



Crl.O.P.(MD) No.18410 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.18410 of 2022

and

Crl.M.P(MD)Nos.12343 and 12344 of 2022

Michael Santha Forgia

...Petitioner

VS

**1. The Assistant Superintendent of Police
Tuticorin South Police Station
Tuticorin, Tuticorin District**

**2. The Inspector of Police
Tuticorin South Police Station,
Tuticorin, Tuticorin District**

3. P.Muthulakshmi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the record in S.C.No.42 of 2020 pending on the file of the Special Court, PCR, Tuticorin, Tuticorin District and quash the same.

For Petitioner : Mr.Ka.Raamakrishnan

For R-1& R2 : Mr.R. Sivakumar

Government Advocate(Crl.Side)



Crl.O.P.(MD) No.18410 of 2022

ORDER

WEB COPY

This Criminal Original Petition has been filed to quash the proceedings in S.C.No.42 of 2020 pending on the file of the Special Court, PCR, Tuticorin, Tuticorin District.

2. The learned Counsel for the Petitioner would submit that the Petitioner is a practicing lawyer of the Thoothukudi Bar Association. The defacto complainant/third Respondent is also the member of the same Bar Association, practicing as a lawyer. It is the contention of the learned Counsel for the Petitioner that the Petitioner had studied law in the usual course of 10+2+3 whereas the defacto complainant had not completed the degree in the usual course of 10+2+3. She had completed in open university and studied outside the State.

3. The learned Counsel for the Petitioner invited the attention of this Court to the cause of action during association meeting on 21.10.2016 where there was a dispute between the Petitioner and the third Respondent, based on which, the Petitioner herein had preferred complaint with the Inspector of Police, Thenbagam Police Station, Thoothukudi, based on



Crl.O.P.(MD) No.18410 of 2022

which, C.S.R.No.700 of 2016 was registered against the defacto complainant/third Respondent and two other lawyers. After CSR was registered against the third Respondent, the third Respondent had approached the learned Judicial Magistrate after five months from the date of registration of the CSR under Section 156(3) of Cr.P.C, where the learned Judicial Magistrate No.I, Thoothukudi had directed the very same police to register the case. Accordingly, the case was registered. Subsequently, the provision of SC/ST(POA) Act was invoked. After completion of the investigation, the final report laid before the Court of the Special Court, PCR Act Cases, Thoothukudi, which was taken cognizance and numbered as S.C.No.42 of 2020.

4. The learned Counsel for the Petitioner invited the attention of this Court regarding the direction issued by the learned Judicial Magistrate which is not permissible under the provisions of SC/ST(POA) Act as per Section 10 and 14 of the SC/ST(POA) Act. It is the further contention of the learned Counsel for the Petitioner that as per the statement of the third Respondent, the occurrence is alleged to have taken place in the Court premises which is a public place, but not in public view. The victim felt



Crl.O.P.(MD) No.18410 of 2022

ashamed because of the words who witnessed the same. There was no immediate complaint to the Judicial Officer to the Court or Court staff members. In the statement given by L.W.1, it is stated that other Advocates who were present in the bar premises, when the Petitioner was abused as against the Petitioner himself had given complaint to the police immediately after the occurrence in the Bar Association premises. The very same Advocate had given statement under Section 161(3) Cr.P.C., in support of the third Respondent. Further, the learned Counsel for the Petitioner invited the attention of this Court to the abusive words used in the public shall not attract the provisions of SC/ST(POA) Act. Therefore, it is the contention of the Petitioner that the Petitioner on the date of incident was inside the Bar premises when the third Respondent and other Advocates were standing outside. In support of her abuse, the Petitioner had immediately lodged a complaint, on which, CSR was registered and as an afterthought and counter blast, made to believe that the case had been registered.

5. It is the contention of the learned Counsel for the Petitioner that the learned Judicial Magistrate No.I, Thoothukudi could not have entertained the petition under Section 156(3) of Cr.P.C when the third Respondent had



Crl.O.P.(MD) No.18410 of 2022

approached him/her to lodge a complaint. The third Respondent being a practitioner of law, ought to have approached the Court of the Special Judge (PCR Act) Cases and filed a complaint immediately on the date of occurrence. Further, the learned Counsel for the Petitioner invited the attention of this Court to Rule 7(2) of SC/ST(POA) Act, which reads as follows:

“7. Forfeiture of property of certain cases:

(2) Where any person is accused of any offence under this Chapter , it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent. It is required for the purpose of realisation of any fine imposed under this Chapter”.

6. The learned Counsel for the Petitioner invited the attention of this Court to the reported ruling of the High Court of Allahabad in the case of ***Vinod Kumar.vs. State of U.P and five others***, in which, it has been observed as follows:

“Even if the grievance is not redressed, the aggrieved person may file a complaint under Section 15(9) of SC/AT Act



before the Special/Exclusive Special Judge who shall refer the matter before the Administrative Committee formed under Section 21(iv) of SC/ST Act Rules 4(4) and Rule (17) SC/ST Rules for punishing the officer in charge as per provisions of Section 4 of the Act..

Therefore, the answer to the second question that the Special Judge can treat the application under Section 156(3) Cr.P.C as a complaint case or not? Answer is 'No' in view of the Rule 5(1) of the amended Act “.

7. The learned Counsel for the Petitioner also invited the attention of this Court to the ruling of the Hon’ble Supreme Court in the case of ***Hitesh Verma .vs. State of Uttarhand and others***, wherein it is observed as follows:

17. In another judgment reported as [Khuman Singh v. State of Madhya Pradesh](#)⁶, this Court held that in a case for applicability of [Section 3\(2\)\(v\)](#) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under: 6 2019 SCC OnLine SC 1104.

“15. As held by the Supreme Court, the offence must be such so as to attract the offence under [Section 3\(2\)\(v\)](#) of the Act. The offence



must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar”- Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under [Section 3\(2\)\(v\)](#) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under [Section 3\(1\)\(r\)](#) of the Act is not made out

20. Later, while examining the constitutionality of the provisions of the [Amending Act \(Central Act No. 27 of 2018\)](#), this Court in a judgment reported as [Prathvi Raj Chauhan v. Union of India & Ors.](#)⁹ held that proceedings can be quashed under [Section 482](#) of the Code. It was held as under:

“12. The Court can, in exceptional cases, exercise power under [Section 482](#) CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.”



Crl.O.P.(MD) No.18410 of 2022

22. *The appellant had sought quashing of the charge-sheet on the ground that the allegation does not make out an offence under the Act against the appellant merely because respondent No. 2 was a Scheduled Caste since the property dispute was not on account of the fact that respondent No. 2 was a Scheduled Caste. The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a Scheduled Caste. Still further, the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar, any person to protect his rights by way of a procedure established by law”.*

Therefore, he seeks to quash the proceedings in S.C.No.42 of 2020 on the file of the Special Court, PCR Act Cases, Tuticorin.

8. The learned Government Advocate (Crl.Side) would submit that as per the complaint of the third Respondent, she was abused by the Petitioner in a public place that is the entrance of Court campus. It was in the public view. Further, he submits that the statement of the witnesses recorded also corroborated the same. *Prima facie* case is made out. There is no intimidation under Section 506(2) of IPC. This is not a fit case for quashing of the proceedings. What are all argued by the learned Counsel for the Petitioner is to be considered only at the time of trial.



Crl.O.P.(MD) No.18410 of 2022

9. It is to be noted that in cases to attract the provisions of SC/ST (POA) Act, the proceedings can be quashed or First Information Report can be quashed after hearing the defacto complainant. Here, in this case, notice was sent to the defacto complainant. Private notice was also ordered. The learned Counsel for the Petitioner repeatedly sent notice that was refused by the defacto complainant/third Respondent. As per the cause list, it is seen that affidavit of service was filed in S.R.No.9836/2022. The third Respondent as a practicing lawyer ought to have appeared before this Court either by herself or through Counsel. Therefore, it is to be taken as in spite of notice, she remained absent.

10. In the light of the above, the offences alleged against the Petitioner herein had not been made out as per the materials available in the charge sheet. Therefore, the learned Counsel for the Petitioner sought to quash the charge sheet.

11. Therefore, the Court can draw presumption that the Respondent being a practicing lawyer, does not want to offer remarks resisting to quash the proceedings. She is aware of the outcome of the non-appearance before



Crl.O.P.(MD) No.18410 of 2022

this Court, when this Court wants to hear from the defacto Complainant about her objections. If she is not interested, at least, she would have sent her colleague to protest against the Petition seeking to quash the charge sheet. Therefore, in the facts of the case as gathered from the materials available in charge sheet before this Court, it is found that even though the learned Additional Public Prosecutor objected to quash the proceedings, the objection of the learned Additional Public Prosecutor is found unacceptable in the specific circumstances as stated by the Petitioner.

12. The origin of the case actually commences when the complaint was lodged by the defacto complainant, in which, CSR was registered by Thenbagam Police jurisdiction which was the territory of the Thoothukudi District and the Bar Association of Tuticorin, is located. The Petitioner being officer bearer of Advocate Bar Association, Tuticorin, felt aggrieved by the conduct of the third Respondent and she had promptly lodged complaint.

13. Since it is the case involving Advocates, the Police are slow to act due to repercussion from the members of the Bar. Therefore, they had



CrI.O.P.(MD) No.18410 of 2022

registered it only as CSR. After registration of the CSR, the third Respondent who is aware of the pending enquiry in CSR, had approached the Court of the learned Judicial Magistrate No.I, Tuticorin, under Section 156(3) of Cr.P.C

14. It is the contention of the learned Counsel for the Petitioner that the learned Judicial Magistrate No.I, Tuticorin, does not have jurisdiction to register the case as per Sections 10 & 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In ordinary cases, the learned Magistrate can pass directions directing the police to register the case. Here, the jurisdiction of the Magistrate is ousted. In the very same Court premises where the Court of the learned Judicial Magistrate No.I, Tuticorin, is situated, in the same campus, the Court of the learned Judicial Magistrate, PCR Court, is also functioning. The third Respondent being practising lawyer, she ought to have approached the PCR Court to register the complaint as per Sections 10 and 14 of the said Act.

15. It is pointed out by the learned Counsel for the Petitioner that nowhere in the SC/ST(POA) Act, the word “ Judicial Magistrate” had been



Crl.O.P.(MD) No.18410 of 2022

used. The Judicial Magistrate refers to the Special Judge for Exclusive Trial of cases under the said Act.

16. Therefore, this is nothing but abuse of process of Court. It is filed five months after lodging of CSR and only intention is to cause harassment to the Petitioner.

17 The submission of the learned Counsel for the Petitioner is found acceptable in the light of the reported ruling cited by him. The objection by the learned Additional Public Prosecutor is rejected in the facts and circumstances of the case as gathered from the records and materials available in the charge sheet itself.

18. As per the reported ruling of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Ch. Bhajan Lal (AIR) 1992 SC 604***, the Court shall not exercise its inherent powers/extraordinary powers under Section 482 of Cr.P.C leniently and it should be used sparingly, for which, guidelines had been issued to the High Court. One of the conditions is that from the materials placed by the prosecution, there are materials available



Crl.O.P.(MD) No.18410 of 2022

that the prosecution case will not stand on its own legs and here, as rightly pointed out by the learned Counsel for the Petitioner, the prosecution case itself does not attract the offences as alleged in the report.

19. The learned Counsel for the Petitioner cited the ruling of the Hon'ble Supreme Court which also relates to the quashing of the proceedings under SC/ST(POA) Act and therefore, in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***Hitesh Verma .vs. The State of Uttarhand and another***, no useful purpose will be served by adjourning the case to hear the defacto complainant/third Respondent.

20. In view of the same, this Criminal Original Petition is allowed and the proceedings in S.C.N.42 of 2020 pending on the file of the Special Court, PCR Act cases, Tuticorin, is hereby quashed. Consequently connected miscellaneous petitions are closed.

10.11.2022

Internet:Yes./No

Index:Yes/no

aav

13/15



Crl.O.P.(MD) No.18410 of 2022

To

WEB COPY

1. The Special Court, PCR, Tuticorin, Tuticorin District
2. The Assistant Superintendent of Police
Tuticorin South Police Station
Tuticorin, Tuticorin District
3. The Inspector of Police
Tuticorin South Police Station,
Tuticorin, Tuticorin District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.18410 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

aav

CRL.O.P (MD) No.18410 of 2022

10.11.2022