Sessions Court PCR, Madurai. The subject property, is in possession and enjoyment of the defacto complainant's uncle and the Revenue Court had already held in his favour as a cultivating tenant. Further the witnesses examined and the statements recorded under Section 161(3) Cr.P.C., categorically revealed that the occurrence took place and there are specific allegations as against each of the accused and as such, the grounds raised by the petitioners are disputed question of facts and it cannot be decided under Section 482 Cr.P.C. He would further submit that the subject property is originally owned by one Syadh Abbas and he tried many occasions to vacate the defacto complainant's uncle from the subject property and failed. Therefore, he sold out the land to the first accused without the knowledge of the defacto complainant's uncle herein. The uncle of the second respondent has been cultivating the land since 1984 by virtue of TANSI agreement between them as per the provision of Tamil Nadu Agricultural Land Record and Tenancy (Rights and Protection) Act, 1969. In fact, he has been recognised as a cultivating tenant by the Revenue Authorities and the same was also published in the District Gazette. Though initially the Tahsildar rejected the request made by the second respondent to register the uncle's name as a cultivating tenant, on appeal, the Revenue Court, viz., the Special Deputy Collector, allowed his appeal and directed to register him as a cultivating tenant of the subject matter property. While being so, the fourth accused threatened his uncle and also attempted to evict him from the subject property by illegal measures. Therefore, he also filed a suit in O.S.No.104 of 2012, on the file of the District Munsif, Thirumangalam. He would further submit that the suit filed by the first accused was decreed in his favour. Aggrieved by the same, the uncle of the defacto complainant filed an appeal suit in

<https://hcservices.recourts.gov.in/hcservices/>



A.S.No.82 of 2016, on the file of the Sub-Court and it is pending. Further, the occurrence took place in the public view, therefore, the offence under SC/ST Act is clearly made out and prayed for dismissal of the quash petition.

6. Heard the learned counsel for the petitioners, the learned Government Advocate (Criminal side) for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

7. It is seen that totally there are four accused and the petitioners herein are arrayed as A1 to A4. On the complaint lodged by the second respondent herein, the first respondent registered an FIR in Crime No.260 of 2020 for the offence under Sections 147, 148, 447, 448, 427, 379(NP, 506(ii) I.P.C. and Section 3(1)(x) of SC/ST Act. After completion of investigation, the first respondent had filed a final report and the same has been taken cognizance as Special S.C.No.70 of 2014, III Additional District and Sessions Court PCR, Madurai. The first petitioner purchased the subject property comprised in Survey Nos.49/1, 52/3A, 51/7, 52/1 ad-measuring 5 acres and 8 cents from one Syadh Abbas and his wife Aysha Beevi in the year 2005 by a registered sale deed, for valid sale consideration, dated 28.03.2005. After purchasing the said property, the first petitioner is in absolute possession and enjoyment of the property and accordingly all the revenue documents are changed to his name. At the same time, the uncle of the defacto complainant attempted to purchase the very same property from the said persons, for which, the vendor refused to sell the same. Therefore, he intended with a vengeance against the first petitioner, caused hindrance to the first petitioner and attempted to trespass into the suit property. Therefore, the first petitioner filed a suit in O.S.No.105 of 2012, for injunction as against the uncle of the defacto complainant/second respondent herein, on the file of the District Munsif, Thirumangalam. In pursuant to the said occurrence, the first petitioner has also lodged a complaint and the same was registered in Crime No.254 of 2012 for the offences under Sections 147, 148, 323, 3241, 443, 424 and 506(ii) I.P.C.,. In fact, he was arrested and remanded to judicial custody. Thereafter, the suit filed by the first petitioner was decreed in his favour and aggrieved by the same, the uncle of the second respondent preferred an Appeal Suit in A.S.No.82 of 2019 and it is pending, without any interim order. Again, on the next day, i.e.18.04.2012, the second respondent and others trespassed into the property and had stolen the motor wire pipe and Rs.2,000/- (Rupees Two Thousand only) from the first petitioner's possession. When it was questioned by the first petitioner, all the accused persons attacked him and threatened him with dire consequences. Immediately, he lodged a complaint and the same was registered in 254 of 2012 for the offence under Sections 147, 148, 323, 341, 447, 427 and 506(ii) I.P.C. as against the second respondent and others. The present proceedings



has initiated on the counter complaint lodged by the second respondent herein and the same was registered in Crime No.260 of 2012, on the file of the first respondent herein.

8. On perusal of the records, it is seen that the uncle of the second respondent claimed his cultivating tenancy right over the subject property. In this regard, there are so many proceedings between the first petitioner and the uncle of the defacto complainant / second respondent. In fact, the suit filed by the first petitioner in O.S.No.105 of 2012, for injunction, was decreed in his favour. Against which, the uncle of the defacto complainant / second respondent filed an Appeal and the same is pending without any interim order. Further it is also seen that the defacto complainant / second respondent and others pleaded guilty in Crime No.254 of 2012 and paid fine. Insofar as the defacto complainant / second respondent's complaint, the first respondent filed a final report and now it is under challenge.

9. The point that arose for consideration is that whether the offence under SC/ST Act attracted or not, when the petitioners alleged to have scolded the defacto complainant in filthy language by mentioning their Caste name?

10. On perusal of the statements recorded under Section 161 Cr.P.C. all the accused persons entered into the subject matter property with deadly weapons and they stolen the house hold articles, pump set.. and also caused damage to the provision, grocery material, which was kept in the house. They also closed the Well by filling up of Mud. Admittedly nobody was there at the time of occurrence and from far away distance, the defacto complainant/second respondent had seen the occurrence. On perusal of F.I.R, there is absolutely no allegation to attract the offence under the SC/ST Act. They did not mention their Caste name and did not abuse them at any point of time, since no one was there at the time of occurrence. Even then, the first respondent charged the petitioners for the offence under Sections 147, 148, 447, 448, 427, 379(NP), 506(ii) I.P.C and Section 3(1)(x) of SC/ST Act. In this regard, the learned counsel for the petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in 2009 CRI.L.J.350 [Gorige Pentaiah v. State of A.P. and Others] and the Hon'ble Apex Court, wherein, it has been held as follows:

"9. In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 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 accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 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.

10. Similarly, we find that the ingredients of Section 506 of the Indian Penal Code are totally absent in the complaint.

11. In the complaint it is not even mentioned that the accused had intimidated or threatened the complainant or any one else. In absence of basic ingredients of the section in the complaint, no case under section 506 IPC can be sustained".

11. In the above judgment, the Hon'ble Supreme Court held that the complainant ought to have alleged that the Caste was not a tool of SC or ST Act and the complainant was intentionally insulted and intimidated by the accused with an intention to humiliate at any place within public view. In the case on hand, admittedly no one was there at the time of occurrence. According to the defacto complainant, all the accused persons entered into the subject property and stolen as stated above. No such allegation is there to attract the offence under Section 3(1)(x) of SC/ST Act. No one was there at the time of occurrence and no one was abused by insulting or intimidating the defacto complainant with an intention to humiliate in a place within a public view. Therefore, the offence under Section 3(1)(x) of SC/ST Act is not at all made out as against any of the petitioners herein and it cannot be sustained against them.

12. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court in **Criminal Appeal No.707 of 2020, [Hitesh Verma Vs. The State of Uttarakhand and another]**, in which, it has been held as follows:

"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 judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors.. The Court had drawn distinction between the expression "public place" and "in any place within 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

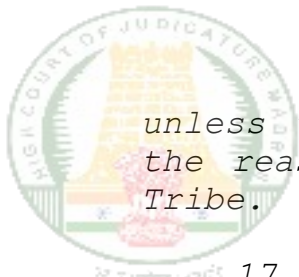


friends) then it would not be an offence since it is not in the public view. The Court held as under:

"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 Swaran 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.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act



unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.

17. In another judgment reported as *Khuman Singh v. State of Madhya Pradesh*⁶, 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."

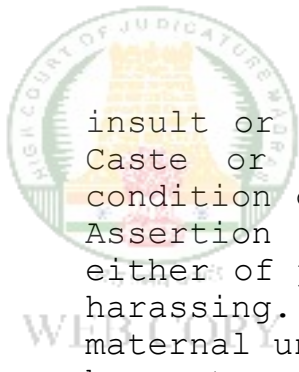
13. The basic ingredients of the offence under Section 3(1)(x) of SC/ST Act is concerned, it reads as under:

3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

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

14. In any place within public view of insults or intimidates to a person will not attract an offence under the Act. Unless such

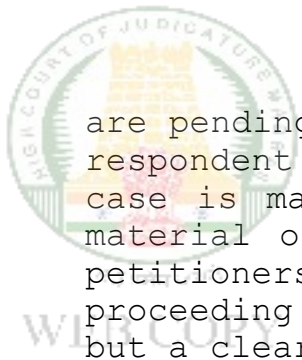
<https://hcservices.ecourts.gov.in/hcservices/>



insult or intimidate is on account of victim belonging to Scheduled Caste or Scheduled Tribe, the act is to include the Socio condition of the SC/ ST, as they are denied number of civil rights. Assertion of title and possession over the subject property by either of parties is not due either of indignities by humiliates or harassing. The petitioners as well as the second respondent's maternal uncle if there is any right over the subject property, they have to avail remedies in accordance with law. The first petitioner has rightly approached the civil Court for injunction as against the uncle of the defacto complainant/second respondent, who is claiming to be the cultivating tenant, in respect of the subject property in O.S.No.105 of 2012 on the file of the District Munsif, Tirumangalam and the same was decreed in his favour. Aggrieved by the same, the uncle of the second respondent has also filed an Appeal Suit in A.S.No.82 of 2019 and it is pending without any interim order. Therefore, the said action is not for the reason that the second respondent is a member of Scheduled Caste. The above judgment relied upon by the petitioners is squarely applicable on the case on hand and the charge under Section 3(1)(x) of SC/ST Act is not made out as against the petitioners.

15.Insofar as the other offences are concerned, for the very same occurrence, the first petitioner lodged a complaint and the same was registered in Crime No.261 of 2012 for the offence under Sections 147, 148, 447, 427, 323, 379 (NP) and 506(ii) I.P.C, as against the second respondent and others. It is pertinent to mention that the second respondent and others admitted their guilty and paid the fine. According to the first petitioner, the second respondent and others trespassed into the subject property and have attacked the first petitioner and also had stolen the pipe in the motor room and other things, whereas for the very same occurrence, the present impugned proceedings was initiated by the second respondent. Almost for the very same offence against the petitioners including the offence under the SC/ST Act, when the second respondent had categorically admitted that they trespassed into the subject property and have committed crime. While being so, the first respondent ought not have charged the petitioners for the offence under Sections 147, 148, 447, 448, 427, 379(NP), 506(ii) I.P.C.

16.That apart, on 16.04.2012, already the second respondent's uncle and others have trespassed into the subject property and attacked the first petitioner and others. Therefore, the first petitioner lodged a complaint and the same was registered by the first respondent in Crime 254 of 2012 for the offence under Sections 147, 148, 323, 329(NP) 447, 426 and 506(ii) IPC. If at all the second respondent or his uncle were in possession of the subject property, the first respondent could not register the offence under Section 447 I.P.C. Further, in respect of cultivating tenancy right and also the possession of the subject property, civil proceedings



are pending between the first petitioner and the uncle of the second respondent herein. Therefore, there is absolutely no *prima facie* case is made out against the petitioners and there is no *iota* of material or ingredients to attract any of the offence against the petitioners as alleged by the prosecution. Thus, the entire proceeding is vitiated and it cannot be sustained and it is nothing but a clear abuse of process of law.

17. In view of the above discussion, this Criminal Original Petition is allowed and the proceedings in Spl.S.C. No. 70 of 2014 on the file of the III Additional District and Sessions Court (PCR), Madurai, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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 III Additional District and Sessions Judge (PCR),
Madurai.

2. The Deputy Superintendent of Police,
Thirumangaslam Sub-Division,
Madurai District.

3. The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer, (2Copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.KANNAN, Advocate (SR-1430[F] dated 20/01/2021)

CRL.O.P (MD) No.204 of 2015

20.01.2021

PU(CO)

KB(04.02.2021) 10P 6C

<https://hcservices.ecourts.gov.in/hcservices/>