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CrI.O.P.No.16989 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2022

Pronounced on : 21.11.2022
CORAM

THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

CrI.O.P.No.16989 of 2019

and

CrI.M.P.No.8543 of 2019

S.Ganesh Anjineyar Sastri

... Petitioner

Vs.

1.The Assistant Commissioner of Police,
J-9, Valasaravakkam Police Station,
Valasaravakkam,
Chennai-600 087.
(Crime No.64/2018)

2.M.Ramesh

... Respondents

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records in S.C.No.23 of 2019 on the file of the learned Principal District and Sessions Court, Tiruvallur and quash the same.

For Petitioner : Mr.S.Senthil

For R1 : Mr.N.S.Suganthan
Government Advocate (CrI.Side)

For R2 : Mr.C.K.M.Appaji



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ORDER

The petitioner herein is the sole accused in S.C.No.23 of 2019 on the file of the learned Principal District and Sessions Court, Tiruvallur for the offences under Sections 294(b), 323, 506(i) I.P.C., and Sections 3(1)(x) & 3(1)(xi) of SC/ST (Prevention of Atrocities) Act, 1989.

2. The complaint against the petitioner is that the *de facto* complainant and the petitioner are friends for long time. During the month of October, 2015 the *de facto* complainant lend loan of Rs.25,50,000/- to the petitioner for establishing hotel in the name and style of “Annapoorani Mess”. The petitioner promised to induct the *de facto* complainant as partner. Subsequently, another sum of Rs.65,00,000/- was given to the petitioner for him to start a Ready made Garments business under the name and style of “Peacock Collection Ladies Wear”. During the month of March 2016, a further sum of Rs.23,00,000/- was advanced to the petitioner for renovation.



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3. Having received more than one crore rupees as stated above, the petitioner failed to induct the *de facto* complainant in his business as partner, but absconded on 18.01.2017 closing down the business. When the *de facto* complainant went to the house of the petitioner on 28.03.2017, he abused him using caste remark and threatened dire consequences. Further, he also told the driver of the *de facto* complainant not to work for the *de facto* complainant, since he belongs to lower caste.

4. The learned counsel for the petitioner would submit that the *de facto* complainant befriended with the petitioner and slowly developed intimacy with the petitioner's wife and joining hand with her to grab his property and business. A false complaint has been given as if the *de facto* complainant has given loan of Rs.1,19,00,000/- to the petitioner herein for improving his business and when he asked the money back as if he was threatened with dire consequences and also abused using filthy language and caste remarks.



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5. The learned counsel for the petitioner would further submit that the *de facto* complainant has no wherewithal to advance loan to the tune of Rs.1,19,00,000/-. The alleged incident is false and even assuming that it is true, it was not within the public view. The prosecution has not prepared sketch of the scene of occurrence to prove that the occurrence took place in the public view. The investigation by a person not authorized as per Rule 7 of SC/ST (Prevention of Atrocities) Act, 1989 is vitiated and liable to be quashed.

6. The learned counsel for the *de facto* complainant would submit that the documents relating to property held by the *de facto* complainant and his income tax return for the financial year 2016-2017 and 2018-2019 to show the *de facto* complainant is a man of means to advance sum of Rs.1,19,00,000/-. He would further submit that the investigation in this case was done by the Assistant Commissioner of Police and therefore, there is no violation of Rule 7 of SC/ST (Prevention of Atrocities) Act, 1989. Whether the incident took place in the public view or not is a matter to be tested in the trial.



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7. The learned Government Advocate (Crl.Side) for the State would submit that Rule 7(1) of SC/ST (Prevention of Atrocities) Act, 1989, mandates the offence committed under the Act shall be investigated by the police officer not below the rank of Deputy Superintendent of Police. In the instant case, the investigation was done by the Assistant Commissioner of Police rank equal to Deputy Superintendent of Police and therefore, there is no violation or infringement. In any event, no prejudice caused to the petitioner and therefore the petition to quash to be dismissed.

8. The perusal of the income tax return and other documents filed by the learned counsel for the *de facto* complainant through his Electrical Contract business for the assessment year 2016-2017 has made a gross profit of Rs.14,53,926/-. Her income tax return does not reflect any advance of loan to the petitioner herein. There is no indication that the *de facto* complainant had any other source to advance a sum of Rs.1,19,00,000/- between 2015-2016. The Final Report does not indicate that the Investigating Officer was authorized by the competent authority



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to investigate the case in SC/ST Act. Rule 7 of SC/ST (Prevention of Atrocities) Act, 1989 reads as below:-

“7. Investigating Officer:- (1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government.”

9. Admittedly, in this case the Investigating Officer has not been appointed by the State/Director General of Police/Superintendent of



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Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case. In the absence of authorization by the competent authority, the case has been investigated by a person not authorized to investigate and Final Report filed without ascertaining the fact whether the *de facto* complainant had source of income to advance Rs.1,19,00,000/- to the petitioner herein and whether the alleged incident happened in the public view, when the *de facto* complainant went to the house of the petitioner to collect the said money.

10. In view of the vital lapse mentioned above, the criminal case against the petitioner is unsustainable and liable to be quashed. Accordingly, this Criminal Original Petition to quash the First Information Report is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Index: Yes/No
Speaking Order/Non Speaking Order



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- 1.The XVI Metropolitan Magistrate Court, George Town, Chennai,
- 2.The Inspector of Police,
W-15, All Women Police Station,
Royapuram,
Chennai-13.
- 3.The Public Prosecutor,
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN, J.

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Delivery Order made in
Crl.O.P.No.16989 of 2019

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