

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1204 of 2014

1.C. Patchaiammal
2.J. Nagalakshmi
3.V. Valarmathi
4.Rani @ Sailaja
5.Vijaya
6.G. Sarala

... Petitioners

Vs.

1. State through
The Assistant Commissioner,
T.Nagar Range,
T.Nagar, Chennai - 600 017.
(Crime No.45 of 2008)

2. Vijayalakshmi W/o Raghu Palani
(Suo moto ordered to be impleaded
as per order dated 20.01.2022).

... Respondents

Prayer:

Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.3967 of 2011 in S.C.No.432 of 2010 on the file of the learned Principal District and Sessions Judge (Special Judge for S.C & S.T Act Cases) at Chennai and set aside the order in Crl.M.P.No.3967 of 2011 dated 23.07.2014.

For Petitioners: Mr.R.Ganesh Kumar

For Respondents: Mr. N.S.Suganthan, for R1
Government Advocate (Crl.Side)
Mr. D. Livingston, for R2

O R D E R

The revision petition is filed challenging the dismissal of the discharge petition filed by the accused in S.C.No.432 of 2010 on the file of Principal District and Sessions Judge, Chennai.

2. Learned counsel appearing for the petitioner would state that the FIR in Crime No.61/2008 was registered at the behest of one Vijayalakshmi/defacto complainant and her statement recorded on the next day under Section 161 Cr.P.C., does not correlate or speak about the occurrence of uttering the caste name to demean the defacto complainant. In such circumstances, even if the petitioners are put to trial, the 161 statement of the defacto complainant, which has not whispered about any occurrence on 21.01.2008 as stated in the FIR, will not lead to any conviction but only an abuse of process. Learned counsel for the petitioner read through the FIR and the statement of the defacto complainant.

3. This Court on perusing the FIR which was registered on 21.01.2008, based on the complaint given by LW.1-Vijayalakshmi find that the petitioners are relatives to the defacto complainant's husband, they were living in different portion of the same house and dispute regarding their respective share is pending in a civil Court. On 05.01.2008, at 1.30 am while she was feeding food to her child, one Ponnammal scolded Balarani why she is conversing with the defacto complainant, who belongs to lower caste and she also scolded the defacto complainant calling her caste name, followed by Ponnammal, Pachaiammal came out and abused her calling her caste name and tried to attack her.

3(i). Again on 21.01.2008, they joined together and abused her using her caste name and causing mental torture, forcing her to commit suicide. While the FIR reads as above, the 161 statement of the defacto complainant-Vijayalakshmi reads that pursuant to the property dispute, family members were quarreling frequently. Thereafter all the sisters of Pachaiammal, joined together and picked quarrel, they also use the caste name. In the melee, Sekar, husband of Balarani attacked Nagalakshmi/2nd petitioner herein and Kodampakkam Police Station has registered a case in connected with this incident and Sekar was arrested. On that day, the petitioners herein abused her using the caste name and insulted her. Hence, in this connection, she gave a complaint to Kodampakkam Police Station. In the next day i.e., 06.01.2008 evening, the police from Kodampakkam station, came to enquire about the complaint. At that time, Eswari, Anandhi and Parameswari was sisters of her husband were present and picked quarrel. Thereafter, the police enquired her on 21.01.2018 and registered the complaint.

4. On combined reading of the FIR and above statement of witness given to the police, this Court finds that 3 distinct incident as alleged to have occurred, leading to registration of criminal complaint against the family members of Pachaiammal.

The first incident is alleged to have taken place on 05.01.2008, the complaint given by one Nagalakshmi/A2 against Sekar and the case was registered by Kodampakkam Police Station wherein, one Sekar is the accused. This is a case registered on the complaint given by Nagalakshmi for the incident alleged to have been taken place on 06.01.2008, Vijayalakshmi, the defacto complainant in this case has given a private complaint and that came to be quashed by this Court in Crl.O.P.No.5468 of 2011 dated 10.01.2019. The present case is registered for the alleged occurrence took place on 21.01.2008. The 161 statement of the defacto complainant as well as the other LWs does not whisper anything about the occurrence alleged to have taken place on 21.01.2008. Much less the alleged occurrence of community name of the defacto complainant and thereby, insulting her.

5. In the said circumstances, even, if version of the prosecution as found in the previous statement of witnesses are held to be proved, there cannot be a conviction since, there is no evidence to show that on 21.01.2018, the allegation of insulting the defacto complainant as found in the FIR, not whispered by the witnesses for the prosecution in their previous statement. There cannot be any improvement to this statement during trial and even if any attempt made, certainly it will be inadmissible.

6. In such circumstances, there need not be any futile exercise of trial of the petitioners. Accordingly, this criminal revision is allowed. The trial Court order dated 23.07.2014 is set aside. The petitioners herein are discharged.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Principal District and Sessions Judge (Special Judge for S.C & S.T Act Cases) at Chennai
2. The Assistant Commissioner,
T.Nagar Range,
T.Nagar, Chennai - 600 017.

3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.41263
+2cc to Mr. D. Livingston, Advocate, S.R.No.41808

Cr1.R.C.No.1204 of 2014

KV(CO)
CT/27/07/2022