

(2009) 07 MAD CK 0312

In the Madras High Court

Case No : Criminal O.P. No. 17440 of 2007 and M.P. No. 1 of 2007

Basant Kumar Ranka

APPELLANT

Vs

The Assistant Commissioner of Police, Flower Bazaar Range
and The Inspector of Police

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 506
Protection of Civil Rights Act, 1955 — Section 7(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2009) 07 MAD CK 0312

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : G.M. Syed Faruddin, for the Appellant; R. Muniappa Raj, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Criminal Original Petition has been filed by the petitioner to call for the records in Crime No. 290 of 2007 on the file of the C-1 Flower Bazaar Police Station, Chennai, the second respondent herein and quash the same.

2. The prosecution case is as follows:

One E. Stephen Raj, Son of Iruthayam, is the defacto complainant herein has lodged a complaint with the second respondent police, stating that on 18.05.2007, at about 6.00 p.m, he had gone to the petitioner/accused shop, situated at Old No. 151/New No. 168, N.S.C. Bose Road, Chennai-1, to buy a silver gift article. The Salesmen of the shop showed the article which was covered by plastic cover. The defacto complainant asked the salesman to open the cover and show the article. The salesman refused to open the cover saying that he was an employee and that if he wanted to view the article, he could

contact the owner of the shop. The salesman spoke to him in a very degrading manner. Thereafter, the defacto complainant contacted the owner of the shop, who also supported the employee. The defacto complainant told the shop owner that they are not acting in the correct manner for which all the employees surrounded him and tried to assault him and used the caste name of "para jathi", while addressing him. Immediately, the defacto complainant lodged a complaint with the second respondent herein on 18.05.2007 at 21.00 hrs. The respondent police received the complaint and registered a case in Crime No. 290 of 2007 on an alleged offence u/s 7(1)(d) of Protection of Civil Rights Act, 1955.

3. On the basis of the complaint, the petitioner's son was arrested and released on bail. The petitioner was also granted bail.

4. Now, the petitioner has contended that due to pressure and influence of some higher officials and due to previous enmity, the case was hurriedly altered to Section 3(1)(x) of SC & ST (Prevention of Atrocities) Act, 1989, against the petitioner herein and his son, Mr. Kapil Ranka. The petitioner contended that his son, Mr. Kapil Ranka was arrested and remanded on 19.05.2007 and was released on bail by order dated 23.05.2007. The petitioner also moved Criminal Original Petition No. 15038 of 2007 before this Court. This Court directed the learned Principal Sessions Judge to consider the bail petition of the petitioner on the very same day of his surrender. As per the Honourable Court order, the petitioner surrendered before the Principal Sessions Judge on 08.06.2007 and he was granted bail.

5. The petitioner further contended that due to previous enmity, the respondent police, under the direction and influence of the higher officials had set up the defacto complainant to harass the petitioner. Hence, a false case had been foisted against them.

6. Further, the petitioner contended that there is no specific allegation against the petitioner and his son for using the word "para jathi". The First Information Report disclosed that the petitioners attempted to assault the defacto complainant and used the word "para jathi" while addressing the defacto complainant.

7. Further, the petitioner has contended that he does not know Tamil and does not know the meaning of the word "para jathi". Further, it is not customary for a shop owner to question and enquire about the caste and community of customer. His aim is only to do business. Further, the petitioner has contended that making use of the said Stephenraj as a trump card, the police wants to harass the entire family. The petitioner is an income tax assessee and hails from a decent family.

8. The petitioner further contends that the defacto complainant is a Christian and so the SC/ST Act will not apply for a Christian. Further, the petitioner has no necessity to use the word "para jathi".

9. The petitioner cited the following citations in support of his case:

(1) 2006(4) Crimes 191, clearly held that offence must be committed by a person, that such a person is member of SC/ST.

(2) 2006 (Vol.I), Crimes 767, Madhyapradesh clearly held that merely calling a person by his caste without any intention of insulting or intimidating will not amount to an offence under SC/ST Act.

(3) 2002 Criminal Law Journal 3407, Andhra Pradesh, has held that mere knowledge of a community of a person is not sufficient to invoke Section 3(1)(x) of SC/ST Act.

(4) 2002 Vol. 2 Criminal Law Journal 1207 and 2000 Criminal Law Journal 1978(13), Allahabad & Orissa High Courts have clearly held that simply addressing a person without any intention to insult will not amount to an offence.

10. It is further stated in the affidavit that there was some dispute between one T.T. Sekar and the respondent police and petitioner. The said dispute entered into a compromise for a sum of Rs. 1,52,000,00. The compromise happened at police station under threat and coercion. Further, the Inspector of Police, C-2, Elephant Gate Police Station, under threat and coercion collected Rs. 85 lakhs from the petitioner based on the unlawful and illegal documents created. The petitioner had filed Criminal Original Petition No. 30459 of 2006 against the second respondent herein for quashing the compromise in C.C. No. 501 of 2006 on an alleged offence u/s 420 and 506(ii) of IPC.

11. The petitioner further stated that he was not present at the time of occurrence. The petitioner had filed a case against the second respondent herein which is pending on the file of VIII Metropolitan Magistrate Court, Chennai. This is also one of the ground for proving the enmity between the petitioner and the second respondent herein.

12. The learned Counsel for the respondent argued the matter on behalf of the respondents.

13. Considering the facts and circumstances of the case and after hearing the arguments of the learned Government Advocate (Crl. Side) and perusal of the ingredients of the First Information Report, the Court is of the view that,

(1) It is not crystal clear that the petitioner and his son, directly used the word "para jathi" against the defacto complainant.

(2) The occurrence happened at 6.00 p.m, but the complaint was lodged at 9.00 p.m. There was 3 hours delay in lodging the complaint, even though it takes only 10 minutes to walk from the occurrence place to the police station.

(3) The First Information Report revealed that the employees of the petitioner assembled and attempted to assault the defacto complainant, when they used the word "para jathi".

(4) There is no specific allegation in the complaint about the exact person from

whose mouth, the word "para jathi" had come out.

14. Hence, this Court is warranted to interfere in the proceedings in Crime No. 290 of 2007 on the file of C-1, Flower Bazaar Police Station, Chennai, the second respondent herein, and quash the same. Accordingly, the Criminal Original Petition No. 17440 of 2007 is allowed. Consequently, connected Miscellaneous Petition is closed.