



Crl.O.P.No.14981 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.14981 of 2023

And

Crl.M.P.Nos.9302, 9304 and 20202 of 2023

1.V.Dhayanithi
2.V.Thiyagarajan

... Petitioners

Vs.

1.S.Babu

2.The Deputy Superintendent of Police,
Ambur Sub Division,
Ambur.

3.The Inspector of Police,
Omerabad Police Station,
Omerabad.
(Crime No.1356 of 2020)

... Respondents

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in Special S.C.No.17 of 2023 on the file of the Special Court for Trial of SC and ST (POA) Act 2015, Vellore in Crime No.1356 of 2020 and quash the Altered the Charge Sheet dated 11.01.2023 filed herein to the limited extend of alleged offence under Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the SC and ST (POA) Amendment Act, 2015.



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For Petitioners : Mr.J.Muthukumaran

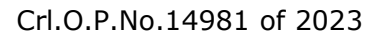
For Respondents : Mr.A.Gouthaman for R1
Mr.A.Gopinath for R2 and R3
Government Advocate (Crl. Side)

ORDER

This petition has been filed seeking to quash the further report that was filed by the respondent Police wherein the offences under Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the SC and ST (Prevention Of Atrocities) Amendment Act, 2015 were added apart from the existing offence under Section 506 (1) of I.P.C. and Section 4 of The Prohibition Of Charging Exorbitant Interest Act, 2003.

2.Heard the learned counsel appearing on behalf of the petitioners, the learned counsel appearing on behalf of the first respondent and the learned Government Advocate (Crl. Side) appearing on behalf of the respondents 2 and 3.

3.The first respondent/ defacto complainant gave a complaint to the effect that he had borrowed a sum of Rs.70,000/- from the petitioners at the rate of Rs.5/- per month for every Rs.100/-. Thereafter, the defacto complainant borrowed a further sum of



4.The respondent Police commenced the investigation and filed a report before the learned Judicial Magistrate, Ambur and the case was taken on file in C.C.No.30 of 2022.

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complaint on 18.03.2021 to the Superintendent of Police,
Thiruppathur

District with an allegation that the entire money transaction was done by the accused persons after knowing that the defacto complainant belongs to Scheduled Caste Community and hence, requested for conducting further investigation in this case. Since no action was taken, the defacto complainant approached this Court and filed Crl.O.P.No.23914 of 2021 seeking for appropriate directions. This Court disposed of this petition by order dated 15.12.2021 and this Court directed the respondent Police to deal with the complaint dated 18.03.2021 and if any case is made out, directed a final report to be filed within a period of four weeks.

6.Pursuant to the above order, an application came to be filed by the defacto complainant before the Court below under Section 173(8) of Cr.P.C. for a direction to conduct further investigation. This petition was ordered by the Court below in C.M.P.No.2822 of 2022 by order dated 19.09.2022 and a direction was given to the respondent Police to further investigate the case and to alter the Sections and file a further report.



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7.The further investigation resulted in an alteration report filed

before the said Court for trial of case under the SC and ST Act. By virtue of this further report, the previous charges were altered as Section 506 (1) of I.P.C., Section 4 of The Prohibition Of Charging Exorbitant Interest Act, 2003, Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the SC and ST (Prevention Of Atrocities) Amendment Act, 2015 [hereinafter referred to as 'Act'].

8.The further report that was filed before the Court below by adding the offence under Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the Act has been put to challenge in the present petition.

9.The learned counsel appearing on behalf of the defacto complainant submitted that the petitioners/ accused had rendered financial assistance to the defacto complainant fully knowing that the defacto complainant belongs to the Scheduled Caste Community and thereby, the defacto complainant was exposed to a frivolous litigation under Section 138 of the Negotiable Instruments Act which was also subsequently dismissed. Therefore, prima facie, an offence has been



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made out under Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the Act.

That apart, there is reverse burden cast upon the petitioners under

Section 8 of the Act and this burden can be rebutted only by participating in the trial before the Court below. Hence, it was contended that there is no ground to interfere with the further report.

10.The learned Government Advocate (Crl. Side) appearing on behalf of the respondents 2 and 3 submitted that it is only pursuant to the directions issued by the Court below, the further investigation was conducted and further report was filed and since prima facie materials were available, the offence under Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the Act were also added while filing further report. The learned Government Advocate (Crl. Side) submitted that there is no ground to interfere with the further report and if at all the petitioners have any defence, they can only establish the same before the Court below at the time of trial.

11.The learned counsel appearing on behalf of the petitioners submitted that there were absolutely no allegations against the petitioners when the initial complaint was given in the year 2020 as if



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they have committed offence under the SC and ST Act and later the improvement was made by the defacto complainant. As a result of it,

the offence under the SC and ST Act has been added in the further report. That apart, there are absolutely no materials to even prima facie come to a conclusion that the petitioners have committed the offence under the SC and ST Act.

12.This Court has carefully considered the submissions made on either side and the materials available on record.

13.The initial complaint was given by the defacto complainant with a specific allegation that he had borrowed money from the petitioners and signatures were obtained in the blank papers and cheques were also received as security and inspite of repayment of the loan amount, the same was not returned back and it was misused and a complaint was filed under Section 138 of the Negotiable Instruments Act. This complaint was given on 22.11.2020. When this complaint was given, the defacto complainant never raised the issue regarding Caste at any place. Hence, the final report was filed before the Court below for offence under Section 506



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(1) of I.P.C. and Section 4 of The Prohibition Of Charging Exorbitant Interest Act, 2003.

14.It is now too well settled that the offence involving SC and ST Act cannot be added just because the victim belongs to the Community. The element of intention has to be established and it must be shown that the accused persons had committed an offence after knowing that such victim is a member of the Scheduled Caste or Scheduled Tribe Community and took advantage of the same. Useful reference can be made to the latest judgment of the Apex Court in ***Dashrath Sahu Vs. State of Chhattisgarh*** reported in **2024 (1) MWN(Cr.) 262 (SC)**. The relevant portions are extracted hereunder:

"9. We have gone through the FIR and the sworn testimony of the prosecutrix/complainant as extracted in the judgments of the High Court as well as that of the trial Court. The case as projected in the FIR and the sworn testimony of the prosecutrix would reveal that the prosecutrix/complainant was engaged for doing household jobs in the house of the accused appellant who tried to outrage her modesty while the prosecutrix/complainant



was doing the household chores. Apparently thus, even from the highest allegations of the prosecutrix, the offending act was not committed by the accused with the intention that he was doing so upon a person belonging to the Scheduled Caste. This issue was dealt with by this Court in the case of Masumsha Hasanasha Musalman v. State of Maharashtra¹ wherein it was held as below:—

"9. Section 3(2)(v.) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v.) of the Act, the sine qua non is that the victim should



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*be a person who belongs to a Scheduled Caste or a Scheduled Tribe **and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe.***

In the absence of such ingredients, no offence under Section 3(2)(v.) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”

(Emphasis supplied)

10. In the said judgment, this Court dealt with a case involving offence under Section 3(2)(v) of the SC/ST Act. The language of Section 3(1)(xi) of the SC/ST Act is pari materia as the same also provides that the offence must be committed upon a person belonging to Scheduled Castes or Scheduled Tribes with the intention that it was being done on the ground of caste.”

15.The offence under Section 3(2)(va) of the Act will get



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attracted only if the offence is committed because the victim belongs to Scheduled Caste or Scheduled Tribe Community and was done to vilify and take advantage of the situation.

16. When the above law is applied to the facts and circumstances of the present case, it is seen that the defacto complainant did not make any allegation regarding Caste against the petitioner when the initial complaint was given in the year 2020. All of a sudden, the defacto complainant has improved the case with a subsequent complaint dated 18.03.2021 and for the first time, the defacto complainant came up with the issue of Caste. The defacto complainant is assuming that if he belongs to Scheduled Caste Community, any offence committed against him will also automatically become an offence under the SC and ST Act. This is an understanding which suffers from fallacy. The same has been made clear in the judgment that has been referred supra.

17. Except for the fact that the defacto complainant belongs to Scheduled Caste Community, there is absolutely nothing to show that the petitioners had committed the offence only because the defacto complainant belongs to the Scheduled Caste Community and it was



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done by them to belittle the defacto complainant. It is important to note the words used in the provision "knowingly / intentionally etc."

There is always an element of intention or knowledge which must

predicate before charging a person for an offence under the SC and ST Act. The same is completely absent in the present case and infact, there was not even a single allegation to that effect when the first complaint was given in the year 2020.

18.The reverse burden that was pointed out by the learned counsel for the defacto complainant under Section 8 of the Act will not apply in the present case. Inorder to apply the reverse burden, certain foundational facts will have to be established. The law on this issue was discussed in detail by the Division Bench of this Court in ***Yuvaraj Vs. State Rep. by the Additional Superintendent of Police, CBCID, Namakkal and another*** reported in **(2023) 2 MWN 161**. The said foundational facts are completely absent in this case and therefore, the theory of reverse burden as stipulated under Section 8 of the Act will not apply in this case.

19.In the light of the above discussion, this Court comes to the



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conclusion that the further report that has been filed by the respondent Police by adding the offence under Sections 3(2)(va), 3(1)(r) and 3(1)(p) of the SC and ST (Prevention Of Atrocities) Amendment Act, 2015 are totally un-sustainable and it requires the interference of this Court and accordingly the same is hereby quashed. The case shall be proceeded with the final report that was originally filed under Section 506 (1) of I.P.C., Section 4 of The Prohibition Of Charging Exorbitant Interest Act, 2003.

20.In the result, this criminal original petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

27.02.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

- 1.The Special Court for Trial of SC and ST (POA) Act 2015,
Vellore.
- 2.The Deputy Superintendent of Police,
Ambur Sub Division,
Ambur.
- 3.The Inspector of Police,
Omerabad Police Station,

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Omerabad.
(Crime No.1356 of 2020)

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4.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

N.ANAND VENKATESH,J.
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