



Crl.O.P.No.32247 of 2022

T.V.THAMILSELVI, J.

The petitioners apprehend arrest at the hands of the respondent / Police for the offences under Sections 294(b) and 323 read with Section 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Crime No.672 of 2019 on the file of the respondent / Police and seeks anticipatory bail.

2. The learned counsel for the petitioners would submit that originally on 15.12.2019, a complaint was lodged by one Jayanthi stating that her age was 40 years, was working as a Professor in a College. One Suresh, S/o Jayabal drove the Car bearing Registration No.TN88L8946 Ford Eco SpotCar and attempted to dash against her and when the same was questioned, he scolded her in filthy language and also threatened her with dire consequences. Based on her complaint, a case was registered in Crime No.671 of 2019 for the offences under Sections 294 (b) and 506(part-I) IPC. In view of this complaint, the said Suresh was arrested and remanded to judicial custody. The Police also came to know that lots of cases are pending against the said Suresh in other States also.



3.The learned counsel for the petitioners further states that after seven days from the date of above occurrence, the present complaint in Crime No.672 of 2019 was registered based on the complaint given by one Saroja, who is none other than the mother of the said Suresh and she is the neighbour of the said Jayanthi. He would further submit that the said Saroja lodged the present complaint against the petitioners, because they helped the said Jayanthi to take the said Suresh to the Police Station in the earlier case in Crime No.671 of 2019 and hence, she gave a false complaint against the petitioners as if she was attacked and scolded by the petitioners. Initially, the case was registered only for the offences under Sections 294 (b) and 323 IPC on 23.12.2019. But the occurrence was alleged to have taken place on 15.12.2019. The second respondent / Police, after conducting enquiry in Crime No.672 of 2019, closed the same as "Mistake of Fact" on 17.06.2022. Thereafter, she gave a complaint to the National Commission for Scheduled Caste, Chennai on 01.09.2022. Subsequently, the case was again taken on file and the Sections of the offences were altered to Sections 294(b), and 323, IPC r/w Section 3(2) (va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. He further submitted



that in order to bring the petitioners under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the offences were altered into Sections 294(b) and 323, IPC r/w Sections 3(2) (va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Even as per the prosecution, there was only a wordy quarrel and there is no allegation of mentioning of her caste name, which is an essential ingredient to attract the provisions under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Hence, he prayed for grant of the anticipatory bail as there is no prima facie materials against them.

4. The learned counsel for the de-facto complainant appeared and submits that as per the submissions of the de-facto complainant, the petitioner, along with their relatives, always used to ill-treat them, since they belong to Scheduled Caste, and they are having house on the street, where they used to reside and were always teased by the petitioners. On the date of alleged occurrence, when the de-facto complainant's son taken the car, the same was objected to by the petitioners along with other neighbours, which ended in the wordy quarrel, but at that time, the de-facto complainant came there, at that time accused attacked her son and she was pulled down



by the petitioners and also by mentioning her caste name in public place they uttered in filthy language and the de-facto complainant was also attacked by the petitioners. Hence, he was admitted in the Government Hospital, Namakkal on 15.12.2019 for taking treatment where she gave statement to the Police with regard to the said offences, but FIR was lodged only for IPC offence. Hence, he gave the complaint to National Commission for Scheduled Castes (NCSC), and based on that, further enquiry was conducted and alteration report was filed, thereby the petitioner/ accused were charged for the offences under Section 294(b) and 323 IPC r/w Section 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. So, they are not entitled to file this application for obtaining the anticipatory bail and as per the Special Act, they have to approach the appropriate forum. Hence, the petition is to be dismissed as devoid of merits.

5. The learned counsel for the petitioners argued that, as the counter blast for the complaint given by one Jainthy, in Crime No.671 of 2019, under Section 294(b) and 506(Part I) IPC, at the instigation of her son, Suresh, The de-facto complainant gave a false complaint and subsequently,



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the same was registered in Crime No.672 of 2019. Thereafter, in order to harass the petitioners / accused herein, at the instigation of her son, the de-facto complainant developed further story and sent the complaint to National Commission for Scheduled Castes (NCSC), Chennai on 13.01.2020. Near about 1 month after her original complaint, stating that herself and her son were harassed by the petitioners by mentioning their caste with an intention to harass these petitioners by invoking the provision of SC/ST Act, as such is a clear case of abuse of process of law.

6. Further submits that, originally the FIR was filed for the offences of IPC and without any prima-facie material, the investigation officer altered the report by including SC/ST Act and as such it is unfair, hence the petitioners approached this Court by filing this application. To support his contentions the learned counsel for the petitioner relied on the following authority, of the High Court of Madras, reported in **2022(3) MWN (Cr.) 247, N.Shyllappa Kalyan vs M.Muthumanikkam, Government Advocate (Crl.Side)**, in which it is held as follows:

5. A perusal of the allegations made in the complaint showed that there was only a reference that the De facto complainant belongs to Hindu Pallar Community. There is no



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Crl.O.P.No.32247 of 2022

specific allegation in the FIR, that there was an abuse or attack or any offence had been committed against the Defacto complainant for the reason that he belongs to Hindu Pallar Community. Since no prima facie has been made out for registering this case under Section 3(1)(r) & 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, this Court following the ratio laid down in Rahna Jalal v.State of Kerala and another, 2021 (5) CTC 99 (SC) : 2021 (1)SCC 733, ordered this petition to be numbered for hearing and heard.

7. Considering both sides submissions and on a perusal of the records, it reveals that the FIR in Crime No.671 of 2019 was lodged against the son of the de-facto complainant, namely Suresh Kannan. Based upon the complaint given by one Jainthy, Assistant Professor, the allegation reveals that on 15.12.2019 at about 4.15 p.m., when she returned back after completion of work in two wheeler, at the time the said Suresh had driven his car in a rash and negligent manner and attempted to hit her. Hence, he raised objection and at the time wordy quarrel arose, the said Suresh uttered the filthy words against them. Hence FIR was lodged against the said Suresh under Sections 294(b) and 506(Part I) IPC. Thereafter, the mother of the said Suresh namely, Saroja herein gave a complaint on 23.12.2019



against her neighbour, Ganesan. Jainthy, Jayamurugan and owner of the MC cycle shop.

8. Based on that FIR was lodged in Crime No.672 and allegation reveals that on 16.12.2019, as per the information from the Namakkal Government Hospital, the Sub-Inspector of Police went there and enquired the in-patient saroja / de-facto complainant and as per her statement, she is a widow living along with two sons and elder son Suresh Kanna was attacked by the neighbours at about 5.00 p.m., and on hearing that, she went to prevent them and at the time, she was also attacked by Karthic, Ganesan and Jayamurugan and she sustained grievous injuries on her right thigh, with the help of her mother-in-law she was admitted in the hospital and based on her statement, the said FIR was lodged under Sections 294 (b) & 324 IPC,. But subsequently, near about 1 month later, Saroja forwarded a complaint to NCSC stating that she was residing in the Pillaiyar Koil Street, Thillaipuram for 35 years along with her two sons Suresh Kannan and Prabhu, and except them, others belong to higher caste and she along with her sons, always were illtreated by the neighbours and they mentioned her caste and while so, on 15.12.2019, her son was attacked by the neighbours



and when she raised objection, she was also attacked. Hence, she was admitted in the hospital. After recovery, her second son gave the complaint to Deputy Superintendent of Police, since she and her son were harrassed by mentioning her caste. They belong to Scheduled Caste. The neighbours caused always ill-treatment, but Police also had not taken any proper action. Hence, he requested the NSCS to take action against those persons. Based on that, the Commissioner sent a letter to Superintendent of Police, Namakkal. Thereafter, enquiry was conducted as per the letter addressed by the NSCS on 13.05.2022.

9. On a perusal of the complaint given by the de-facto complainant, the Commission made an observation that no action was initiated under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and there is a deliberate act mentioned in the counter petitions against the de-facto complainant and her family members and there is a immense proof of stringent act for invoking Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and again, the Superintendent of Police directed to re-enquire the matter. Thereafter, the SP of Police conducted investigation through the enquiry officer ASP, and further enquiry was



conducted and it was found that as per the statement of the witnesses, the de-facto complainant was not present in the scene of occurrence on the date of alleged occurrence was on 15.12.2019, though they examined 5 witnesses and no witnesses had supported the offence committed by the petitioners. So, the complaint given by her was closed as "mistake of fact", and the report was also forwarded to the Director, NCSC on 13.07.2022.

10. Further not satisfied with that, the said Commission insisted Superintendent of Police to conduct the investigation meticulously, and notice was issued to all the parties for further enquiry and on 22.09.2022. The de-facto complainant lodged the complaint before the Commission against the petitioners, and re-investigation was conducted and the FIR was altered by including Sections 294(b) and 323 IPC r/w Section 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, since the de-facto complainant belongs to the Scheduled Caste. On a perusal of the entire facts as well as the records it reveals that, one Jainthy gave a complaint against the son of the de-facto complainant on 15.12.2019, as if he had driven the car in a rash and negligent manner and the same was questioned by her wordy quarrel was arose FIR was lodged under Sections



294b and 506 (Part- I) IPC on 23.12.2019. Thereafter, as per the statement given by the de-facto complainant/ mother of the said Suresh, as if she was attacked by the present accused person, when she attempted to prevent her son at the time of alleged occurrence as she sustained pain and injury in left thigh. Though FIR was lodged under Sections 294(b) & 324 IPC, the FIR allegation clearly reveals that before the Police, she gave a statement that when her son was attacked by these accused by uttering the filthy words and when she attempt to prevent, she was also attacked by them. So the allegations levelled against the accused are that they uttered filthy words against her son and she sustained simple injury as she was also pulled down by them at that time of alleged occurrence attracts only IPC offences.

11. Admittedly, her son is also an educated person and he is also facing other Criminal cases, in other States also. But even in the complaint sent to the NCSC commission after one month from the date of alleged occurrence on 15.12.2019, she stated that she was attacked by the accused, but even in that complaint she has not specifically stated that she was attacked on that day by mentioning her caste name. FIR allegation also prima facie reveals that she was scolded with filthy language alone.



12. Prima facie there is no material substantiate that these accused persons abused her by mentioning the caste of the defacto-complainant. Even as per the alteration report, since continuous direction was given by the Commissioner, the Section of the offence was altered by including Section 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, but there is no prima- facie material at this juncture on the side of the investigation to alter the said provision of law. Therefore, this Court is inclined to grand bail to the petitioners.

13. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.10,000/- (Rupees Ten thousand only)** with **two sureties** (one surety must be a blood related surety), for a like sum to the satisfaction of the **learned Special Court for SC/ST Act, Sessions Judge, Namakkal**, and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;



Crl.O.P.No.32247 of 2022

[b] the petitioner shall report before the respondent / Police daily at 10.30 a.m., until further orders.

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*;

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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Crl.O.P.No.32247 of 2022

T.V.THAMILSELVI, J.

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Crl.O.P.No.32247 of 2022

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