



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/12/2022

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)No.985 of 2022

Muthukumar : Petitioner/Petitioner

Vs.

Sundaramurthy
Sub Inspector of Police,
Eramiel Police Station,
Kanyakumari District. : Respondent/Respondent

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for records and set aside the order passed in Cr.MP No.1751 of 2022, dated 09/09/2022 on the file of the Additional Sessions Judge-II, (PCR), Tirunelveli and consequently direct the Inspector of Police, Eramiel Police Station to register the FIR against the respondent.

For Petitioner : Mr.Isaac Mohanlal
Senior counsel
for M/s.Isaac Chambers

For Respondent : Mrs.S.Mahalakshmi

O R D E R

This revision has been filed seeking to set aside the order, dated 09/09/2022 passed in Cr.MP No.1751 of 2022 by the Additional Sessions Judge-II, (PCR), Tirunelveli and consequently direct the Inspector of



Police, Eraniel Police Station to register the FIR against the respondent.

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2.Before we go into the merits of the case, let us refer the judgment of the Hon'ble Supreme Court in the case of **National Dalit Human Rights Vs. Union of India [2017(2)SCC 432]**. The relevant portion of the judgment is extracted hereunder:-

"17... The ever increasing number of cases is also an indication to show that there is a total failure on the part of the authorities in complying with the provisions of the Act and the Rules. Placing reliance on the NHRC Report and other reports, the petitioners sought a mandamus from this court for effective implementation of the Act and the Rules.

18.We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and the Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended



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by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance with the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before the Parliament every year. The constitutional goal of equality for all the citizens fo this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and the State Government should be directed to strictly enforce the provisions of the Act and we do so."

3. Now the grievance that has been raised by the revision petitioner in this matter is in reference to the observation of the Hon'ble Supreme Court in the above said case.

4. The facts in brief:- The revision petitioner filed a petition under section 156(C3) Cr.P.C before the



Special Court with the following averments:-

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He belongs to SC community. He was employed in abroad from 1987 to 2021 and used to send money to his brother namely Krishnan to purchase some property in his name. For that purchase, he has also executed a power of attorney in favour of Krishnan. But however, the property that was purchased in his name was in possession of the above said Krishnan. So apart from that he is also rendered financial assistance to Krishnan to purchase the property with his adjacent to his property. On 21/05/2021 the above said Krishnan died. After that he asked the Krishnan's wife namely Mary Majila to return the document. Over the above said, misunderstanding arose between them. On 16/03/2022 he was removed debris in his property. At about 11.30 am, the above said Mary Majila and her daughter came to that place and pocked up quarrel. So also called some other persons through cell phone within five minutes, one George, Adaikalam, Adaikalam's husband, John Peter and Mariaselvi came to the spot and caused assault by calling his caste name and also assaulted. So he was taken to the Government Medical Hospital, Asaripallam. In this regard, he lodged a complaint through online as well as registered post. But FIR was not registered immediately. He was called for preliminary enquiry on 29/03/2022 and 30/03/2022. The above said preliminary enquiry was conducted with an intention to



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5. With these averments, he filed a petition seeking an order of the court to register FIR against the respondent under section 4 of SC/ST Act and also under section 166 IPC.

6. The Special Court made elaborate discussion with regard to the issue to find out whether sufficient ground was made by the petitioner to proceed against the respondent under section 4 of SC/ST (POA) Act and section 166 IPC.

7. The learned Senior counsel appearing for the revision petitioner would submit that absolute illegality has been committed by the respondent herein in not registering the FIR immediately on receipt of the online complaint from the revision petitioner under the provision of the Special Act. So without registering the FIR, illegally statements have been recorded by the respondent by making the preliminary enquiry. This, according to the learned Senior counsel for the revision petitioner, is not



permissible in the light of the amendment that was introduced in the above said Act under section 18A of the Act. It is further submitted that the very undertaking of preliminary enquiry by the respondent nullifies the force and effect of section 18A of the Act. The above said provision has been introduced by amendment in order to prevent the officials from making preliminary enquiry before registering FIR, when the allegation of the offence of the provision of the Special Act has been made.

8. Answering this point requires some factual analysis also.

9. At the time of initial argument, the learned Senior counsel appearing for the revision petitioner confined the matter only with regard to the illegality that has been committed by the Special Court in dismissing the petition by making a preliminary analysis of the factual circumstances and also other legal aspects.

10. Rely to the above said argument, the learned counsel appearing for the respondent has entered into the factual aspect also to explain her position and under what circumstance, the preliminary enquiry was undertaken by the respondent.



11. On hearing this argument, the learned Senior counsel appearing for the revision petitioner also brought the factual aspects before this court.

12. So the factual aspect as well as the legal aspect must be taken into account for deciding this issue.

13. In reply to the above said argument of the learned Senior counsel appearing for the revision petitioner, the learned counsel appearing for the respondent by relying upon the case of **Prathvi Raj Chauhan** would submit that in para '9', the following observation has been made by the Hon'ble Supreme Court.

"9. Concerning the provision contained in Section 18-A, suffice it to observe that with respect to preliminary inquiry for registration of FIR. We have already recalled the general Directions 79.3 and 79.4 issued in Subhash Kashinath case [(2018) 6 SCC 4564]. A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this court in Lalitha Kumari V. State of U.P [(2014) 2 SCC 1] shall hold good as explained in the order passed by this Court in the review petitions on 1-10-2019 (Union of India Vs. State of Maharashtra [(2020) 4 SCC 761] and



*the amendment provision of Section 18-A
have to be interpreted accordingly.*

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So according to the counsel for the respondent, preliminary enquiry in the facts and circumstance of the case was necessitated, because of the relationship between the revision petitioner and the accused. According to her, dispute has arisen between the revision petitioner and the wife of his brother, over some property.

14.The occurrence said to have been taken place at the place of the above said property. So according to her, even though the revision petitioner has mentioned the community in the complaint, no reference was made to the effect to which the counter parties belong.

15.In short, according to the learned counsel appearing for respondent, the relationship between the parties and the issue necessitated the preliminary enquiry, which is not barred under section 18-A of the Act in view of the clarification that was issued by the Hon'ble Supreme Court in the case of **Subhash Kashinath**, which is referred in para 9 extracted above. In the light of the above said submission, this court may not commit any mistake in venturing into the factual aspect also, so that the records can be set-right.



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16. Perusal of the CD file shows that the above said complaint was made through online, on 17/03/2022. It was the complaint registered in CSR No.308 of 2022, on 08/03/2021. Enquiry was undertaken by the respondent by calling the parties. The revision petitioner appeared before the respondent, on 29/03/2022. Enquiry was posted on 30/03/2022. Some of the witnesses have been examined and their statement were also recorded and the counter party also appeared and they have also given statement. He made counter allegation against the revision petitioner that she was assaulted. Enquiry was concluded, on 31/03/2022 stating that they visited the occurrence place and parties were examined, on 29/03/2022. They were required to appear on 30/03/2021, but the revision petitioner did not turn up. So on the basis of the statement of the witnesses, it was found that no such occurrence took place. So it was closed and intimation was also sent to the revision petitioner. But later, another development took place at the intervention of the National Commission for Scheduled Castes. Again, the matter was taken up for investigation and now that process is underway by registering the FIR under section 156 and 147 Cr.P.C, on 16/04/2022.

17. By pointing out this long delay, it was submitted by the learned Senior counsel appearing for the revision petitioner that the closure report is illegal,



since he appeared on 30/03/2022 also. But he was insulted and humiliated. So he did not appear on the next hearing date.

18. Now whatever it may be, FIR has been registered and the investigation is underway.

19. With regard to the omission on the part of the revision petitioner in mentioning the community of the counter party, it has been submitted by him to the effect that it is not required. So according to him, when the complaint with regard to the commission of the offence under the provisions of Special Act under section 3(1)(r), 3(1)(s) of SC/ST (POA) Act, which is cognizable in nature, as mandated under section 18A of the Act, immediate action might have been taken.

20. When the argument was advanced by the learned Senior counsel appearing for the petitioner, the learned counsel appearing for the respondent would submit that non mentioning of the community by the petitioner in the complaint is resulted in the above said consequences.

21. The learned Senior counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court reported in the case of **Ashabai Machindra**



Adhagale Vs. State of Maharashtra and others [(2009)3 SCC

789] and would contend that absolutely there was no compulsion to mention the caste name in the complaint.

22.No doubt that in the above said judgment, it has been mentioned that non mentioning of the community in the complaint is not fatal. It can be found out at any stage.

23.No doubt that it is not necessary. But when the revision petitioner and the counter party are closely related, naturally it is the duty of the revision petitioner to mention the caste to which the counter party belongs to make out a prima face case of cognizable offence under the provisions of Special Act.

24.Further perusal of the CD file shows that only during the course of investigation, after filing the FIR some of the witnesses stated that the counter party namely the wife of revision petitioner's brother belongs to backward community and it was inter-caste marriage between herself and the brother of this petitioner. So this factual aspect is not mentioned in the complaint. So the action that has been undertaken by the respondent in making the preliminary enquiry cannot be found fault.



25. So in view of the above said, I find no reason to interfere the order passed by the trial court, even though for different reasons.

26. In the result, this criminal revision fails and the same is **dismissed**.

23/12/2022

Index: Yes/No
Internet: Yes/No
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To,

The Additional Sessions Judge-II,
Fast Track court,
Tirunelveli.



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G.ILANGOVAN, J

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