



Crl.O.P.No. 7347 of 2022

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 13.02.2024

CORAM:

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

Crl.O.P.No. 7347 of 2022  
and  
Crl.M.P.Nos.4215 & 4218 of 2022

Mohan Santhosh Durai

... Petitioner

Versus

1. The State by  
Deputy Superintendent of Police,  
D.S.P. office, Pennagaram Police Station,  
Pennagaram, Dharmapuri Dt.
2. The Inspector of Police,  
Pennagaram Police Station,  
Dharmapuri Dt.  
(Crime No.422 of 2021)

3. Kumar

... Respondents

**PRAYER** : Criminal Original Petition filed under Section 482 of the  
Code of Criminal Procedure, to call for the records in S.C.No. 49 of 2021



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on the file of Principal District and Sessions Judge, Dharmapuri and  
quash the same.

For Petitioner : Mr.N.Manokaran for  
Mr.N.Ponraj

For Respondents : Mr.S.Vinoth Kumar,  
Govt. Advocate (Crl. Side)  
for R1 and R2

### **ORDER**

This Criminal Original Petition has been filed seeking to quash the charge sheet in S.C. No. 49 of 2021 on the file of learned Principal District and Sessions Judge, Dharmapuri.

2. Heard both sides.

3. The petitioner is the Sole Accused in the F.I.R. in Crime No.422 of 2021 registered for the offence under Sec. 294(b), 341, 506(2), 326 of I.P.C. r/w Sec.3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015. Subsequently, the charge sheet has been filed and the same



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was taken on file in S.C. No.49 of 2021 on the file of Principal District and Sessions Judge, Dharmapuri and the same is pending. Now, the petitioner had filed this petition praying to quash the said charge sheet.

4. Brief facts of the case is as follows :-

There was a love affair between one Renuka and Pandian and they eloped, left the family and got married on 21.09.2021 at Uthanapalli, Krishnagiri. As the family members not interested in their marriage, on the date of alleged occurrence on 21.09.2021, as per the complaint given by 2<sup>nd</sup> respondent/defacto complainant, the petitioner came to their house and shouted at him and abused him by mentioning his caste name and also scolded his son Ilanthamizhan, who said to have instigated for the said marriage and also attempted to attack him, thereby the 2<sup>nd</sup> respondent/defacto complainant had given the complaint. Based on that, F.I.R. in Crime No. 422 of 2021 was registered for the offence under Sec. 294(b), 341, 506(2), 326 of I.P.C. r/w Sec.3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015 and subsequently, the charge sheet was filed, which was taken on file in S.C.No.49 of 2021. Aggrieved over



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that, the petitioner filed this petition praying to quash the said charge sheet.

5. The learned counsel for petitioner would submit that he is no way connected with the alleged marriage of Pandian and Renuka. As a close family member of Renuka, he enquired about whereabouts of the said Renuka. Aggrieved over that, father of one Ilanthamizhan, the 2<sup>nd</sup> respondent/defacto complainant gave this false complaint. He would also submit that he has not abused him by mentioning his caste name in a public view. Moreover, he was not aware about the community of petitioner. Only with an ulterior motive this complaint was lodged. Hence, he prayed to quash the proceedings initiated against the petitioner. The learned counsel also pointed out that there is no eye-witnesses from the public view and the alleged witnesses viz., 2<sup>nd</sup> and 3<sup>rd</sup> witnesses are wife and son of 2<sup>nd</sup> respondent/defacto complainant and other two witnesses are closely associated with the petitioner. So, the fact reveals that there is no independent witnesses from the public view.



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6. Admittedly, the F.I.R. was lodged in Crime No. 421 of 2021 for an offence under Sec. 294(b), 341, 506(2), 326 of I.P.C. r/w Sec.3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015 against the petitioner. However, the fact reveals that there is no witness from the public view and the prosecution also failed to establish that the petitioner humiliated the 2<sup>nd</sup> respondent/defacto complainant by mentioning his caste name in the public view. When there is no basic materials available for the said offence, the petitioner is not liable to be prosecuted under the Special Act. For that, the petitioner's counsel relied on the ratio laid down by this Court in the authority 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:*

*"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*



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*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*



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*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.*

*14.In any place within public view of insults or intimidates to a person will not attract an offence under the*



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*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.”*

As per the submission of learned Government Advocate (Crl. Side) appearing for 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent/defacto complainant died and so, as on date, the defacto complainant also not alive. Furthermore,



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the entire facts reveals that there is no independent witness to prove the prima facie that the petitioner abused the 2<sup>nd</sup> respondent/defacto complainant by mentioning his caste name in the presence of public view. Therefore, the prosecution is not entitled to prosecute the petitioner for the alleged offence under Sec.3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015. Furthermore, the ratio in that authority relied by the petitioner's counsel is squarely applicable the fact of the case on hand and there is no incriminating 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 S.C.No.49 of 2021 on the file of Principal District and Sessions Judge, Dharmapuri is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

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D.S.P. office, Pennagaram Police Station,  
Pennagaram, Dharmapuri Dt.
2. The Inspector of Police,  
Pennagaram Police Station,  
Dharmapuri Dt.
3. The Public Prosecutor,  
High Court, Madras.

**T.V.THAMILSELVI, J.**

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