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**(2003) 04 KAR CK 0048**

**In the Karnataka High Court**

**Case No :** Criminal Petition No's. 2312, 2313 and 2315 of 2002

Ananda Pangala

APPELLANT

Vs

T.R. Jagannath

RESPONDENT

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**Date of Decision :** 08-04-2003

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 201, 302, 34, 392, 411  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3 (2), 4

**Citation :** (2003) CriLJ 3215 : (2004) 1 KarLJ 623 : (2003) 3 KCCR 1965 :  
(2003) 4 RCR(Criminal) 249

**Hon'ble Judges :** K. Sreedhar Rao, J

**Bench :** Single Bench

**Advocate :** K. M. Nataraj, for the Appellant; R.B. Deshpande in Cri. P. No. 2312 of 2002, H.V. Ramesh, High Court Government Pleader for Respondent-1 in Cri. P. No. 2315 of 2002 and S.J. Chouta, for Respondents-2 to 5 in Cri. P. No. 2315 of 2002, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K. Sreedhar Rao, J.—All the three petitions are considered together for passing common order, as they arise out of the proceedings in Criminal Revision Petition Nos. 126 and 129 of 2001 on the file of the Sessions Judge, Mangalore arising out of the proceedings in P.C.R. No. 251 of 2000 on the file of the Judicial Magistrate First Class, Puttur.

2. The complainant in P.C.R. No. 251 of 2000 is the petitioner in Cri. P. Nos. 2312 and 2313 of 2002 and the petitioner in Cri. P. No. 2315 of 2002 is the person who lodged FIR in Crime No. 18 of 1998 on the file of Kadaba Police Station, Puttur Circle. The brief facts leading to the case are stated thus:

One Kum. Vasanthi, aged about 18 years was found missing from 24-12-1997. Her whereabouts were not known. The father of the deceased lodged a missing complaint before the Sirur Police Station in Cri. Misc. No. 3 of 1998 on 5-1-1998.

About 5 months thereafter, skeleton remains of a person were found in Kepukudi Jungle. Near the scene chappals, choodidar and other articles were also found. It transpired that the articles belonged to the deceased Vasanthi. Therefore, FIR was lodged by the petitioner in Cri. P. No. 2315 of 2002 on 23-5-1998 on the file of Kadaba Police Station. It is alleged that the deceased was wearing gold ear-studs and other jewellery. The deceased was moving friendly with the accused persons, who are respondents 2 to 5 in Cri. P. No. 2315 of 2002. When Vasanthi was found missing, it is said that the complainant and her family members approached the accused to know about the deceased. The accused ill-treated the complainant and her family members in a harsh manner using abusive language telling them not to come and make any enquiries henceforth. On account of the said belligerent and evasive conduct, it was suspected that accused have caused the murder of Vasanthi for gain.

3. The Kadaba Police, after investigation filed the charge-sheet in S.C. No. 50 of 1998 on the file of the Sessions Judge, Mangalore for committing offences punishable under Sections 302, 392, 411, 201, 504 and 506 read with Section 34 of the IPC. In the charge-sheet, the prosecution has placed a material regarding discovery of jewellery worn by the deceased at the voluntary instance of the accused persons. The Forensic Laboratory report discloses that the skeleton remains are of a human being. It is only on the basis of the wearing apparels found at the scene, the identity of the corpus delicti has been found to be that of Vasanthi. The cause and time of death has not been ascertained and stated by the prosecution in the charge-sheet. Only on the basis of the discovery evidence and the motive, the prosecution contends that the murder of deceased by the accused is for gain.

4. The petitioner in Cri. P. Nos. 2313 and 2312 of 2002 filed a private complaint before the Special Court-cum-Principal Sessions Judge, Mangalore, alleging that the Police have not properly investigated into the case and that the respondents in Cri. P. Nos. 2313 and 2312 of 2002 who are the Investigation Officers have not conducted the investigation in proper manner and have not charged the accused for committing the offences punishable u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, despite furnishing of proper material by the complainant. Therefore, under the private complaint, the complainant sought for taking action against the accused including the Investigating Officers concerned for the offences alleged. The Sessions Judge referred the complainant for investigation to Police u/s 156(3) of the Cr. P.C. The Police filed a B report. Then a protest petition was filed. Sworn statement of the complainant was recorded and then summons was issued to the respondent herein.

5. The Sessions Judge transferred the case file to the Judicial Magistrate First Class Court, Puttur, who on the basis of sworn statement, ordered issuance of summons. Aggrieved by the said order, the revision was filed in Cri. R.P. Nos. 126 and 129 of 2001 by the Investigation Officers who are accused 5 and 6 in

the complaint. The Second Additional Sessions Judge, Mangalore allowed the revision and set aside the proceedings initiated against the accused 5 and 6. The complainant in S.C. No. 50 of 1999 filed a petition before this Court in Cri. R.P. No. 891 of 2001 for stay of the proceedings in S.C. No. 50 of 1999 till committal of the case in P.C.R. No. 251 of 2000. This Court dismissed the petition with a liberty to the complainant to approach the Sessions Court. Accordingly, the complainant filed a petition before the Sessions Judge under Sections 210 and 309 of the Cr. P.C. for stay of the proceedings in S.C. No. 50 of 1999 till committal of the case in P.C.R. No. 251 of 2000. The Sessions Judge rejected the request. Aggrieved by the said order, the complainant has filed Cri. P. No. 2315 of 2002. The petitioner in Cri. P. No. 2315 of 2002 virtually sail with the petitioner in Cri. P. Nos. 2312 and 2313 of 2002.

6. It is the contention of the petitioner that the investigation has not been conducted by the respondents in Cri. P. Nos. 2312 and 2313 of 2002 in a proper manner. There is sufficient material to disclose that the accused have committed the offence punishable u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and deliberately the said offence has not been included. In that regard, a private complaint has been filed. After carefully going through the statement of the petitioner in Cri. P. No. 2312 of 2002, who is cited as C.W. 2 in S.C. No. 50 of 1999 and averments made in the private complaint, they do not disclose any material to enable invoking of provisions of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the FIR in S.C. No. 50 of 1999 and the statements of C.Ws. 1 and 2, who are the petitioners herein, nowhere it is stated that the deceased was murdered with an animus that she belongs to Scheduled Caste. The motive offered by the petitioners, only indicate that the murder has been committed for gain. The gold jewellery worn by the deceased is alleged to have been robbed by the accused in S.C. No. 50 of 1999. Of course, the prosecution has placed material to show discovery of the said articles at the voluntary instance of the accused, it is very preposterous on the part of the petitioners to contend that the Police Officers have committed offence in this regard. The provisions of Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, fasten criminal liability on the public servants, who wilfully neglect their duties required to be performed by them under the Act and make punishable for imprisonment for a term not less than six months and may extend upto one year. In order to invoke Section 4 of the Act against the Investigation Officers, there should necessary and proper averments of facts to the effect that they have wilfully neglected their duties by not properly investigating the offence covered by sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In what manner there is a failure to take steps on the pan of the Investigation Officers is to be clearly stated. In the context of provision of Section 4 of the Act, if the averments made in the private complaint in S.C. No. 50 of 1999 is read, it does not suggest that necessary material showing ingredients of Section 4 has been made out to

proceed against the Police Officers under the complaint in P.C.R. No. 251 of 2000. Therefore, I find that the Sessions Judge was justified in setting aside the order as against the respondents in Cri. P. Nos. 2312 and 2313 of 2002. The said impugned order does not call for interference.

7. On the contention of the petitioner that the offence u/s 3(2)(v) has been committed is also untenable contention and it appears to be an afterthought with some oblique motive. The FIR allegations and statements of C.Ws. 1 and 2 in S.C. No. 50 of 1999 and the averments in P.C.R. No. 251 of 2000 does not state that the accused caused the murder of Vasanthi with an animus that she belongs to Scheduled Caste. The allegations disclose that deceased was friendly with the accused persons and that the complainant suspect some foul play on the part of the accused. In order attract provision of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, it is essential for the prosecution to show that the offence punishable with imprisonment for a term of 10 years or more against a Scheduled Caste person is committed on the ground that such member is a member of Scheduled Caste. There are no necessary averments in the FIR as envisaged under Clause (v) of Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In that view of the matter, taking cognizance on the basis of private complaint by the Judicial Magistrate First Class appears to be bad in law and without exercisable jurisdiction.

8. In the result, the revision petitions are dismissed and the proceedings in P.C.R. No. 251 of 2000 is quashed.