



CrI.O.P.No.25229 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.25229 of 2021 and
CrI.MP.Nos.13960 & 13961 of 2021

1.Saravanan
2.Prabakaran
3.Dhanesh
4.Dharmaraj
5.Sathiyamoorthi

... Petitioners/A1 to 5

Vs.

1.The State Rep by its,
The Deputy Superintendent of Police,
Karumathapatty Sub Division,
Coimbatore District
(crime No.209 of 2018)
2.The Inspector of Police,
Karumathampatty Police Station,
Coimbatore
(crime No.209 of 2018)
3.Gopinath

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Spl.SC.No.18 of 2019 on the file of Principal District and Sessions Judge at Coimbatore and to quash the same.

For Petitioners

: Mr.K.Myilsamy



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For Respondents

For R1 & 2

: Mr.A.Gopinath,
Government Advocate(crl.side)

For R3

: No appearance

ORDER

This criminal original petition has been filed to quash the proceedings in Spl.SC.No.18 of 2019 on the file of learned Principal District and Sessions Judge at Coimbatore, taken cognizance for the offences under Sections 147, 148, 323, 342, 324, 506(ii) of IPC and Sections 3(1)(r) & 3(2)(Va) of The Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 2015 as against the petitioners.

2. The case of the prosecution is that on 13.05.2019, the defacto complainant was called by the petitioners at about 11 a.m. to a place near the the bridge at Somanur. Thereafter, they used his caste name and attacked him using their hands. Further, one of the accused tied him using rope and they beat him using an iron rod. Therefore, he sustained injuries on his right shoulder and left knee. They also threatened him with dire consequences. The first respondent registered FIR in crime No.209 of 2018 for the offence under



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Sections 147, 148, 323, 342, 324, 506(ii) of IPC and Sections 3(1)(r) &

3(2)(va) of The Schedule Caste and Schedule Tribes (Prevention of Atrocities)

Act, 2015. After completion of investigation, they filed final report and the same has been taken cognizance by the trial court.

3. The learned counsel for the petitioners would submit that though the Tahsildar stated that the petitioners 1, 3 & 5 belong to backward community, they all belong to only scheduled caste community and as such, the offence under SC/ST Act would not attract as against them.

4. On perusal of the statement of the Tahsildar, he categorically deposed that all the petitioners belong to backward community. Therefore, the grounds raised by the petitioners can be considered only before the trial court during the trial. Whatever the documents produced before this Court, cannot be tested here as the trial court. Insofar as other offences are concerned, there are specific allegations as against all the petitioners. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-



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" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

5. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior



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counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

6. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a



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complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

7. In view of the above discussion, this Court is not inclined to quash the proceedings in Spl.SC.No.18 of 2019 on the file of Principal District and Sessions Judge at Coimbatore. However, the petitioners are at liberty to raise all the above grounds before the trial Court.



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WEB COPY 8. Accordingly, this criminal original petition is dismissed.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order
lok

To

- 1.The learned Principal District and Sessions Judge at Coimbatore
- 2.The Deputy Superintendent of Police,
Karumathapatty Sub Division,
Coimbatore District
- 3.The Inspector of Police,
Karumathampatty Police Station,
Coimbatore
- 4.The Government Advocate,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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