



CrI.A.No.1664 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT RESERVED ON : 21.04.2025

JUDGMENT DELIVERED ON : 29.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.1664 of 2023 and
CrI.M.P.No.20268 of 2023

State Represented by
The Assistant Commissioner of Police,
Sooramangalam Range,
Karuppur Police Station,
Salem City, Salem District.
(Cr.No.1003 of 2023)

...Appellant

Vs.

1. Jaganathan
2. Elangovan

...Respondents

Prayer: Criminal Appeal are filed under Section 14A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities Act), 1989, to call for the records and set aside the order dated 26.12.2023 rejecting the remand and consequently granting bail passed by the learned Judicial Magistrate No.2, Salem, in Cr.No.1003 of 2023 and allow the appeal.



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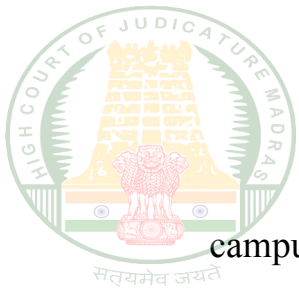
For Appellant : Mr.E.Raj Thilak, Addl. Public Prosecutor

For Respondents : Mr.R.Godson Swaminath for R1
Mr.S.Jim Raj Milton for R2

JUDGMENT

This criminal appeal has been filed by the State against the order of the learned Judicial Magistrate No.II, Salem, rejecting the remand of the first respondent/accused.

2 The learned Additional Public Prosecutor appearing for the petitioner/State would submit that the second respondent had lodged a complaint against the first respondent stating that he is the President of Periyar University Labour Union. The first accused had started a company in the name of M/s.Periya University Technology Entrepreneurship and Research Foundation (PUTER Foundation) by making huge investments without approval of Syndicate or from the Government and had illegally allotted a building for the above said company inside the Periyar University



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campus by abusing his power and incurred loss to the University.

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2.1 PUTER Foundation had entered into an agreement with Tamilnadu Agricultural University, Coimbatore, Deepam Education Private Limited, Monolith Technology Pvt. Ltd., Active Edutechnology Pvt. Ltd., Futurristic Systems Pvt. Ltd., India Turns Pick (ITP), Vinayaga Mission Research Foundation, Media and Entertainment Skills Council (MESC). The said institutions have absolutely no connection with Periyar University or anything related to higher education. While so, the second respondent/defacto complainant along with his friend met the first accused on 26.12.2023 and enquired about the function of PUTER Foundation and the accused abused him with slur words uttering his caste name in a public place. Therefore a case in Cr.No.1003 of 2023 was registered against the first respondent for the offence under Section 294(b), 120(b), 420, 468, 409 r/w 511, 506(1) and 3(1)(r) and 3 (1)(s) of SC/ST Act.

2.2 After registering FIR, Assistant Commissioner of Police took up investigation as the case involves offence under SC/ST Act. The first



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respondent was secured on 26.12.2023 and produced before the learned

Judicial Magistrate No.II, Salem, since designated Court was on vacation.

The learned Judicial Magistrate, on hearing the request of learned Public Prosecutor for remand of the accused and the learned counsel for the accused, passed the impugned order, rejecting the request of the prosecution and granted bail by order dated 27.12.2023.

2.3 The learned Judicial Magistrate relying upon the decisions of the Hon'ble Supreme Court in the case of *Arnesh Kumar vs. State of Bihar and Satendar Kumar Antil vs. CBI* made an observation that the offences are punishable upto seven years imprisonment, but the learned Magistrate failed to note that Section 409 IPC is punishable with imprisonment for life. Therefore the decisions relied on by the learned Judicial Magistrate are not applicable to the facts of the present case on hand.

2.4 The learned Judicial Magistrate erroneously came to the conclusion that there is no specific averment of misappropriation or cheating against the accused and the investigation can be proceeded further without



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remanding the accused to judicial custody.

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2.5 The learned Judicial Magistrate, even though rightly quoted Section 15A (3) the SC/ST Act, which bestow the right of the victim at all stages, but, observed that prosecution has been elaborately heard on behalf of the victim and rejected the remand of the accused. Further the Hon'ble Apex Court and this Court held that in the cases of offences falling under the Special Act, the designated Court only has jurisdiction to grant bail. Hence the order of the learned Judicial Magistrate granting bail to the accused without giving notice to the victim, is completely against the provisions of Section 15A (3) of the SC/ST Act.

2.6 The learned Magistrate failed to note the object of remand, which helps the prosecution to interrogate the accused to know the motive of the crime and other essential details and erroneously passed order of rejection of remand request and further granted bail.

2.7 The learned Additional Public Prosecutor, to support his



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contentions placed reliance on the following decisions of the Hon'ble Supreme Court.

1. *Sundeeep Kumar Bafna vs. State of Maharashtra & Another* (2014) 16 SCC 623
2. *Arnesh Kumar Vs. State of Bihar & Another* (2014) 8 SCC 273
3. *Satender Kumar Antil vs. CBI and Another* (2021) 10 SCC 773
4. *Hariram Bhambi vs. Satyanarayan and Another* 2021 SCC OnLine SC 1010

3 The learned counsel for the first respondent/accused would submit that the appeal itself is not maintainable since no appeal would lie as against the interlocutory order. The impugned order of rejection of remand request of the prosecution is only an interlocutory order and hence as per Section 14A of the SC/ST Act, no appeal would lie before this Court.

3.1 Further remand of the accused in all the cases is not mandatory and it is only subject to satisfaction of the Magistrate. In this case, the learned Magistrate passed the detailed order, whereby the request of the prosecution for remand of the accused is rejected, which is well founded. Hence the appeal is liable to be dismissed.



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WEB COPY 4 Despite giving opportunity, the learned counsel for the second respondent has not made any submissions.

5 Heard the learned Additional Public Prosecutor for the appellant/State and the learned counsel for the first and perused the materials available on record.

6 The first respondent/accused is the Vice Chancellor of Periyar University. The second respondent/defacto complainant is President of Periyar University and he made complaint against the first respondent. Hence the case in Cr.No.1003 of 2023 was registered for the offence under Sections 294(b), 120(B), 420, 468, 409 r/w 511, 506(1) and 3(1)(r) and 3(1)(s) of SC/ST Act. The first respondent was arrested and produced before the learned Judicial Magistrate No.II, Salem, for remand. The learned Magistrate by the impugned order dated 26.12.2023 rejected the request of the prosecution and also enlarged the first respondent/accused on bail imposing certain conditions.



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Remanding accused is only subject to satisfaction of the Magistrate and it is not mandatory in all the cases and if the remand of the accused is not necessary, the Court can always reject the remand request. Even though the offence under Section 3(1) of the SC/ST Act is a cognizable offence and the Investigating Officer can arrest the accused, the learned Magistrate, after hearing the prosecution and the learned counsel for the accused, made an observation that arrest of the accused is not necessary and hence rejected the request of the prosecution.

8 As far as remand is concerned it is between the court and the prosecution. In case, any application is filed seeking bail, quash, discharge or for any other enquiry, the victim has to be heard and hence the victim need not be heard at the stage of remanding the accused. If the Court thinks the remand of the accused is not necessary, it can always reject the request of the prosecution to remand the accused.

9 Further on reading of the material, it reveal that the accused is the Vice Chancellor of the Periyar University and the investigation is



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pending. The accused had filed separate petitions under Section 482 Cr.P.C.

seeking to quash the case in Cr.No.1003 of 2020 and this Court by a common order dated 04.04.2025 dismissed the same and directed the Investigating Officer to complete investigation within a period of 12 weeks. Therefore at this stage, remand of the accused is not necessary.

10 As far as remand is concerned, it is not mandatory and it is only subject to satisfaction of the Magistrate. Hence considering the status of the accused, this Court does not find any error in the order of the learned Magistrate as far as rejection of remand is concerned.

11 As far as granting bail to the accused by the learned Magistrate is concerned, it is settled law that in any proceeding/enquiry under the SC/ST Act, the victim has to be heard. As per Section 15(A) of the SC/ST Act, before granting bail to the accused, victim has to be heard. Furthermore, when the offence is triable only by the Court of Session, the Magistrate has no jurisdiction or power to grant bail to the accused. In this case it is alleged by the prosecution that the accused committed offence under Section 409



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IPC also, which is triable only by the Court of Session or the Special Court.

Therefore, in my opinion, as far as rejection of remand is concerned there is no error in the order of the learned Magistrate, but granting bail to the accused is beyond the jurisdiction of the learned Magistrate.

12 In view of the above discussions, the order of the learned Magistrate is set aside as far granting of bail to the accused is concerned and the order of rejection of remand request is hereby confirmed.

13 In the result the criminal appeal is partly allowed to the extent above. However, the first respondent is directed to extend his fullest co-operation to complete the investigation. In case, the first respondent fails to co-operate for investigation or the prosecution finds that he is trying to tamper the evidence, it is always open to the Investigating Officer to arrest the first respondent and take him into judicial custody and complete the investigation in accordance with law. Consequently connected miscellaneous petition stands closed.



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14 It is seen that the learned Magistrate has not followed the

mandatory procedures of granting bail for the offence triable by the Court of Session, which shows that he is not aware of the procedure, while remanding the accused for the offence triable by the Court of Session/Special Court. Therefore Registrar General, Madras High Court, is directed to impart training to the Magistrates, in the State Judicial Academy, covering the subject of power of the Magistrate to grant bail for the offence triable by the Court of Session and the offence under the Special Act.

29.04.2025

Speaking Order/Non Speaking Order

Neutral Citation case: Yes/no

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To

1. The Judicial Magistrate No.2, Salem.
2. The Assistant Commissioner of Police,
Sooramangalam Range, Karuppur Police Station,
Salem City, Salem District.
3. The Public Prosecutor, High Court of Madras.

P.VELMURUGAN, J

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Pre-Delivery Judgment
in
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