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Crl.O.P.No.23452 of 2021
and Crl.M.P.No.12864 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.23452 of 2021
and
Crl.M.P.No.12864 of 2021

Kavin Kumar.

... Petitioner

Versus

The State rep by Deputy Superintendent of Police,
All Women Police Station,
Erode.
Crime No.27 of 2018.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the charge framed dated 03.03.2020 against the petitioner in Crl.M.P.No.382 of 2020 in Spl.S.C.No.2 of 2019 on the file of the Special Court for the Trial of SC/ST Cases, Erode District by allowing this Criminal Original Petition.

For Petitioner : Mr. R.Shase

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to set aside the order dated 03.03.2020 in Crl.M.P.No.382 of 2020 in Spl.S.C.No.2 of 2019 on the file of the Special Court for trial of SC/ST cases, Erode District.

2. Heard the learned counsel for the petitioner and the learned Government Advocate, (Criminal side), for the respondent.

3. The petitioner/accused, who has filed this quash petition, was charged for the offences under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(2)(va) of Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 1989. A petition, under Section 216 of the "Code of Criminal Procedure" [hereinafter called as "Cr.P.C"], was filed by the respondent Police in Crl.M.P.No.382 of 2020 on 03.03.2020. On the same day, PW1 to PW4 were examined and Ex.P1 to Ex.P6 were marked and similarly, the defence side also documents were marked as Ex.D1 to D8. Thereafter, the Court below allowed the said petition based on the "No objection" endorsement made by the



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defence side counsel and thereafter, the trial has proceeded and as on date, PW13 has been examined.

4. The grievance of the petitioner is that the petitioner ought to be personally enquired as per Section 216 of Cr.P.C., but no such enquiry has been made through Counsel. Without conducting the enquiry, the trial Court included the charge for the offence under Section 376 of IPC, which is not proper. Further, it is submitted by the learned Counsel for the Petitioner that this petition has to be considered based on the materials produced, but the records submitted by the Prosecution does not make out any offence to add a charge under Section 376 of IPC.

5. In this case, the Petitioner and the *de facto* complainant knew each other for quiet some time and during that period they developed relationship. Later they had physical relationship. Subsequently, the Petitioner refused to marry her. Hence, the case had been registered. At this stage, no new facts have arisen to file a petition under Section 216 of Cr.P.C., in which case, entertaining the petition is not proper.



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6. By way of reply, the learned Government Advocate vehemently objected stating that the petition filed by the Prosecution under Section 216 of Cr.P.C was presented before the Court. The Court had issued notice to the Counsel for the Accused. The learned defence counsel appearing before the trial Court had made an endorsement, “No Objection”. Thereafter, the learned trial Judge had allowed the petition. Therefore the order of the learned Principal District Judge, Special Court for trial of cases under SC/ST (Prevention of Atrocity) Act is perfect. It does not need any interference from this Court. The learned Government Advocate further submitted that the petition itself is not maintainable and invited the attention of this Court to provisions of Section 216 of CrPC.

7. On consideration of the rival submission, this Court is not satisfied as the order passed by the learned Principal District Judge, Special Court for the trial of cases under SC/ST (Prevention of Atrocity), is found mechanical. He had not applied mind to understand the gravity of the issues involved. The charges were framed for the offences under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(2)(va) of Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 1989 read with Section 506(i) of IPC. These are lesser



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offences compared to offence under Section 376 IPC. Without understanding the gravity of the situation, the learned Principal District Judge, Special Court for the trial of cases under SC/ST (Prevention of Atrocity) had mechanically, as though he is presiding as a Civil Judge and petition are filed across the table by the learned counsel for the disputing parties in Civil Court, passed an order which had created this problem whereby valuable defence of the accused guaranteed under the Constitution of India had been ignored by the learned Principal District Judge, which cannot be condoned. Therefore, the same is set aside as per the reported ruling of the Hon'ble Supreme Court in ***State of Haryana Vs Bhajan Lal*** being reported in ***1992 AIR 604***, where there are guidelines issued to the High Court exercising its extraordinary powers for abuse of the process of Court and also for safeguarding the rights of litigants. The action of the learned counsel for the defence who is expected to protect the right of the Accused as per the right guaranteed under the Constitution of India and also the learned Sessions Judge presiding from the present Court is found unacceptable and unreasonable.

8. The learned Judge considering the valuable right of defence of the accused ought to have put him on notice regarding ingredients of the petition



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filed under Section 216 of Cr.P.C by the Prosecution and ought to have forced the learned Public Prosecutor to argue on that ground in the presence of the Accused. It is to be noted that proceedings in criminal Court are conducted in the presence of the Accused. That is why in the absence of the Accused proceedings are adjourned. After hearing the argument of the learned Public Prosecutor in this case, the explanation offered objection raised by the accused ought to have been recorded along with the arguments or submissions advanced by the learned Counsel for the defence. Then, the learned Session Judge, after perusing the materials available in the final report of the investigation before him/her, pass appropriate orders either rejecting the petition under Section 216 of CrPC filed by the Prosecution or allowing the same. In case of allowing, it is the duty of the learned Session Judge to recall all the witnesses who had already been examined by the Court after alteration of the charges, to adduce evidence to the new charges and thereby allowing their defence lawyer to cross-examine the witness who are already examined and who are now recalled. The learned Principal District Judge is advised to peruse the commentaries on Cr.P.C by Ratanlal and Dirajlal for better clarification.



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9. Therefore, the order is set aside the learned Principal District Judge is directed to hear the arguments of the prosecution and act accordingly as per law to protect the valuable rights of the accused. Otherwise if the case end up in conviction, after appreciation of evidence, will be set aside as it had violated the rights guaranteed to the citizen of the country who faces criminal trial under the principles of fair trial guaranteed in the Constitution of India.

10. With the above direction, this petition is allowed. The order in Crl.M.P dated 03.08.2020 in Special Case No.2 of 2019 is set aside. Consequently, the connected miscellaneous petition is also closed.

24.06.2022

Index : yes/no

Speaking order/Non-speaking order

nsa

To

1. The Special Court for the Trial of SC/ST Cases,
Erode District

2. The Deputy Superintendent of Police,
All Women Police Station,
Erode.

3. The Public Prosecutor,
Madras High Court.



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SATHI KUMAR SUKUMARA KURUP. J.,

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