



Crl.O.P.No.6934 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.6934 of 2022

and

Crl.M.P.No.3946 of 2022

P.Manivasagam

... Petitioner

Versus

1. The State by
Deputy Superintendent of Police,
Mallasamuthiram Police Station,
Namakkal Dt.
(Crime No.542 of 2020)

2. Sadasivam

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in Spl.S.C.No.36 of 2021 on the file of Principal Sessions Court, Special Court for SC & ST Cases, Namakkal and quash the same.



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For Petitioner : Mr.R.Nalliyappan for
Mr.C.Vasudevan

For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1

No appearance – R2/Notice served

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in Spl. S.C. No. 36 of 2021 on the file of learned Principal Sessions Judge, Special Court for SC/ST Cases, Namakkal.

2. Heard both sides.

3. The petitioner is ranked as A1 in the F.I.R. in Crime No.542 of 2020 registered for the offence under Sec. 294(b), 506(i) of I.P.C. r/w Sec.3(1)(r) and Sec.3(1)(s) of SC/ST Act. Subsequently, the charge sheet has been filed and the same was taken on file in Spl. S.C. No.36 of 2021 on the file of Principal Sessions Court, Special Court for SC & ST Cases, Namakkal and the same is pending. Now, the petitioner had filed this



petition praying to quash the said charge sheet. Despite service of notice as well as name of 2nd respondent printed in the cause list, there is no representation on the side of 2nd respondent.

4. The learned counsel for petitioner would submit that he was not connected with the alleged occurrence and he has been falsely implicated in this case by the 1st respondent police as per the complaint given by the 2nd respondent/defacto complainant. He would also submit that there was a dispute with regard to fixing of compound wall between the petitioner along with other accused and the 2nd respondent/defacto complainant. On that day, there was a wordy quarrel happened in respect of fixing the compound wall. The petitioner and others belong to Arunthathiyar colony situated on the western side of his land raised objections, so, he stopped the construction. However, the petitioner is having valid decree obtained in a civil court in O.S.No.103 of 2016 for enjoyment of his property. While so, the 2nd respondent/defacto complainant gave a false complaint as if the petitioner humiliated him by mentioning his caste name in the presence of witness but no such occurrence happened nor he uttered his



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caste name. He would also submit that in fact, the 2nd respondent and other colony people always attempted to trespass the property and causing interference. So, he filed a suit in O.S.No.103 of 2016, wherein some of colony people viz., the defendants therein appeared and filed their written statement. Thereafter, during the trial, despite the opportunity given to them, they have not appeared, so, the trial judge granted a decree of injunction in favour of him and to that effect, the civil suit as well as written statement filed by the defendants in that suit also produced. On 06.02.2023, the said suit also decreed in favour of plaintiff. Hence, he prayed to quash the charge sheet initiated against him as there is no basic materials to attract the provision of Sec.3(1)(r) and 3(1)(s) of SC/ST (POA) Act.

5. Admittedly, on perusal of suit, it reveals that there was a dispute between parties in respect of boundary. Admittedly, Arunthathiyar colony people is a neighbour of petitioner herein and a civil dispute in respect of boundary was already pending between the parties. Furthermore, on perusal of complaint also, it reveals that at the time of constructing a



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compound wall, there was a wordy quarrel arose on 15.11.2020 and the complaint was given on 16.11.2020. On seeing the final report filed by the prosecution, all the four witnesses are belong to Arunthathiyar colony and there is no independent witness examined on their side. If at all, the alleged occurrence happened in the public place, there must be an eye-witness from the public view to narrate about the said incident. But, on seeing the list of witnesses mentioned in the final report, it shows that four witnesses was mentioned, but they are belong to Arunthathiyar Colony. Therefore, there is no basic materials collected by the prosecution to prove that on the date of alleged occurrence, the petitioner humiliated the 2nd respondent/defacto complainant by mentioning his caste name in the public place with an intention to harass him. When there is no materials to attract the said provision of law, the proceedings initiated against him is vexatious one. Furthermore, the suit in O.S.No.103 of 2016 reveals the fact that already there was a civil dispute with regard to construction of compound wall pending between the parties from the year of 2016. Therefore, the civil dispute is coloured with a criminal proceedings, as such is not permissible under law. To that



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effect, the petitioner relied the authority laid down by this Court in

Crl.O.P. (MD) No. 204 of 2015 dated 20.01.2021 in the case of ***Paulraj***

and others vs. ***The Deputy Superintendent of Police,***

Thirumangalam Sub-Division, Madurai District and another, wherein

in para 12 to 14, this Court held as follows :-

“ 12.The learned counsel would also rely upon the judgment of the Hon-ble Supreme Court in ***Criminal Appeal No.707 of 2020, [Hitesh Verma Vs. The State of Uttarakhand and another]***, in which, it has been held as follows:

“14. Another key ingredient of the provision is insult or intimidation in any place within public view”. What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as *Swaran Singh & Ors. v. State through Standing Counsel & Ors..* The Court had drawn distinction between the expression "public place" and "in any place within public view". On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:



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"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or



an instrumentality of the State, and not by private persons or private bodies."

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge~sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge~sheet.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for



the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.

17. In another judgment reported as Khuman Singh v. State of Madhya Pradesh, 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:

"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."

13.The basic ingredients of the offence under Section 3(1)(x) of SC/ST Act is concerned, it reads as under:

3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:~

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.



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14.In any place within public view of insults or intimidates to a person will not attract an offence under the Act. Unless such insult or intimidate is on account of victim belonging to Scheduled Caste or Scheduled Tribe, the act is to include the Socio condition of the SC/ ST, as they are denied number of civil rights. Assertion of title and possession over the subject property by either of parties is not due either of indignities by humiliates or harassing. The petitioners as well as the second respondent's maternal uncle if there is any right over the subject property, they have to avail remedies in accordance with law. The first petitioner has rightly approached the civil Court for injunction as against the uncle of the defacto complainant/second respondent, who is claiming to be the cultivating tenant, in respect of the subject property in O.S.No.105 of 2012 on the file of the District Munsif, Tirumangalam and the same was decreed in his favour. Aggrieved by the same, the uncle of the second respondent has also filed an Appeal Suit in A.S.No.82 of 2019 and it is pending without any interim order.”

The above ratio relied on by the petitioner's counsel is squarely applicable the fact of the case on hand and there is no incriminating



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evidence as well as material evidence on the side of prosecution for the alleged offence said to be committed by this petitioner, hence the same is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings initiated against the petitioner in the charge sheet in Spl.S.C.No.36 of 2021 on the file of Principal Sessions Judge, Special Court for SC/ST Cases, Namakkal is quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

06.02.2024

Index: Yes/No
Internet: Yes/No
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To

1. Deputy Superintendent of Police,
Mallasamuthiram Police Station,
Namakkal Dt.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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