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DATED: 12.03.2024

CORAM:

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

CRL.OP Nos. 26271 & 26259 of 2022 and 1924 of 2024

& Crl.MP.Nos. 1365, 16187 of 2022

V.Raja ..Petitioner in Crl.O.P No. 26271 & 26259 of 2022

K.N.Senthilve Petitioner in Crl.O.P No. 1924 of 2024

Vs.

1 The Additional Suprerintendent of Police,
CB - CID Police, Villupuram Range,
Crime No. 04 of 2015

2.Revathi ...Respondents in all petitions

PRAYER in CRL.OP No. 26271 of 2022 : This petition has been filed under Section 482 of Cr.P.C, to Quash the Order passed by the Learned Special Court for Trial of Cases under the SC/ST Poa Act Cuddalore on 22.08.2021 in Crl.MP.1115/2021 in Sc.40/2021 u/s 216 of Cr.P.C altering



the Proposed Charge from an Offence u/s 304(II) of IPC to 302 IPC and adding Additional Charge Punishable for the Offences u/s 3(1)(x) and 3(1)(xi) of the Sc/St Poa Act and Charges framed for the Offences u/s 302 of IPC and u/s 3(1)(x) and 3(1)(xi) of the Sc/St Poa Act 1989 as against the petitioner herein.

PRAYER in CRL.OP No. 26259 of 2022 : This petition has been filed under Section 482 of Cr.P.C, to set aside the order passed on 29.12.2021 by the Learned Principal Sessions Judge Cuddalore district Cuddalore in CrI.MP.NO. 7636 of 2021 in SC.NO. 95 of 2019.

PRAYER in CRL.OP No. 1924 of 2024 : This petition has been filed under Section 482 of Cr.P.C, To call for the records CrI.M.P.No.1115 of 2021 in S.C.No.40 of 2021 on the file of the learned Special Court for Trial of Cases under SC/ST (POA) Act Cuddalore and set aside the order in CrI.M.P.No.1115 of 2021 dated 22.08.2022 and the charges framed by the said court u/s.302 of IPC and u/s.34 of IPC and sections 3(1)(x) and 3(1)(xi) of SC/ST (POA) Act along with Sections 218 330 343 and 348 of IPC.

For Petitioner : Mr.G.Prabakaran
(in CrI.P No. 26271 & 26259 of 2022)

For Petitioner : Mr.N.R.Elango, Senior counsel.
(in CrI.O.P No. 1924 of 2024)

For R1 : S.Vinoth Kumar



(in all petitions) Government Advocate (Crl.side)
For R2 : Mr.NGR.Prasad
(in Crl.OP. No. 1924 of 2024) for Mr.R.Thirumoorthy
For R2 : Mr.R.Sankarasubbu
(in Crl.OP. No. 26271 & 26259 of 2022) for Mr.R.Thirumurthy

COMMON ORDER

The Crl.O.P No. 26271 of 2022 is filed to Quash the Order passed by the Learned Special Court for Trial of Cases under the SC/ST Poa Act Cuddalore on 22.08.2021 in Crl.MP.1115/2021 in Sc.40/2021 u/s 216 of Cr.P.C altering the Proposed Charge from an Offence u/s 304(II) of IPC to 302 IPC and adding Additional Charge Punishable for the Offences u/s 3(1)(x) and 3(1)(xi) of the Sc/St Poa Act and Charges framed for the Offences u/s 302 of IPC and u/s 3(1)(x) and 3(1)(xi) of the Sc/St Poa Act 1989 as against the petitioner herein.

2. The Crl.OP.No. 1924 of 2024 is filed to call for the records Crl.M.P.No.1115 of 2021 in S.C.No.40 of 2021 on the file of the learned Special Court for Trial of Cases under SC/ST (POA) Act Cuddalore and set aside the order in Crl.M.P.No.1115 of 2021 dated 22.08.2022 and the charges framed by the said court u/s.302 of IPC and u/s.34 of IPC and sections 3(1)(x) and 3(1)(xi) of SC/ST (POA) Act along with Sections 218 330 343 and 348 of IPC.



3. The Crl.OP. No. 26259 of 2022 is filed to set aside the order passed on 29.12.2021 by the Learned Principal Sessions Judge Cuddalore district Cuddalore in Crl.MP.NO. 7636 of 2021 in SC.NO. 95 of 2019.

4. Since, the issue involved in the above three petitions are one and the same hence this Court pass the common order.

5. The facts leading to the present case is that, on 23.05.2015, on the basis of complaint preferred by one Mohaammad Younis, a case of murder for gain was reported to the Neyveli Township Police station stating that a female by name by Mumtaj, aged about 47 years was found murdered and the body was lying in semi-burnt conditions and her jewels were also found stolen. Based on the said complaint the Neyveli Township Police registered a case for the offence under Section 302 and 380 of IPC in crime No. 95 of 2015 as against unknowns suspects. Thereafter, the Police officers/petitioners visited the scene of occurrence and started gathering evidence and interrogated the witnesses concerned. In the meanwhile, in the course of the post mortem it was came to light that the said Victim Mumtaj was subjected to forcible rape. Thereafter, higher officials visited scene of occurrence and also formed three special teams to nab the culprit. In the course of the investigation, the defacto complainant of the said case, has expressed



serious suspicion over the one Subramani who often visited the house of Mumtaj.

5.1. Later, one Elizabeth and her husband had confirmed the frequent visit of said Subramani to her house. It was noticed that from 23.05.2015 the suspect Subramani went in hide and not available in his usual places. Under the circumstances the investigation team developed severe suspicion against the said Subramani and decided to interrogate him. Thus, in order to investigate him, he was nabbed on 29.05.2015 by the investigation team on being identified by the said Elizabeth and he was subsequently brought to police station and subjected to interrogation. On every day after completing investigation, the suspect Subramani was sent back to the home after bind over under taking taken from him on every day. Finally, on 04.06.2015 at 2 p.m the suspect Subramani was sent along with her wife after executing a bind over Muchalika.

5.2. Thereafter, the suspect was taken to JIPMER Hospital, Pondicherry, for the complaints of Abdominal pain and vomiting. Later, he was declared to have been died due to acute tubular necrosis (renal failure) On 06.06.2015. Thereafter the defacto complainant/wife of the said Subramani lodged a complaint before the Nellikuppam Police station stating



that on 28.05.2015, the Neyveli Town Ship Police took his husband Subramani for investigation and the next the defacto complainant went to the Police Station to see her husband Subramani but the said Police refused to see her husband Subramani and on 03.06.2015 also the said police refused to see her husband. In the meanwhile, her brother Baskar visited the said Subramani daily in the said Police Station. Thereafter, on 06.06.2015, the defacto complainant came to know that her husband was died in JIPMER Hospital, Pondicherry. Hence filed the complaint before the Nellikuppan Police Station that they belongs to Scheduled community and due to the torture made by police her husband was died. Subsequently, FIR in crime No. 269 of 2015 was filed under Section 174(1) of Cr.P.C for suspicious death and the case was kept pending as there was no evidence available to hold the death of Subramani as homicidal death. In the meanwhile, the defacto complainant and his relative kept on agitating the matter and sought for the transfer of the investigation.

5.4. Pursuant to the said demands, the case was transferred to the CB-CIC police to investigate the matter. As per the order, the first respondent/Additional SP, CB-CID Villupuram take over the investigation and re-registered the case in CB-CID crime No. 14 of 2015 on 01.08.2015.



Later on 26.10.2015, as per the direction of AGDP, CB-CID the first respondent altered the Section of law of the case from 174 of Cr.P.C to 176(1)(a) of Cr.P.C and as per the mandate of the Section Judicial Magistrate - I, Cuddalore was conducted the enquiry under Section 176 Cr.P.C and filed a report that the said Subramani was subjected to custodial torture and the suspected police officers are responsible for the custodial death of the deceased Subramani. Thereafter final report was filed by the first respondent against the petitioners and other accused person under Sections 218,330,343,348 and 304(II) of IPC and case was taken on file in PRC No. 1 of 2017 on 12.05.2017 by the Chief Judicial Magistrate(CJM0, Cuddalore, and committed the case to the Principal Sessions Judge, Cuddalore. When the case was pending for committal proceedings before the CJM, Cuddalore, the defacto complainant filed petition under Section 216 of Cr.P.C praying to add a charge for offence under Section SC/ST POA Act and to alter teh charges under section 304(ii) of IPC to 302 of IPC and the same was dismissed by the CJM as its lacks statutory power to alter the charges. Against the said order, the defacto complainant/second respondent preferred Crl.O.P No. 26341 of 2018 before this Court and the same was dismissed and also gave liberty to the second respondent to prefer



such a petition before the appropriate forum at appropriate stage by placing the materials for the same.

6. Thereafter, the case committed to Principal District Judge and the same was taken on file S.C No. 95 of 2019 and made over the same to the Second Additional Sessions judge, Chidambaram. In the meanwhile, the second respondent filed the transfer petition before the District Court seeking to transfer the case from Chidambaram to Cuddalore Sessions Court on the ground that convenience and security. Accordingly, PDJ ordered for transfer on 27.09.2021 but prior that the second Additional Judge of Chidambaram vide docket order dated 02.09.2022 suo motu written communication the Principal Sessions Judge, Cuddalore expressing judicial view that the case in hand to be tried under the provision of SC/ST Act and for homicidal death under proper provision of IPC. At this juncture, the second respondent wife of the deceased filed another application under Section 216 of Cr.P.C praying to alter the charges from 304(ii) IPC to 302 IPC and for offence punishable under SC/ST Act in CrI.MP. No. 7639 of 2019 which was heard by the Principal Sessions Judge and allowed the said application, wherein the Sessions Court held that facts of the case fallen under jurisdiction of provisions of SC/ST Act as deceased belongs to



scheduled community. Therefore, transferred the case to Special Court for SC/ST Act along with other applications with conclusive observations that matter is specially tried before the Sessions Court. But in respect of altering the charges he left open to the ambit of the Special Court for SC/ST Act. Thereafter the application filed in Crl.MP. No. 7636 of 2021 was renumbered as Crl.MP. No. 1115 of 2021 and the prosecution also filed another application for the same prayer under Section 216 of Cr.P.C. Thereafter, the said petitions were jointly heard and order was passed based on the Special Judge, SC/ST Act allowed the said petition holding that charges shall be framed under Section 302 IPC instead of 304(ii) IPC and also charges for offence under Section 3(1)(x) and 3(1)(xi) of SC/ST (POA) Act, 1989 also made out along with other charges accordingly altered and charges were framed against the petitioners and another accused on the same day on 22.08.2022. Challenging the said order accused 1 and 2 filed these petitions.

7. The petitioners filed this petition on the following grounds:

i. The order passed by the court below is bald, vague and cryptic and bereft of due legal and factual reasons and thus the same is not maintainable in law. The Trial Court has committed a grave legal error both in canine



alteration of charge from Section 304) of IPC to Section 302 of IPC and by adding the offences under Sections 3(1)(x) and 3(1)(xi) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989.

ii. The Trial Court flouting the fundamental principle of law that a charge for an offence could be validly framed or added only when the materials placed by the prosecution duly showing the existence of rudimentary ingredients of such offence and the commission of such offence is probable.

iii. The Trial court failed to see the charges could be altered only when reasonable grounds does exists to do so and the same cannot be done to satisfy the sentiments of either parties to the proceedings

iv. The Trial Court failed to see that absolutely no justification prevails to introduce a charge of murder into the case by altering the proposed charge from Section 304(ii) of IPC to Section 302 IPC. It is pertinent to quote here that the trial court unable to comprehend as to how the alleged acts of the accused would constitute an offence of culpable homicide amounting to murder warranting a charge for an offence under Section 302 of IPC.

v. The Trial Court failed to see that the nature of injuries as noted in



the post-mortem report and the varied and contradictory medical opinion as to the cause of the death of the deceased would not justify the framing of charge for an offence of murder even in layman's pariance.

vi The Trial court failed to see that none of the core ingredients/instances of Section 300 of IPC namely causing death by an intentional act, causing death by resulting bodily injury which is likely to cause death, causing bodily injury which is sufficient in the ordinary course to cause death and doing an imminent dangerous act which in all probability would cause death, the existence of which is the condition precedent is made out in the present case and thus, no charge for section 302 of IPC could be validly altered in the place of charge for an offence under Section 304(ii) of IPC.

vii. When the prosecution was not even able to conclusively assert the death as a homicidal one by placing due medical evidence and when there were clear cut contrary medical opinion that the deceased could have died out of renal diseases the hurried act of the Trial court framing charge for murder for asking of the defacto-complainant it the at all justified and the same is to be interfered with to prevent the failure of justice.



Viii. The reasons set out by the trial court to arrive at a conclusion that the deceased was subjected to atrocities as envisaged under the provisions of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 are neither tenable nor acceptable even in the light of the records placed by the prosecution.

ix. The Trial Court legally and factually erred in equating the different expressions found in the amended act and new act that the offence was committed on the ground of being the member of SC/ST community is one and the same to the expression that offence was committed knowing that he is the member of the community.

x. The trial court miserably failed to take note of core ingredients of the offence under Section 3(1)(x) and 3(1)(xi) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 and erroneously held as is those offences were committed against the 2nd respondent. It is irony as well as unfortunate that even the respondent has not made a stateshent as is such offences were committed against her and even it is her specific case that atrocity was commuted only against her husband and not against her, But the trial court picking up some stray sentener somewhere from the



record infers such a commission of offences on whimsical grounds and added those charges to the case.

Xi. The Trial court failed to see absolutely there is no material prevailing in the records of the prosecution even on a microscopic scrutiny that there was an instance wherein the 2 respondent was subjected to humiliation within public view or her modesty was outraged or dishonored. Even the language deployed in the charges would show that such charges cannot be validly framed.

Xii. The court below without having due regard to the settled prepositions of law enunciated touching the scope and ambit of Section 216 of CrPC erroneously entertained the petition preferred by the defacto-complainant u/S. 216 of CrPC and thereupon violated the procedure established by law.

Xiii. The court below failed to take note of the authoritative decisions rendered by the Hon'ble Apex court that the exercise of jurisdiction u/S. 216 of CrPC is an exclusive discretion of the court and the same cannot be exercised at the instance of the either party to the proceedings.



XIV. The court below also failed to take note of the fact that practically the very right of exercising jurisdiction u/S. 216 of entertaining a petition u/S. 216 of CrPC would arise only after framing original charges and only when in a later point of time contingency revealed in materials placed on record warranting alteration or addition of charges.

XV. The court below miserably failed to understand the original provision u/S. 3 (II)(v) of the Act would come into play only when an offence was committed against the member of SC/ST which is punishable for 10 years or more under IPC on the ground that such a person is being a member of SC/ST would be liable for the punishment for life. Thus, in order to attract the said provision, the offence should have been committed against the member of SC/ST and such offence shall be punishable with the 10 years or more and importantly such offence should have been committed on the ground that the victim is the member of SC/ST.

XVI. The Court below failed to take note that absolutely there is no iota of material and it was not even claimed by the defacto- complainant or the prosecution that the suspect Subramani in the present case was subjected to custodial torture on the ground that he is a member of SC/ST community. In fact, it is not even the claim of findings recorded by the court below even



in respect of the fact that the accused might have got knowledge as to the caste of the deceased Subramani cannot be countenanced at any rate. Inerting Such s were recorded on mere surmises and conjectures findings

Xvii. The court below even failed to consider the averment set forth in the petition filed by the defacto-complainant u/8. 216 of CrPC in w proper perspective. Even in the said petition it was not claimed that the custodias a member of setted on the pretext that the get that Subramani is a member of SC/ST community. On the contrary, th petition simply asserts that just because the deceased is happened to be a member of SC/ST the case shall be tried by the Special court for SC/ST Act cases.

XIX. It is submitted that as per the opinion of the doctors, who have conducted the Post Mortem on the dead body of Subramani, the cause of death was ACUTE TUBULAR NECROSIS. In the admission record, case summary and the discharge records, the cause of death was mentioned to be ACUTE RENAL FAILURE DUE TO POST TRAUMATIC RHABDOMYOLYSIS

XX. It is submitted that Rhabdomyolysis is a syndrome caused by injury to skeletal muscle and involves leakage of large quantities of



potentially toxic intracellular contents into plasma. Its final common pathway may be a disturbance in myocyte calcium homeostasis. Myoglobin is an important myocyte compound released into plasma (see the image below). After muscle injury, massive plasma myoglobin levels exceed protein binding (haptoglobin) and can precipitate in glomerular filtrate. Excess myoglobin may thus cause renal tubular obstruction, direct nephrotoxicity (ischemia and tubule injury), intrarenal vasoconstriction, and acute kidney injury (AKI).. It is most respectfully submitted that the prosecution has chosen to examine Dr.P.Parasakthi, Professor and HOD of Forensic Medicine attached to Chengalpattu Medical College and as the 161(2) Cr.P.C. Statement of Dr.P.Parasakthi has stated that In the answers to the questionnaire, the nephrologist has accepted his wrong diagnosis of Rhabdomyolysis as the test for Myoglobinuria is negative. She has given a clear expert opinion that the Injuries mentioned in the Post Mortem Certificate are unlikely to cause ACUTE TUBULAR NECROSIS (ATN) and subsequent death of the deceased Subramani. Therefore the charges cannot be framed even for alleged offence U/s, 304(II) IPC, while so, the framing of charges under Section 302 of IPC as against the petitioner and the other accused is bad in law and the same is liable to be quashed



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8. By summing up the above grounds, the learned counsel for the petitioners argued that there is no basic prime facie material against the petitioners and another accused to alter charges from 304(II) IPC to 302 IPC but the Trial Judge by presuming that the accused has committed offence and said presumption is not presumption of law. Besides, the prosecution also not collected any new additional materials against these petitioners in respect of present altered charges under Section 302 of IPC and under Section 3(1)(x) and 3(1)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short "SC/ST (POA) Act") along with Sections 218 330 343 and 348 of IPC. Thus, the Trial Court failed to apply its mind while framing charges hence, the petitioner filed the petition to quash the alteration of the charges made by the Trial Court as it is illegal, unjust by allowing the petitions respectively.

9. Further, the learned counsel for the petitioner argued that even on bare perusal of the medical records, it clearly indicates that reason for the death is renal failure and not by the injuries of the alleged custodial torture which are all main ingredients necessary to alter the said charges without



which the alteration of the charges under Section 302 of IPC as such is illegal and liable to be set aside.

10. So far as the alteration of charges into Section 3(1)(x) and 3(1)(xi) of SC/ST POA act, is concerned, the learned counsel for the petitioners submit that deceased Subramani was suspected that he would have involved in the death of one Mumtaj who was murdered for gain and also subject to rape, from the reliable source of information the said deceased Subramani was taken for interrogation by giving proper information to his family members and as per the statement given by the one Elizabeth and her husband Daniel and the said Subramani was interrogated from 29.05.2015 to 04.06.2015 and his family member/his brother also used to see him during those interrogation. Thereafter, he was admitted to JIPMER Hospital on 04.06.2015 due to abdominal pain, subsequently where he declared dead on 06.06.2015. Therefore, at any point of time he was not harassed since because he was belongs to the member of scheduled community but while framing charges under SC/ST (POA) Act, the Trial Judge erroneously observed that there is incriminating materials that he was belongs to the scheduled community and his wife also humiliated by the Police officers by ignoring that Old Act alone apply. Therefore, adding at the time of alleged



occurrence of the year 2015 Old Act alone prevailed, hence charge for offence under Section under Section 3(1)(x) and 3(1)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, against the petitioners as such is erroneous and liable to be set aside.

1. Ashrafi Vs. State of U.P (2017 - 0- AIR (SC 5819))
2. Khuman Singh Vs. State of M.P (2019(3)MWN(Cr.)155 SC)
3. M.Karthiga Priyadarshini Vs. State (2022(2) MWN(Cr.) 135)
4. Patan Jamal Vali Vs. State of A.P. 2021 (2) MWN (Cr.) 481 (SC)

11. By way of reply, the learned counsel for the second respondent submitted that even at the time of filing FIR she was mentioned that she belongs to scheduled community but the prosecution failed to conduct investigation in that manner. Therefore, as a victim she is entitled to file application to alter the charges under Section 216 of Cr.P.C and the same was rightly appreciated by the Trial Court needs no interference. Further, he would also submitted that Trial Judge rightly concluded that the deceased was died due to the custodial torture, Thereby, the police officials are liable to be prosecuted under Section 302 of IPC. Therefore, order passed by the Trial Court is well reasoned needs no interference. Hence, he prayed to dismiss this petition.

12. Countering the same, learned counsel for the petitioner



submitted that at earliest point of time when the complaint was given before the respondent police, she was not even whispered that she was humiliated by the police officials since she belongs to scheduled community nor she gave a complaint that her husband was taken to police custody only because he belongs to schedule community, nor she gave any statement that she was humiliated by the police officials while giving the statement before the Magistrate who conducted enquiry under Section 176 of Cr.P.C. In order to harass the petitioners with after thought the petition was filed to alter the charges, and the Trial judge before framing the charges considering the request made by the second respondent as well as prosecution altered the charges as such is erroneous for the reason that alteration of charges is exclusive power of the Trial court neither individual nor prosecution has right to seek Court to Add or alter the charges to that effect he relied the Judgement of the Apex Court reported in 2017 3 SCC 347:

6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the Judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to knowledge of the Court trying the offence, power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies



which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

13. Therefore, the proper procedure has not been that followed by the Trial Court while framing the charges, on that ground that they prayed to set aside the order of the special Judge.

14. Replied for the same the learned counsel for the second respondent/victim submitted that as per the Special Act she is also entitled to approach the Court to put forth her grievances. Accordingly, she dissatisfied with the report of the prosecution hence she filed the application to alter the charges as such is maintainable in law and the same was rightly appreciated by the Trial Judge to the effect he relied the judgment of this Court in Crl.A. No. 184 of 2024:

18. This Court in the case of K.Ravichandran Vs. Superintendent of Police, Erode reported in 2019 (2) LW 313 following the Anant Prakash Sinah @ anant sinah Vs. State of Haryana judgment had held that though it is an exclusive domain for the Court to alter or add any charge, it is always open to the prosecution or the victim to pin point those materials before this Court to enable the Court to take the decision under Section 216 Cr.P.C.

19. The Code of criminal procedure is only a procedure code devised to subserve the ends of justice and not to frustrate them on mere technicalities. On these principles the Apex Court in the case of Shanthakumari Vs. State of Jammu and Kashmir reported in (2011) 9 SCC



234 has held as follows: “17. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.”

20. In view of the same, this Court finds that alteration of charges by the trial Court on the petition of the 2nd respondent is permissible and the order of the trial Court in CrI.M.P.No.5601 of 2017 is perfectly correct, does not need any interference. In view of the same, the order of the trial Court is sustained and the appeal filed by the appellants is hereby dismissed.

15. Besides, this Court gave a liberty to approach the appropriate forum accordingly she filed the application as such is maintainable in law hence he prayed to dismiss the petition as no merits.

16.. Considering the both side submissions, it is undisputed fact that the accused persons are police officials, the first petitioner is Inspector of Police, the second petitioner is Sub-Inspector of Police and the third accused is the constable, as a team they were said to be interrogated the deceased subramani who said to have allegedly involved in the murder case of Mumtaj who was said to be murdered for gain and also raped, pertaining to that case FIR was filed in crime No. 95 of 2015 before the Nellikuppam Police station. According to the petitioners, during the investigation they came to know through one Elizabeth and her husband Daniel that the



deceased Subramani who used to visit the Mumtaj house (Scene of Occurrence) hence they suspected the deceased Subramani. On the next day of said Murder the said Subramani hide himself. Thereafter, the investigation team developed severe suspicion against the said Subramani and decided to interrogate him. Accordingly, he was taken to police station on 29.05.2015 on being identified by the said Elizabeth and Danieal, the interrogation was continued from 26.05.2015 to 04.06.2015 as per the contention of the petitioners he was permitted to go back to his house every day after obtaining undertaking from him and finally he was sent with her wife on 04.06.2015. Thereafter, he was admitted in JIPMER hospital where he died due to renal failure on 06.06.2015. But the case of the second respondent is that her husband was falsely implicated in the said murder case and the petitioners were tortured him in the police station from 26.05.2015 to 04.06.2015 where he was suffered with the injuries while he was at the Police Station hence due to the custodial torture made by the petitioners her husband was died after two days in JIPMER Hospital, Pondichery. Thereafter, due to her protest, the case was transfered to CBCID and the final report was filed before the CJM who committed the case to the Principal Sessions Judge, Cuddalore on made over the said case



was transferred to II Additional Sessions Judge, Chidambaram.

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17. Instead of take the case on file, the Second Additional Judge, *Suo Motu* passed the order stating that on perusal of the records he found that primary evidence against the accused person and he satisfied that there are sufficient material on record in the case to proceed the Trial for framing charges under Section 302 of IPC under relevant SC/ST POA Act and also he relied the judgment in the case of Mannalal Gupta Vs. State of U.P 2009 CrI.L.J 2659. Accordingly, he addressed the Principal District Judge to transfer this case to Sessions Judge of SC/ST POA Act. Therefore, before framing of the charges the Trial Judge *Suo Motu* transfered the case to the Sessions Court for as if he found that prime facie materials against the accused persons who charged under Section 302 IPC and other offence under Section SC/SC POA Act. On perusal of the docket order, the Judge stated that he satisfied that there are sufficient material on record of the case to proceed the trial for framing the proper charge under Section 302 IPC and relevant provisions in SC/SC POA Act, thus the Trial Judge *Suo Motu* passed the order without adopting proper procedure to be followed before framing or altering charges. As pointed out by the petitioners' counsel the Trial Court comes to the premature conclusion that the conclusion that the



petitioners are to be tried under said offences even without adopting the procedure to be followed before framing charges as per manner known to law. Hence, the said docket order passed by the Trial Judge is improper one.

18. As per Section 239 and 240 of Cr.P.C the Trial Court stick with material available on record which has been collected by the prosecution in the course of investigation and put this materials each of the accused persons and seeking for explanation. Thereafter, the Trial Court has to access this material along with answers that even given by the accused persons, thereafter, the Trial Court satisfied itself about the framing of charges, but without following said procedures the Additional Sessions Judge himself concluded that there is sufficient material to prosecute the petitioners under Section 302 of IPC and 3(1)(x) and 3(1)(xi) of the SC/ST POA Act as such is unwarranted one. Therefore the docket order passed by the judge is improper one.

19. Thereafter the matter was transferred to the District Judge, Cuddalore, wherein the defacto complainant wife of the deceased Subramani filed the petition in CMP. No. 7736 of 2021 praying to alter the charge into Section 302 of IPC as well as for the offence under Section SC/ST POA Act. On hearing both sides as well as these petitioners the Principal



Sessions Judge, held that even at the time of filing of the FIR she was mentioned that she was belongs to scheduled community which itself sufficient to proceed against the petitioners under the said SC/ST PoA Act irrespective of the old Act or New Act of SC/ST POA Act. Accordingly, he transferred the case of Special Court. The said order is challenged in CrI.O.P No. 26259 of 2022 by the accused Raja.

20. The learned counsel for the petitioner submits that Principal District Judge, has not properly applied the provisions of law pertaining to SC/ST POA Act old and New Amended Act and in fact, as per the old Act, if any harassment made against the SC and ST community only on the ground that they are belongs to SC and ST community but the case in hand the deceased Subramani was not been harassed since because he belongs to scheduled community only on the information that he was suspected about the involvement in the murder for gain case but the sessions judge, without appreciating the material placed by the prosecution transfered the case to Special Court for SC/ST cases as such is erroneous and liable to be set aside. But, the reason assigned by the sessions judge that at the time of the filing FIR the victim has stated that she belongs to scheduled community therefore which itself sufficient to prosecute the petitioner under SC and ST



Act , whether victim comes under the Old Act or New Act is immaterial.

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21. Accordingly, the case was transferred to SC ST Act, to Special Court wherein the prosecution filed application under Section 216 of Cr.P.C praying to alter the charges which was already sought by the victim was taken jointly in CMP No. 1115 of 2021 in SC No. 40 of 2021 by the Special Judge, of SC/ST POA Act. It is undisputed fact that the deceased belongs to SC and ST community and all the accused 1, 2 and 3 are belongs to the non-SC and ST community. The arguments advanced on the side of the accused is that there was no material placed by the prosecution that the offences was committed on the basis of community. Besides, at the time of the alleged occurrence which was said to be happened between 26.05.2015 to 04.06.2015 the amended provisions of the Act was not applicable as it came into force from 26.01.2016 and Old Act can be applied to that effect he relied following judgement of the Apex Court :

1. Ashrafi Vs. State of U.P (2017 - 0- AIR (SC 5819))
2. Khuman Singh Vs. State of M.P (2019(3)MWN(Cr.)155 SC)
3. M.Karthiga Priyadarshini Vs. State (2022(2) MWN(Cr.) 135)
4. Patan Jamal Vali Vs. State of A.P. 2021 (2) MWN (Cr.) 481 (SC)

22. But on the side of the victim, accused police men tortured the



deceased Subramani. Besides, defacto complainant was also humiliated by the accused persons at the time of the interrogation to that effect he relied 161(3) statement of L.W.1 and her relative and her brother L.W.7 relied the Sessions Court thereby concluded that the deceased Subramani and his family members belongs to scheduled community also were caused for atrocities committed on them. The arguments advanced on the side of the prosecution and accused was considered by the Trial Court as opening of Trial as required under Section 239 and 240 of Cr.P.C. Thereby he framed charges under section 3(1)(x) and 3(1)(xi) of the SC/ST POA Act, which speaks as follows:

Section 3(1) (x) of the scheduled castes and scheduled tribes (prevention of atrocities) act, 1989 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;

Section 3(1)(XI) of the Act reads thus" assaults or uses force to any woman belonging to scheduled caste & scheduled tribe with the intent to dishonour or outrage her modesty.

23. But as rightly pointed out by the learned counsel for the petitioner, at the time of giving complaint she has not narrated that her husband was harassed only because he belongs to scheduled community. However, she mentioned in the FIR that they belonged to Scheduled



community. Whether the old act or new Act apply to the present case is subject to outcome of the Trial. Even, the learned counsel for the petitioner submitted that at the time of enquiry conducted by the learned Magistrate under Section 176 of Cr.P.C neither the victim nor her relative stated that at the time of incident they were humiliated by the petitioner by mentioning the caste name or uttered any words by humiliating them with caste, without which charges framed against them is erroneous one. On the contrary, in the Trial Court discussed about the applicability of Old Act as well as new Act during the relevant period made an observation that no ordinance from 26.05.2015 to till the amended Act came to force on 26.01.2016 are subject matter of the Trial. Therefore, the applicability of the old Act or new Act needs evidence. It is undisputed fact that the deceased Subramani belongs to schedule caste. Since the deceased belongs to scheduled caste, it is appropriate to conduct Trial before the special Court under SC/ST Act to avoid other complications like if any other district judge conduct the trial and framed any charges under SC/ST Act again the case is to be transferred to special Court in respect of charges under Section 3(i)(x), 3(1)(xi) of the SC/ST Act. Hence, it is safe to proceed the Trial before special Court to avoid further complication. Therefore, I am not inclined to interfere with the



alleged framing of charges under SC/ST PoA Act by the Trial Judge at the same time i am not affirmed the said charges. However, the liberty is granted to the petitioner to take all defence before the Trial court by submitting all the relevant authorities at any stage of Trial before pronouncing the judgement, the Trial Court is empower to alter or change the charges. It is pertinent to mention here that, so far no accused was fixed in the said Mumtaj murder case who died leaving the minor children. Law is equal to all, the victim of that family also to be taken into consideration. Because of this case, police not able to fix the accused as per submission made by R1. Therefore based on the relevant materials after conclusion of the evidence the Trial Court is empower to Add or alter the charges before pronouncing the judgment. Hence, I am not inclined to interfere with the charges framed against the petitioners in respect of SC/SC POA Act.

24. In respect of framing of charges under Section 302 of IPC, the Trial Court relied the post mortem certificate, the following injuries are noted in the Post mortem certificate:

(1) Multiple abraded contusions (Covered with brownish scab), Cris - cross pattern, present over the upper back with side ranging from 12cm x 1 cm to 6cm x 1cm.



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(ii) Multiple abraded contusions (Covered with brownish scab), Cris - cross pattern, present over the left arm with size ranging from 8cm x 1cm to 2.5cm x 1cm.

(iii) Partially healed abrasion (Scab fallen off) over the back of the right and left hand of size 4 cm x 0.5cm and 1cm x 0.5cm respectively.

(iv) Transversely placed abraded contusion (covered with brownish scab) present over the right and left buttock with size ranging from 4cm x 1cm to 3cm x 1cm respectively.

(v) Contusion of size 20cm x 15cm and 18 cm x 12cm present over the back of right and left thigh respectively at its middle and lower one-third.

(vi) Contusion present over both knee joints.

(vii) Contusion present over both ankle joints.

(viii) Contusion of size 7cm x 7cm present over the sole of left foot at its middle one third.

(ix) Avulsion of right big toe nail and second toe nail of the right foot missing with blood extravasated around"

25. At the stage of charges, the Court examine the material only with a view to be satisfied that prime facie case on for all offence alleged has been made out against the accused petitioners. As per the paragraph 6 and 10 of the order passed by the Trial Judge comes to the definite conclusion that cause for the death of deceased was custodial violence committed to the deceased Subramani. Furthermore, he also relied the injuries mentioned in the post mortem certificate of the deceased. At this juncture, the learned counsel for the petitioner submits that this injuries are contusions injuries



which was sustained by him at the time of interrogation back side of this hip used by stick(Lathy) by the police below the buttock and also stated that as per the final report he was died due to the renal failure not by the injuries. Whether the deceased died due to the custodial torture or renal failure are matter for Trial based upon the available medical records. Hence this Court is not inclined to interfere with the Trial which is exclusive right of the Trial Court. But this Court empower to test the veracity of the order passed by the Trial Court in respect of alteration of charges from 304(ii) of IPC to 302 of IPC. Mainly, the Trial Judge relied the post mortem and ratio laid down in Mehboob Batcha Vs. State case reported in 2011 (3) SCC.

26. On perusal of the above referred Mehboob Batcha case, which is related to custodial death of one Nanda Gopal who was died in Police Custody inside police Station and also gang raped his wife Padmini. As per the facts of the said case, the accused and other persons beaten the said Nanda Gopal to death and raped his wife and the post mortem of the case shows that the rope like Legature marked at centre of his neck on the deceased Nanda Gopal. Therefore, it was held that Nanda Gopal was beaten in Police custody but the case in hand is totally differs from the facts of the



said case. Therefore, in the said case the Apex Court found that there was no charges under Section 302 of IPC so it was questioned upon the Trial Court as to why no charges was framed in Section 302 of IPC. On considering gravity of the said case it was observed that charges ought to have framed under Section 302 of IPC. Furthermore, principles of D.K.Basu case was also to be followed in the above referred case.

27. Coming to the present case, admittedly as per the medical records said Subramani was not died inside the police station, according to the petitioner he was died after two days reliving from the police station in JIPMER Hospital, Pondichery. At this stage, I am not inclined to discuss about the medical report as it is subject matter for trial. However, the learned counsel for the petitioner submitted that even on bare perusal of the medical reports it reveals that there was no nexus between injuries sustained by the deceased and his death. Again I reiterate that all these facts are to be proved at the time of trial. The liberty is granted to the petitioner to take all defence before the Trial Court to prove their defence. Nevertheless, the findings of the Trial Judge shows that he relied the Nanda Gopal case thereby concluded that if any death of custodial violence shall be charged under Section 302 of IPC as well as he relied the case of S.Ponulali Vs. Sate



of Tamil Nadu. But coming to the facts of the case admittedly, death was not happened inside the Police Station. Though the above referred cases are applicable to the custodial death but the decision of the Apex Court not mandates the Trial Court to frame charges under Section 302 of IPC in all cases of alleged custodial violence or in all cases of death indeed charges are always required to be framed for appropriate penal provision upon materials placed by prosecution. But at this stage I am of the view that the observations made by the Judge by relying the above referred case is premature one. Therefore, the order passed by the special Judge is unjust and improper. After conclusion of the evidence the Trial Court is empowered to add or alter the charges but case in hand the pre-determination made by the Trial Judge shows that since because there was injuries sustained by him during interrogation accused are to be prosecuted for offence under Section 302 IPC as such is erroneous findings. The observation made by the Trial Court is that during the illegal custody multiple injuries found in the body of the deceased and the same is sufficient to show that the cause for the death was custodial violence committed on the deceased Subramani and concluded that the accused petitioners committed such offence is unwarranted conclusion trial. Law is very clear that while framing charge no



prejudice to be caused to the accused till prove his offence he is to be treated as innocent. Therefore, the altering of charges under Section 302 of IPC from 304(II) of IPC is illegal and liable to be set aside. Further, the learned counsel for the petitioner argued that reason for the death is renal failure and at the most petitioners can be prosecuted under Section 326 IPC for contusions injuries alone but he is entitled to put forth such defence before the Trial Court, the liberty is granted to them. Therefore, order passed by the Trial Court in altering the charges from Section 304(ii) of IPC to 302 of IPC is set aside by allowing the OP filed by the petitioner in CrI.O.P No. 1924 of 2024 and CrI.OP. No. 26271 of 2022. The petitioner accused filed petitions to quash the proceedings but can be done only in rare of the rarest case. As discussed above, altering the charges from under Section 304 of IPC to 302 of IPC is not well reasoned one erroneously arrived the conclusion before commencement of Trial as such is unjust and liable to be set aside. Alteration of charges under Section 302 IPC alone is set aside.

28. One more argument advanced on the side of the victim is that order passed by the SC/ST Act, is appellable order against revision is not maintainable but as discussed above, this Court is not inclined to go in to



the framing of charges under SC and ST POA Act. By way of reply, the learned counsel for the petitioners submits that order passed by the Trial Court in interlocutory application against which there is no provision for prefer the appeal in SC/ST POA Act the petition as such is maintainable. But as discussed above, I am not inclined to interfere with the framing of charges under Section SC/ST POA Act. Therefore, whether appeal is lie or not need not be concerned.

29. The Trial Judge is empower to add or alter the charges based upon the relevant materials at any stage before pronouncing judgment., However, the liberty is granted to the petitioner to put forth their defence before the Trial Court to work out their remedy. Accordingly, CRP 1924 of 2024 is partly allowed.

30. In respect of transferring the case from Sessions Court to Special Court, as discussed above, since the victim belongs to scheduled community irrespective of old or new Act the case is to be tried by the Special Court meant for SC/ST. Though suo motu order passed by Additional District Judge, Chidambarm and order of Principal District Judge is improper, at this stage I am not inclined to interfering for the aforesaid reason. As discussed above, whether the applicability of New Act or Old ACT is subject to matter



of Trial. The Liberty is granted to the petitioner to work out their defence before the Trial Court. Hence, this Court is not inclined to pass order at this stage. Accordingly, Crl.O.P No. 26259 of 2022 is disposed of. In view of the order passed in Crl.O.P No. 1924 of 2024 and Crl.O.P No. 26271 of 2022.

31. Accordingly, the petition in Crl.O.P No. 26271 of 2022 and Crl.O.P No. 1924 of 2024 is partly allowed.

12.03.2024

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To
The Public Prosecutor,

High Court, Madras.



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T.V.THAMILSELVI, J.

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CRL.OP Nos. 26271 & 26259 of 2022 and 1924 of 2024

& Crl.MP.Nos. 1365, 16187 of 2022

12.03.2024