

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.04.2022
Delivered on: 13.06.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.8419 of 2019
and
Crl.M.P.No. 4464 of 2019

T.Suresh

... Petitioner

Vs.

1. The State Rep. By
The Deputy Superintendent of Police,
Attur Sub-Division,
Salem District.
(Crime No.687 of 2017)

2. Kaliyan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records and quash the charge sheet in Spl. Sc.No.7/2018 on the file of the learned Principal District Judge, Salem.

For Petitioner : Mr.M.R.Franklin

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

O R D E R

This Petition had been filed to quash the charge sheet in Spl. Sc.No.7/2018 on the file of the learned Principal District Judge, Salem.

2. The learned Counsel for the Petitioner submitted that the Petitioner is alleged to have shared a Whatsapp message with his contacts. Based on which a case in Crime No.687 of 2017 was filed at Attur Police Station, Salem District for the offences under Sections 294(b), 323 and 506(1) of IPC and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015. Further, based on the mandatory provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015,

the Superintendent of Police, Salem had issued proceedings, appointing the Deputy Superintendent of Police, Attur as Investigating Officer. The investigation proceeded in laying of the final report of the investigation, before the Principal District Court, Salem in Spl S.C.No.7 of 2018.

2.1. The learned counsel for the Petitioner invited the attention of this Court to a letter pad of the Petitioner who is an office bearer of "Vazhva Saava Party". Further the learned counsel for the Petitioner submitted that the Respondent herein/Complainant had given 161(3) Cr.P.C statement in typed set of papers, wherein, there is no mention that this Petitioner belong to a different community other than the Scheduled caste, to invoke the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015. Under these circumstances, he seeks the indulgence of this Court under Section 482 Cr.P.C to quash the final report of the investigation pending on the file of the learned Principal District Judge, Salem in Spl.S.C.No.7 of 2018. Further in support of his arguments, he relied on the ruling of the Hon'ble Supreme Court of India in the case of "Gorige Pentaiah Vs State of A.P. and others" is extracted hereunder.

"As far as Section 3(1)(x) of the 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."

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."

3. Based on the earlier rulings of the Hon'ble Supreme Court of India, which had been cited, he seeks to quash the case which is pending on the file of the learned Principal District Judge, Salem.

4. Mr.S.Vinoth Kumar, the learned Government Advocate (Crl.Side) invited the attention of this Court to the charge sheet. Further, the learned Government Advocate (Crl.Side) submits that there are other witnesses when this Petitioner is alleged to have abused the defacto complainant with the words and expressions attracting the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015. He invited the attention of this Court to Page No.14 of the typed set of papers that L.W.2 to L.W.4 are the eye witnesses for the occurrence on 16.12.2017 on 10.25 Hrs before the General Hospital. He also stated that the 161(3) Cr.P.C. Statement of the Tahsildar, Attur had also been recorded by the Investigating Officer, wherein the Tahsildar, had stated that the Petitioner herein belongs to a caste other than SC/ST caste and the defacto complainant belongs to SC/ST caste. Therefore, the learned Government Advocate (Crl.Side) vehemently objects to quash the charge sheet and their materials are to be treated before the learned Principal District Judge, Salem.

5. On consideration of the rival submissions of the learned Counsel for the Petitioner and the learned Government Advocate (Crl. Side) for the Prosecution, the submission of the learned Government Advocate (Crl. Side) is found acceptable. What had been relied on by the learned Counsel for the Petitioner in Crl.A.No.1311 of 2008 (Gorige Pentaiah Vs. State of A.P & Others) cannot be accepted in this case that as rightly pointed out by the learned Government Advocate (Crl. Side) that the Investigation Officer viz., Deputy Superintendent of Police had obtained the Caste Certificate that the Petitioner herein belongs to OBC and the defacto complainant belongs to SC/ST Community. Therefore, what had been submitted by the learned Counsel for the Petitioner is to be agitated as valuable defence available only before the trial Court by the Petitioner herein. This Court invoking the extraordinary powers under Section 482 of Cr.P.C., for quashing of the criminal complaint, particularly when the offence under SC/ST (prevention of Attrocities) Act is attracted to quash the criminal complaint or charge sheet, amounts to injustice to the defacto complainant who is a member of the SC/ST Community.

5.1. The arguments of the learned Government Advocate (Crl.

Side) vehemently objecting to the submission of the learned Counsel for the Petitioner is found acceptable regarding the Petitioner belongs to OBC and the defacto complainant belongs to SC which is available in the type set. Therefore, this is not a fit case for quashing of Complaint and what are all agitated by the learned Counsel for the Petitioner herein cannot be accepted in the light of the reported ruling of Hon'ble Supreme Court in 1992 Supp (1) SCC 335:1992 SCC (cri) 426 in the case of State of Haryana Vs. Bhajanlal, it can only be considered as valuable defence before the trial Court which can be raised at the time of trial.

In the light of the above discussion, this Criminal Original Petition is dismissed with a direction to the learned Principal District Judge, Salem to proceed with the trial and dispose of the case within a reasonable period of three months from the date of receipt of a copy of this order or from the date of uploading of this order in the website of this Court. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Superintendent of Police,
Attur Sub-Division,
Salem District.
2. The Principal District Judge,
Salem.
3. The Public Prosecutor
High Court of Madras
Chennai 600 104.

CRL.O.P.No.8419 of 2019

RR(CO)
SB(19/07/2022)