



CrI.O.P.No.19470 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

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

CrI.O.P.No.19470 of 2022

and

CrI.M.P.Nos.12831, 12833 of 2022 & 14661 of 2023

1. D.Makeshkumar
2. D.Thirunavukkarasu

... Petitioners

Versus

1. State rep. by
Inspector of Police,
All Women Police Station,
Chidambaram Taluk,
Cuddalore Dt. Tamil Nadu.
(Crime No.5 of 2021)

2. A.Swathi

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the final report No.8 of 2022 and consequently quash the proceedings in S.C.No.34 of 2022 on the file of Special Court, Cuddalore with SC/ST (PoA) Act against the petitioners.



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For Petitioners : Mr.N.L.Rajah,
Senior Advocate for
Mr. E.Jayasankar

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

Mr.R.Thirumoorthy for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C. No. 34 of 2022 on the file of Special SC/ST Court, Cuddalore.

2. Heard both sides.

3. The petitioners are ranked as A1 and A2 in the F.I.R. in Crime No.5 of 2021 registered for the offence under Sec.417 of I.P.C., 4 of TN Prohibition of Harassment of Women Act, 2002 and 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (hereinafter called as “Special Act”) based on a complaint given by 2nd respondent/defacto complainant.



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Subsequently, the charge sheet has been filed and the same was taken on file in S.C.No.5 of 2021 on the file of Special SC/ST Court, Cuddalore and the same is pending. Now, the petitioner had filed this petition praying to quash the said charge sheet.

4. The learned senior counsel appearing for petitioners would submit that 1st petitioner was employed as Engineer in a private firm at Singapore and he visit India occasionally. However, the 2nd respondent/defacto complainant gave a false complaint as if the 1st petitioner promised to marry her and subsequently he cheated her. As against the 2nd petitioner, she gave a complaint as if he humiliated her by mentioning her caste name in a public view, but no such occurrence was happened and they were falsely implicated in this case. Hence, he prayed to quash the proceedings initiated against them.

5. By way of reply, the learned Government Advocate (Criminal side) appearing for 1st respondent would submit that based on the complaint given by 2nd respondent/defacto complainant, the F.I.R. in



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Crime No.5 of 2021 was registered, in which the investigation was completed and a final report was also filed. If at all, any defence available for them, they have to work out their remedy before the trial court, since because the 1st petitioner had consensus relationship, thereby promised to marry her, but subsequently he refused. Hence, he prayed to dismiss this petition.

6. The learned counsel for 2nd respondent/defacto complainant would submit that nearly about eight years, both the 1st petitioner and 2nd respondent/defacto complainant had a love affair and since she belong to adi-dravidar community, 1st petitioner's parents are not willing to marry her, besides, the 1st petitioner is also not willing to marry her. Though he had sexual intercourse by giving false promise to marry her, now he refused to marry her. However, when she went to his house to enquire about his whereabouts, his brother/2nd petitioner humiliated her by mentioning her caste name in a public view. Hence, a complaint was given against them and a final report was filed. Accordingly, both the petitioners are liable to be prosecuted and prayed not to quash the charge sheet initiated against them. In support of his contentions, he relied the



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ratio laid down in the authority reported in **2006 (11) SCC 615** in the case of **Yedla Srinivasa Rao vs. State of A.P.**, wherein the Apex Court held as follows :-

“A consent obtained by misconception while playing a fraud is not a consent. (para 10)

In the instant case, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused, who held out the promise for marriage. This kind of persuading the girl to believe that he is going to marry her and obtaining her consent for the sexual intercourse under total misconception, cannot be treated to be a consent. Such fraudulent consent cannot be said to be a consent so as to condone the offence of the accused.”

7. The learned senior counsel for petitioners would submit that both were major and they had consensus relationship, which would not amount to an offence and to that effect, he relied the ratio laid down in the authority reported in **2016 SCC Online Mad 32974** in the case of **E.Babyammal and another vs. The Sub-Inspector of Police, D-3 Ice**



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House Police Station, Chennai, wherein the Apex Court in paras 30 to 32 held as follows :-

“30. On coming to Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 the term 'harassment' is defined under clause (a) of Section 2 of the act as under:-

“the term 'harassment' means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force;”

31. Section 4 of the Act enacts that :-

“4. Penalty for [harassment of woman]- whoever commits participates in or abets [harassment of women] in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term, which may extend to (three years and) with fine which shall not be less than ten thousand rupees.”

32. In so far as this section is concerned, the alleged act of harassment of woman must have been taken place in or within the precincts of any educational institution, temple or other place of worship, bus stop, road railway station,



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cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place. As per the case of prosecution, the alleged act is said to have been taken place inside the house of the complainant.”

8. Admittedly, both are majors and when they had a love affair, as per the case of 2nd respondent, she belong to adi-dravidar community, so at the instigation of his family members, the 1st petitioner refused to marry her. However, the 2nd respondent/defacto complainant would also submit that whenever he came to India and even in the last occasion in the year of 2021, both had consensus relationship. To that effect, she produced hotel bill. But, by way of reply, learned counsel for petitioners would submit that the dates and events submitted by the 2nd respondent/defacto complainant is totally erroneous one. Even on 29.09.2018 he was not available at India and he left India in the month of August itself. By way of reply, the learned counsel for 2nd respondent/defacto complainant would submit that even there is a mistake happened while mentioning the date, the entire events upto the last occasion, the 1st petitioner gave a promise to marry her and to that effect,



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she had also produced the hotel bill, according to her, they had a sexual relationship on 29.09.2018. So, the allegations made by the 2nd respondent/defacto complainant against the 1st petitioner is the subject matter for trial. Therefore, the allegation as against the 1st petitioner needs detailed investigation. So, I do not find any irregularity in the charge sheet initiated against the 1st petitioner. Accordingly, this Criminal Original Petition as against the 1st petitioner is dismissed.

9. So far as the 2nd petitioner is concerned, there is an allegation that when the 2nd respondent/defacto complainant went to the house of 1st petitioner, his brother/2nd petitioner attacked her and also humiliated her by mentioning her caste name in a public view on that day, wherein one Amutha was there and she made a compromise. However, the learned senior counsel for petitioners would submit that no such occurrence was happened on that day as alleged by the 2nd respondent/defacto complainant. Even otherwise, when she went to the house of 1st petitioner, the statement made by the 2nd petitioner would not amount to abusement as per Sec. 3(i)(r), 3(1)(s), 3(2)(va) of the Special Act. In



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support of his contentions, he relied the ratio laid down in the authority held in ***Crl. Appeal No(s).....of 2024 (arising out of SLP (Crl.) No(s). 6367 of 2023)*** in the case of ***Dashrath Sahu vs. State of Chhattisgarh***, wherein the Apex Court in paras 9 and 10 as follows:-

*“9. We have gone through the FIR and the sworn testimony of the prosecutrix/complainant as extracted in the judgments of 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 prosecutrix,the offending act was not committed by the accused with the intention that he was doing so upon a person belonging to a scheduled caste. This issue was dealt with by this court in the case of **Masumsha Hasanasha Musalman vs. State of Maharashtra reported in 2003 (3) SCC 557**, 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 Sec.3(2)(v) of the Act, the sine quo non is that the victim should 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 Sec.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”.

10. In the said judgment, this Court dealt with a case involving offence under Sec.3(2)(v) of the SC/ST Act. The



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language of Sec. 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.”

10. Admittedly, coming to the facts of the case, relying the ratio referred in the above case, the alleged incident said to have happened as per the complaint of 2nd respondent/defacto complainant inside A1's house, at that time, the 2nd petitioner abused her in the presence of public by humiliating her by mentioning her caste name. But, there is no basic ingredient to attract the offence that such utterance of word by mentioning her caste name and such humiliation was not made in the public vicinity itself reveals that when she went to the house of 1st petitioner, wherein the alleged wordy quarrel has happened inside the house premises and not in public vicinity. Hence, I do not find any basic ingredients in the proceedings initiated against the 2nd petitioner under Sec.3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. Accordingly, the proceedings against the 2nd petitioner is quashed and this Criminal



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Original Petition is allowed. Consequently, connected Criminal
Miscellaneous Petitions are closed.

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Index: Yes/No
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To

1. Inspector of Police,
All Women Police Station,
Chidambaram Taluk,
Cuddalore Dt. Tamil Nadu.
2. The Public Prosecutor,
High Court, Madras.

T.V.THAMILSELVI, J.

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