

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2022

PRONOUNCED ON : 06.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.17866 OF 2020

AND

CRL.M.P.NOS.6951 & 6952 OF 2020

1.Ravichandra Gounder
2.Nataraja Gounder
3.Pitchandi Gounder
4.P.Maniyarasu
5.E.Ravi
6.Suresh
7.Johnny
8.K.Elumalai
9.T.Sundaram
10.Parasurama Gounder
11.Elumalai Gounder

...Petitioners

-Vs-

1. State by:
The Deputy Superintendent of Police,
Gingee Taluk,
Villupuram District.
(Crime No.582 of 2019)

2. Devaprakash

... Respondents

Prayer:

Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in SPL.S.C.No.24 of 2020 pending on the file of Special Court for SC/ST (POA) Act, Villupuram district, and quash the same.

For Petitioners : Mr.M.A.Gautham for
Mr.M.A.Muthalakan

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

For R2 : Mr.C.Prabhu

ORDER

This petition has been filed to quash the Proceedings in SPL.S.C.No.24 of 2020, on the file of the Special Court for SC and ST (POA) Act, Villupuram, for the offences under Sections 147, 120B, 153A, 504 and 505(1)(c) of IPC and Sections 3(1)(s), 3(1)(u), 3(1)(za)(E), 3(1)(zc) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Sections 4(1) and 6 of Protection of Civil Rights Act in Crime No.582 of 2019 dated 01.11.2019.

2.1. A complaint has been registered for the incident that was purported to have taken place on 01.11.2019 at about 07.30 A.M, based on the statement of the de-facto complainant who, with the help of the one Thangaraj, that he recorded a video in his mobile phone. The statement of the de-facto complainant and the said witness Thangaraj is that they both went to Ramani Grocery Store, situated at Nayinaar Street, where, the 6th and 7th petitioners, the owners of the grocery store, refused to sell groceries. The 7th petitioner is purported to have replied to the de-facto complainant by refusing to sell groceries and further alleged to have stated that if they sell the groceries to the de-facto complainant, the 6th and 7th petitioners have to pay a fine amount of Rs.1,00,000/- which will be imposed by the Ethanemili village people, who have conducted a meeting on 31.10.2019 at 09.00 P.M headed by the 1st to 5th petitioners herein. Due to the decision of the said villagers proposing to impose fine, the 6th and 7th petitioners, who are the owners of grocery shop, refused to sell their groceries to the de-facto complainant and the witness Thangaraj, who belong to Scheduled Caste community.

2.2. Other witnesses namely Sathya, Yegavalli, Amutha and Muthu, who were regularly supplying cow milk for the past five years to Thirumala Dairy Co-operative Society, where the 10th petitioner herein as the President of the Co-operative Society, alleged to have denied receiving Forty (40) Litres of milk from the above said witnesses. The 11th petitioner herein, a hotel owner, refused to sell tea to the Adi-Dravidar community people of the Ethanemili Village. For all the alleged offences, a complaint came to be registered.

2.3. Based on the complaint lodged by the de-facto complainant, a case has been registered under Sections 147, 120B, 153A, 504 and 505(1)(c) of IPC and Sections 3(1)(s), 3(1)

(u), 3(1)(za)(E), 3(1)(zc) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Sections 4(1) and 6 of Protection of Civil Rights Act in Crime No.582 of 2019 dated 01.11.2019.

2.4. After registration of case, investigation was undertaken by the investigating officer and a Final Report dated 10.12.2019 was filed by the 1st respondent under Sections 147, 120B, 153A, 504 and 505(1)(c) of IPC and Sections 3(1)(s), 3(1)(u), 3(1)(za)(E), 3(1)(zc) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. The learned counsel for the petitioners submitted that there is no specific allegation in the complaint or any specific overt act as against the petitioners to attract the offences as alleged by the prosecution. The present complaint has been filed to hurt vengeance against the petitioners for the incident which took place on 17.08.2019, when the 2nd respondent and his friends celebrated their political party leader's birthday and they placed a flag post, banners in the village, which was opposed by the petitioners. Thus, the 2nd respondent said to have made complaint and the said dispute was mediated and solved by the Tahsildar, Gingee on 30.10.2019. He further submitted that the charge sheet has been filed only on the basis of the electronic evidence, but the respondent has purposefully failed to comply with the mandatory provisions of Section 65-B(4) of the Evidence Act.

4. Thus, it is clear that as per the provisions, the conditions mentioned have to be fulfilled and the certification of the electronic record is mandatory to substantiate the charge for the offences. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B and it deals with the admissibility of the Evidence on record. The purpose of these provisions is to sanctify the secondary evidence in electronic form, generated by a computer. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A, opinion of the examiner of electronic evidence.

5. He further submitted that insofar as the Sections 153-A and 505(1)(c) are concerned, the prosecution must obtain sanction as contemplated under Section 196 of Cr.P.C before taking cognizance of those offences, whereas, the first respondent failed to accord any sanction to proceed as against the petitioners for those offences.

6. In respect of his contention, he relied upon the various judgments of Hon'ble Supreme Court of India and various judgments of the various Hon'ble High Courts.

7. Per contra, the learned counsel for the 2nd respondent and also the learned Government Advocate (Crl. Side) appearing for the 1st respondent submitted that when the petitioners are charged for the offence under the SC/ST Act, it does not require sanction for the other offences committed by the petitioners under Sections 153-A, 504, 505(1)(c) of IPC. Even assuming that the first respondent failed to obtain any sanction before taking up the matter, the first respondent is liable to be fined for the offence under Section 4 of the SC/ST Act, and for the fault committed by the first respondent, the second respondent cannot be suffered.

8. That apart, all the grounds raised by the petitioners are mixed question of facts and it can be considered only before the Trial Court by let in evidence by the prosecution. The second respondent and other people belonged to SC/ST community have severely suffered by the petitioners and as such, all the offences alleged are attracted as against the petitioners. He further submitted that there are two limbs in the charges in which, the first limb is that the second respondent approached the grocery shop for purchasing goods, where he was denied by the grocery shop owners. The second limb is that the second respondent belongs to SC/ST community. Insofar as the 2nd limb of charges are concerned, the other witnesses namely Sathya, Yegavalli, Amutha and Muthu were not able to sell their milk to Thirumala Milk Co-operative Society as the society refused to receive the milk. Further, one K.Elumalai who was running a tea stall and eatery shop in the vacant land (Porampoke) at the village refused to provide tea and other eateries in the shop. These allegations are supported by witnesses and not through the Audio recorded by the 2nd respondent.

9. The sanction required under Section 196 of Cr.P.C to prosecute the petitioners for the offences under Sections 153-A, 504, 505(1)(c) of IPC and the sanction may be obtained at any stage of the investigation or trial. Therefore, the non obtaining sanction to prosecute the petitioners is not a ground to quash the entire proceedings.

10. In the present case, the learned Magistrate is yet to frame charges as against the petitioners. It is true that the sanction required under Section 196 of Cr.P.C is pre-requisite, but it is for the petitioners to raise their objection at the stage of taking cognizance, or at the stage of committal. When the petitioners failed to raise any objections while taking

cognizance by the trial Court, the petitioners cannot invoke the provisions of Section 482 of Cr.P.C to quash the entire proceedings on the ground that the investigating agency failed to obtain sanction as required under Section 196 of Cr.P.C. As far as the production of Certification as required under Section 65-B of the Evidence Act, the need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the time of trial. It has to be furnished at the latest before the trial begins. It gives the accused fair chance to prepare to defend the charges alleged against them during trial.

11. The general principle in criminal proceedings is to supply to the accused all documents that the prosecution seeks to rely upon before commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for trial before its commencement. Therefore, the ground raised by the petitioners is premature and the certificate required under Section 65-B of the Evidence Act will be produced at time of trial.

12. He further submitted that inherent powers of this Court as contemplated under Section 482 of Cr.P.C, must be exercised on sound principles and it should not be exercised to stifle the legitimate prosecution. This Court cannot analyze the case of the complainant in the light of all the probabilities in order to determine whether the conviction would be sustainable and on such premise arrive at a conclusion that the proceedings are to be quashed. Therefore, he prays for dismissal of the quash petition.

13. Heard Mr.M.A.Gautham, learned counsel for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl. Side) for 1st respondent police and Mr.C.Prabhu, learned counsel for 2nd respondent. and perused the entire materials available on record.

14. There are 11 accused in this case, the petitioners are arrayed as A1 to A11. All the petitioners were charged for the offences under Sections 147, 120B, 153A, 504 and 505(1)(c) of IPC and Sections 3(1)(s), 3(1)(u), 3(1)(za)(E), 3(1)(zc) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. All the charges framed against the petitioners are on the basis of electronic evidence namely video recording of mobile phone of the 2nd respondent herein. The petitioners were charged for the offence under Sections 3(1)(s), 3(1)(u), 3(1)(za)(E), 3(1)(zc) and 3(2)(va) of SC/ST Act including offences under Sections 153A, 504 and 505(1)(c) of IPC.

15. The learned counsel for the petitioner raised the following grounds to quash the entire proceedings;-

1. The first respondent failed to comply with the mandatory provisions of Section 65-B (4) of the Evidence Act, while filing the charge sheet on the basis of video recording of mobile phone produced by the 2nd respondent.
2. The first respondent failed to obtain sanction under Section 196 of Cr.P.C to take cognizance for the offence under Sections 153A, 504 and 505(1)(c) of IPC.

16. There was a dispute between the second respondent and his party men with regard to placing a flag post, banners on their political party leader's birthday on 17.08.2019 at Ethanemili village. Therefore, the public conducted a meeting and resolved that no one should sell any grocery items, any provisions and no one shall receive any milk from the person who belongs to SC/ST community. After the resolution, the 2nd respondent went for purchasing some grocery items from the petitioners' shops on 01.11.2019. After switching on video recording in his mobile phone, all the accused persons have refused to sell any grocery items any provisions to the second respondent likewise, other witnesses went to sell their milk to the Thirumala Milk Co-operative Society, they also refused to receive the same. All the allegations are recorded in his mobile phone and produced before the first respondent. Therefore, the entire charges charged on the basis of the electronic record.

17. The law mandates that any secondary evidence should have written certificate, as contemplated under Section 65-B (4) of the Evidence Act.

18. It is relevant to extract the provisions under Sections 65-B of the Indian Evidence Act, 1872, reads as follows;-

1[65B. Admissibility of electronic records.-

(1)Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this

section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a)by a combination of computers operating over that period; or

(b)by different computers operating in succession over that period; or

(c)by different combinations of computers operating in succession over that period; or

(d)in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a)identifying the electronic record containing the statement and describing the manner in which it was produced;

(b)giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c)dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

19. Thus, it is clear that the conditions mentioned under Section 65-B of the Evidence Act only then it is fulfilled and certification of the electronic record is mandatory as under Section 65-B (4) of the Evidence Act. When the certificate expected is required, it should be on the basis of knowledge and belief supported by an oath. Further, it is well settled principle that such evidence is admissible on the basis of certificate of such responsible person and the evidence can be used and needs to be used as the compliance of the provision of Section 65-B of the Evidence Act.

20. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in MANU/SC/0577/2022 in the case of Ravinder Singh Vs. State of Punjab passed in CrI.A.No.1307 of 2019 dated 04.05.2022. In the said case, the Hon'ble Supreme Court of India relying upon the decision, in the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal reported in [MANU/SC/0521/2020 : (2020) 7 SCC 1], held that;-

' We may reiterate, therefore, that the certificate required Under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly 'clarified' in Shafi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor V. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B (4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

Anvar P.V.(supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The Judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also the judgment in SLP (Crl.)No.9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as MANU/SC/0331/2018 : (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

The clarification referred to above is that the required certificate Under Section 65B (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the 'computer' happens to be a part of a 'computer system' or 'computer network' and it becomes impossible to physically bring such system or network to the Court, then the only means of providing such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate Under Section 65B(4)''.

21. In the above judgment, it was further held that the electronic evidence produced before the High Court should have

been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the Court of law. In the case on hand, the Trial Court has now taken cognizance for the offences under Sections 147, 120B, 153A, 504 and 505(1)(c) of IPC and Sections 3(1)(s), 3(1)(u), 3(1)(za)(E), 3(1)(zc) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 as against the petitioners without fulfilling the conditions mentioned under Section 65-B(4) of the Evidence Act.

22. Insofar as the sanction as required under Section 196 of Cr.P.C is concerned, it provides that 'no Court shall take cognizance of any offence punishable under Chapter VI of the IPC except with the previous sanction of the Central Government or of the State Government. It is thus, a pre-condition for taking cognizance of the offence specified in various clauses of Section 196 of the Cr.P.C. The object of Section 196 of the Code is to ensure protection only after due consideration by the appropriate authority so that frivolous or needless prosecutions are avoided. The sanction of a prosecution must be expressed with sufficient particularity to indicate clearly the matter which is to be the subject of the proceeding and it should be apparent from the order of sanction that the authority had applied its mind to the facts constituting the offence.

23. It is relevant to extract the provisions under Section 196 of Cr.P.C.

'196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.

(1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or Section 295 A or sub section (1) of section 505] of the Indian Penal Code (45 of 1860) or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit ¹ an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction ² under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the 1 Subs. Act. 45 of 1978, s. 16, for "a cognizable offence" (w. e. f. 18- 12- 1978) 2 subs. and ins by act 63 of 1980 s. 3 (w. e. f. 23- 9- 1980) rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155''.

24. Thus, it is clear that the prosecution ought to have obtained sanction under Section 196 Cr.P.C for prosecuting the petitioners for having committed the offences under Sections 153-A, 504, and 505(1)(c) of IPC. Admittedly, in the case on hand, no sanction was obtained by the first respondent and no material was produced before this Court. Therefore, this Court has no hesitation to hold that the Trial Court has no jurisdiction to take cognizance of the offence under Sections 147, 120B, 153A, 504 and 505(1)(c) of IPC without a valid

sanction under Section 196 of Cr.P.C.

25. Thus, it is clear that Sub-Section (1) of Section 196, transpires that the offence punishable under Section 124A and Section 153A of IPC cannot be taken cognizance of by the Court except with previous sanction of the Central Government or of the State Government. Similarly, as provided in Sub-Section (1A) of Section 196, the Court cannot take cognizance of offence punishable under Section 153B or 505(2) of IPC except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

26. In view of the above discussion, the proceedings in Spl.S.C.No.24 of 2020, cannot be sustained as against the petitioners and it is liable to be quashed.

27. Accordingly, this Criminal Original Petition stand allowed and the proceedings in Spl.S.C.No.24 of 2020, on the file of the Special Court for SC/ST (POA) Act, Villupuram District, is hereby quashed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ata

To

1. The Special Court for SC/ST (POA) Act,
Villupuram District.
2. The Deputy Superintendent of Police,
Gingee Taluk,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.A.Muthalakan, Advocate, S.R.No.43680

CrI.O.P.No.17866 of 2020

KK(CO)
PM/25/07/2022