



Crl.O.P(MD)No.17095 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 17.03.2023

Pronounced on 28.04.2023

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)No.17095 of 2018

and

Crl.M.P(MD)Nos.7568 & 7569 of 2018

Jeyaraman

.. Petitioner / Sole Accused

Vs.

S.Murugaiah

.. Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned complaint in S.C.No.76 of 2018 on the file of the II-Additional District and Sessions Court (PCR), Tirunelveli, and quash the same as illegal insofar as the petitioner is concerned.



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For Petitioner : Mr.T.Lenin Kumar

For Respondent : No appearance

ORDER

The sole accused in S.C.No.76 of 2018 on the file of the II-Additional District and Sessions Court (PCR), Tirunelveli, filed this petition to quash the proceedings in S.C.No.76 of 2018 wherein he is said to have committed the offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The respondent laid a private complaint before the learned Judicial Magistrate, Ambasamudram in Cr.M.P.No.1232 of 2017 under Section 156(3) of Cr.P.C., seeking a direction to direct the Vikramasingapuram police officers to register the case and investigate the matter. The allegation in the complaint is that on 24.01.2016, at 6.00 p.m., when the respondent was going to purchase the household articles to a



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shop in the bus stand, situated near one Vinayaga Stores, the respondent met his friends and was talking with them, at the time, the petitioner came there and abused the petitioner by uttering his caste name and threatened him to deposit the amount in the Court, otherwise he will burn him and also there was some exchange of heat words and during that exchange of heat words, the petitioner abused the respondent herein and criminally intimidated him. On the next day, he went to Vikramasingapuram police station to give complaint against the petitioner, but the police officers directed the respondent to approach the Superintendent of Police, Tirunelveli District, since the case is in the nature of 'untouchability'. Thereafter, he made a complaint to the Superintendent of Police, Tirunelveli and the same was directed to be enquired by the Deputy Superintendent of Police, Ambasamuthiram and the same was retransmitted to the Vikramasingapuram police station.

3. Thereafter, Vikramasingapuram police officers, after examining the respondent and his witnesses informed the respondent that the report



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will be sent to the Deputy Superintendent of Police, Ambasamuthiram and he will take a decision for registering the case. But there was no action taken and hence he made a complaint to the District Scheduled Caste and Scheduled Tribes Welfare Officer on 28.03.2016 and they also sent the complaint to the Superintendent of Police, Tirunelveli, on 01.04.2016. Even after that, no action was taken and the Social Welfare Officer, namely, the Deputy Superintendent of Police also did not respond to his request to register the complaint and hence, he approached this Court in CrI.O.P(MD)No.SR19197 of 2016 to take action against the respondents. The said petition was returned with endorsement to approach the jurisdictional Court.

4. Thereafter, he filed the private complaint before the learned Judicial Magistrate, Ambasamuthiram on 24.02.2017 and the same was taken on file by the learned Judicial Magistrate and after recording the sworn statement, the learned Magistrate taken cognizance under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of



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Atrocities) Act, 1989. Since the said offence was triable by the special Court constituted for trying the offences relating to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the learned Judicial Magistrate committed the same to the said Court by order dated 07.03.2018 and the learned Sessions Judge has taken the same on file in S.C.No.76 of 2018.

5. To quash the same, the petitioner filed this quash petition and made the following submissions:

5.1. The respondent borrowed money from him and he filed a suit in O.S.No.57 of 2004 and the said suit was decreed after contest. Thereafter, the respondent filed the appeal before the first Appellate Court. Pending appeal, the amount was settled by the defacto complainant and thereafter with motivation, he laid the complaint as if the petitioner abused him by using his caste name. Apart from the motivation, the allegation in the complaint is false and the same was clearly proved from the material contradiction stated in the Document No.7 filed along with



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the complaint dated 24.02.2017 where the defacto complainant filed the Crl.O.P(MD)No.SR19197 of 2016 before this Court to register the case and the same was returned with a direction to approach the learned Judicial Magistrate. In the said complaint, the date of the occurrence is stated as 25.01.2016, but in the complaint as well as the sworn statement, they stated that the occurrence date is 24.01.2016 at 06.00 p.m. The same was material on the ground that the District Social Welfare Officer of the Scheduled Castes and Scheduled Tribes Department conducted the enquiry and found that the petitioner was not available in the place of occurrence since he went to the Tiruchenthur Murugan temple by walk as pilgrimage. Hence, the allegation is false one. The said report was emanated from the responsible Government officers and hence it is admissible to ascertain whether the complaint version is true or false. He further contended that the offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not made out.



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6. Per contra, the learned counsel for the respondent would submit that the said occurrence was taken place in front of the number of witnesses and the number of witnesses speak about the same and learned Judicial Magistrate correctly taken the cognizance and the same was correctly committed to the learned Special Judge and the learned Special Judge was applied his mind and taken on file in S.C.No.76 of 2018 and hence, this petition is not liable to be dismissed.

7. On hearing the rival submissions, this Court is dutybound to consider whether the offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out against the petitioner.

8. Upon perusal of the private complaint annexed documents and the sworn statement and also on the basis of the unimpeachable documents submitted by the Government officials, this Court found that the said offence is not made out. Admittedly, the petitioner filed a suit for



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recovery of amount from the respondent and the same was decreed.

Aggrieved over the same, the respondent also filed the appeal suit before the competent Court. Pending appeal, he paid the amount. After making the payment, he made a complaint alleging that the petitioner criminally intimidated him and abusing him using his caste name. On going through the records, it is found that two different caste names were alleged to be uttered by the petitioner. In the said circumstances, it is taken into consideration by this Court that the case of the complainant is that he was already known to the petitioner and also there was a creditor-debtor relationship between them and the same was subsisted for some time.

9. In the said circumstances, the petitioner, if at all, have any intention to humiliate the respondent, he uttered the word of his community. But the words available in the statement of the witnesses is concerned, the petitioner mentioned two communities. It shows that the intention of the complaint is not bonafide and it is made with malafide intention taking vengeance against the petitioner as a result of which the



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decree passed against the defacto complainant. So, the submission made by the learned counsel for the petitioner that it is a false allegation is accepted.

10. Apart from that the responsible officer of the District Social Welfare officer of SC/ST Department made a thorough enquiry and found that this petitioner did not present in the scene of occurrence and he was not available on the date of the occurrence since he went to the Tiruchenthur Murugan Temple along with 17 persons by walk. The said document is also strengthened the case of the petitioner that the allegation is false. Till date, the said document was neither challenged nor set aside by any appropriate Court.

11. In addition to that there is a material contradiction regarding the date of occurrence, but in the Doc.No.7, it is stated that occurrence date is 25.01.2016 at 06.00 p.m., but in the complaint sworn statement, all witnesses are stated that the occurrence took place on 24.01.2016. The



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said variation clearly shows that the defacto complainant/respondent herein made the complaint against the petitioner with malafide intention.

12. So, the above circumstances, the petitioner's case has come under the clause-7 of the **Bajanlal case [1992(1) Supp SCC461]**. Looking the averment made in the complaint to constitute the offence, from the documents annexed along with the private complaint, it is clear that there was constrained relationship between the petitioner and the defacto complainant. In the said circumstances, the usage of caste name is motivated one. Insofar as Section 294 (b) IPC as well as Section 506(i) IPC is concerned, there was no *mens rea* and also the ingredients of Sections 294 (b) and 506(i) IPC is not made out. Hence, this Court finds that the complaint is a motivated one and lack of ingredients of the offence and hence the proceedings against the petitioner is liable to be quashed.



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13. In the result, this Criminal Original Petition is allowed and the impugned complaint in S.C.No.76 of 2018 on the file of the II-Additional District and Sessions Court(PCR), Tirunelveli, is hereby set aside. Consequently, connected miscellaneous petitions are closed.

28.04.2023

NCC : Yes/No
Internet: Yes/No
Index : Yes/No
P JL

To
The II-Additional District and Sessions Court(PCR),
Tirunelveli.



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K.K.RAMAKRISHNAN,J.

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Predelivery Order made in
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