



Crl.O.P.(MD)No.395 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.395 of 2022

and

Crl.M.P.(MD)No.298 of 2022

1.Dinesh
2.Kowsalya
3.Manikandan

... Petitioners/A1 to A3

Vs.

1.The Deputy Superintendent of Police,
Devakottai Division,
Devakottai, Sivagangai District.

2.The Inspector of Police,
Devakottai Town Police Station,
Sivagangai District.
Crime No.522 of 2021

... Respondents/Complainants

3.Kanimozhi

... Respondent/Defacto complainant

PRAYER:- Petition filed under Section 482 of Cr.P.C., to call for the records in connection with the FIR in Crime No.522 of 2021 pending investigation on the file of the second respondent and quash the same.

For Petitioners : Mr.N.Sathish Babu

For R1 & R2 : Mr.B.Nambiselvan
Additional Public Prosecutor

For R3 : Mr.RM.Arun Swaminathan



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ORDER

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This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.522 of 2021 pending investigation on the file of the second respondent.

2.The case of the prosecution is that the third respondent lodged a complaint with the second respondent alleging that her father, namely, Senthilkumar stood as a guarantor for the loan taken by one Babu, who is none other than the brother-in-law of the first petitioner. Since he failed to discharge the above said loan amount, the bank authorities insisted the father of the third respondent to pay the said loan amount. Therefore, the third respondent and his father had approached the petitioners at their residence on 18.11.2021 at about 05.00 a.m., and requested to settle the loan amount. It is further alleged that on 20.11.2021 at about 08.00 a.m., the first and second petitioners approached the third respondent at her residence, wherein, she was with her sister and slapped the third respondent by hand and abused them by using their caste name and by using unparliamentary words. Hence, the second respondent police registered a case in Crime No.522 of 2021 against the petitioners for the offences punishable under Sections 448, 109, 294(b), 323, 355 and 506(1) IPC, Section 4 of Tamil



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Nadu Prohibition of Harassment of Women Act r/w Sections 3(1)(r) and 3(1)(s)
of SC/ST (Prevention of Atrocities) Act.

3.The learned counsel appearing for the petitioners would submit that though the petitioners were implicated for the offences under Sections 448, 109, 294(b), 323, 355 and 506(1) IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w Sections 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Act, no ingredients are available in respect of the offence under Section 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Act. He would further submit that as per Section 3(1)(r), if the non-scheduled caste member intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within the public view; and as per Section 3(1)(s), abuses of any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within the public view and in the present case, *sine qua non* for implicating the petitioners who insulted the scheduled caste member in the public view, it is an offence. However, in the present case, as per the impugned FIR, the allegation against the petitioners is that the petitioners entered into the third respondent's house and insulted her by calling the caste name, which is not in a public view and no other persons are available in her house except the complainant. On the sole



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ground, the present petition is filed. He would further submit that in the absence of any public view and the allegation only against the third respondent and except the statement of the third respondent, no other third party evidence was recorded by the second respondent and hence, implicating the petitioners for the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Act is not sustainable one. Accordingly, he prayed for allowing this petition.

4.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 would submit that initially, the FIR was made by the third respondent before the second respondent stating that the petitioners entered into the house of the third respondent and insulted the third respondent and her sister by calling their caste name and thereafter, they pulled the third respondent and her sister outside of the house on the road and again, they insulted the third respondent and her sister by calling their caste name. He would further submit that investigation has been completed and the charge sheet has already been filed before the concerned Court. Hence, the act of the petitioners is attracted the provisions of Sections 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Act.



5.In support of their contention, the learned counsel for the petitioner and the learned Additional Public Prosecutor also relied upon the decision of the Hon'ble Supreme Court in ***Hitesh Verma Vs. State of Uttarakhand*** and another reported in ***(2020) 10 Supreme Court Cases 710*** and the relevant paragraphs are extracted hereunder:

“....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 v. State. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an 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, then the lawn would certainly be a place within the 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



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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



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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.”

6.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents 1 and 2.

7.Admittedly, the third respondent made a complaint before the second respondent police stating that on 20.11.2021 at about 08.00 a.m., the petitioners 1 and 2 approached the third respondent at her residence, wherein she was with her sister and the petitioners slapped the third respondent and abused them by using their caste name and by using unparliamentary words. While entertaining the quash petition, this Court granted an order of interim stay on 12.01.2022. Despite the order of interim stay granted by this Court, the respondent police filed a charge sheet before the Court below.

8.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 would further submit that as per the FIR, the occurrence happened



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inside the house of the third respondent, whereas, after investigation, it is revealed that the petitioners attacked the third respondent and pulled her on the road by using her caste name. Hence, he prayed for dismissal of this petition.

9.However, in the present case, this Court also perused the impugned order and a perusal of the impugned order makes it clear that the petitioners allegedly entered into the third respondent's house and attacked the third respondent and her sister by calling their caste name and the third respondent did not whisper anything about the presence of any person at that time. However, despite the interim order granted by this Court, the respondent police conducted investigation and filed the charge sheet before the Court below. Even in the charge sheet, it is alleged that when the third respondent was alone in the house, the petitioners dragged her on the road and attacked her and also abused her in filthy language. That improved version cannot be accepted.

10.Further, this Court also perused the decision relied upon by the learned counsels on either side and a perusal of the same revealed that the key ingredient of the provision of insult to intimidation in any place within public view and the place in public view had come up for consideration before the Apex Court as *Swaran Singh Vs. State* reported in (2008) 8 SCC 435, wherein,



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the Apex Court has drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building viz., in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the 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.

11.However, in the present case, admittedly, the occurrence happened inside the house and no public member is available and the said place is not in a public view, since the said incident cannot be happened outside the house either in the lawn or in the portico and this Court also perused the decision relied upon by the learned counsel on either side as stated *supra*.

12.A perusal of the above decision makes it clear that as per the FIR, the allegation of abusing the informant was within the four walls of the building. Therefore, the basic ingredient that the words were uttered in any place within the public view is not made out and further, in the present case, it is a money dispute between the petitioners and the third respondent, for which, the



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petitioners entered into the house of the third respondent and attacked the third respondent and her sister and thereby, they sustained injuries and for the injuries, they produced the wound certificate before this Court.

13.In view of the above, this Court is inclined to quash the FIR in respect of the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Act and the other provisions implicated on the petitioners are not interfered with.

14. Accordingly, the FIR in Crime No.522 of 2021 is quashed insofar as the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Act is concerned. This Criminal Original Petition is partly allowed. In respect of the offences under Sections 448, 109, 294(b), 323, 355 and 506(1) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, the second respondent is directed to file a charge sheet before the Court below. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
Sji

31.01.2024



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To

- 1.The Deputy Superintendent of Police,
Devakottai Division,
Devakottai, Sivagangai District.

- 2.The Inspector of Police,
Devakottai Town Police Station,
Sivagangai District.



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M.DHANDAPANI, J.

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