

(2010) 04 MAD CK 0291

In the Madras High Court

Case No : Criminal O.P. (MD) No. 1348 of 2010 and M.P. (MD) Nos.1 and 3 of 2010

Mallaiah @ Muthu Mallaiah, Selvam, Suyambu @
Suyambudurai and Murugesan

APPELLANT

Vs

The Deputy Superintendent of Police, Thoothukudi Rural Sub
Division and Stella

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3)

Penal Code, 1860 (IPC) — Section 201, 302, 365

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2010) 04 MAD CK 0291

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : C. Christopher, for the Appellant; P. Rajendran, Government
Advocate for R1 and B.Pugalendhi, for R2, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The petitioners, who are A.1 to A.4 for the alleged offences under Sections 365, 302 and 201 I.P.C read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, seek to quash the proceedings in P.R.C. No. 10 of 2009 pending on the file of the learned Judicial Magistrate No. II, Thoothukudi, insofar as the offence punishable u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned.

2. The second respondent/defacto complainant gave a complaint stating that her deceased husband was having illicit relationship with one Pushpavalli. In view of the objections made by her, the defacto complainant's husband had stopped going to the house of the said Pushpavalli. Since the deceased had stopped going to the house of Pushpavalli, all the accused have abducted the deceased.

3. A further statement was given by the second respondent/defacto complainant stating that when the petitioners 1 and 2 were walking in the street, they shouted at the deceased who was following them and the second petitioner stated that why the deceased was following him which was replied by the deceased stating that it is none of botheration of the second petitioner. Thereafter, the second petitioner has replied stating that the deceased has no business to say that the second petitioner should not enter into the street and move with one Jayanthi. After making such statement, the deceased was attacked and taken in a tri-cycle by all the accused. The other witnesses have also given the same version to the effect that the deceased questioned the relationship of the said Jayanthi with the second petitioner which has resulted in the alleged occurrence.

4. It has been further stated that thereafter the deceased has been murdered and the body has been buried.

5. A charge sheet has been filed by the first respondent based upon the above said facts for the alleged offence under Sections 365, 302 and 201 I.P.C read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Challenging the implication of the petitioners for the alleged offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the present petition has been filed.

7. The learned Counsel for the petitioners submitted that on a perusal of the complaint, the statement given by the witnesses u/s 161(3) of the Code of Criminal Procedure and the charge sheet, no offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been made out. The learned Counsel further submitted that there is no allegation neither in the complaint nor in the statements given by the witnesses or in the charge sheet that the offence has been committed on the ground that the deceased belonged to the Scheduled Caste community and there is not even a statement by the accused to that effect, even as per the case of the prosecution.

8. The learned Counsel for the petitioners also submitted that therefore under those circumstances, the framing of charges u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, will have to be quashed.

9. In support of his contention, the learned Counsel for the petitioners relied upon the decision in (i) C. Vijaya v. State of Tamil Nadu represented by Secretary to Government, Home Department and Ors. 1999 MLJ (Cri) 600 and (ii) Dinesh @ Buddha Vs. State of Rajasthan, and submitted that when there is no allegation warranting the offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the proceedings are liable to be quashed.

10. Per contra, the learned Counsel for the second respondent submitted that

merely because the statements recorded u/s 161(3) of the Code of Criminal Procedure, do not indicate the alleged offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the proceedings cannot be quashed. The learned Counsel further submitted that the question as to whether the alleged offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out or not, will have to be decided at the time of trial. Therefore, this Court shall not interfere with the same.

11. In support of his contention, the learned Counsel for the second respondent has relied upon the decision in Baldev Singh v. State of Punjab 1991 MLJ(Crl) 24 and submitted that the statement recorded u/s 161(3) of the Code of Criminal Procedure cannot be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162(1) of the Code of Criminal Procedure. The learned Counsel also relied on the decision in State of Haryana and Another Vs. Dharam Singh and Others, and submitted that a judgment cannot be relied upon without indicating how the same is applicable to the present case on hand. Therefore, the learned Counsel for the second respondent prayed for the dismissal of this petition.

12. Admittedly, in the present case on hand, there is no allegation in the statements of the witnesses and in the complaint that the alleged offence has been committed by the petitioners on the ground that the deceased was belonging to the Scheduled Caste community.

13. The case of the prosecution is that the second petitioner got agitated due to the objection raised by the deceased about the illicit relationship between the second petitioner and one Jayanthi. Even in the charge sheet, the very same facts have been stated to the effect that in pursuance of the objections raised by the deceased, the alleged occurrence had been happened. Merely because, the deceased belonged to the Scheduled Caste community, the alleged offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be charged against the petitioners. No doubt, it is true that the other charges for the offences are very specific against the petitioners, but what is challenged before this Court is only the implication of the petitioners for the alleged offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

14. In order to appreciate the above said position, the provision contained u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is extracted hereunder:

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with

imprisonment for life and with fine.

15. A reading of the above said provision and applying the same to the case on hand, would clearly show that the alleged occurrence did not happen because of the fact that the deceased belonged to the Scheduled Caste community. There is not even a statement either in the complaint or in the statement recorded u/s 161(3) of the Code of Criminal Procedure from the witnesses to the effect that the petitioners abused the deceased on the basis of his community or committed the offence only on that basis.

16. Admittedly, the alleged offence is said to have been committed by the petitioners in view of the relationship of the second petitioner with one Jayanthi which was questioned by the deceased.

17. In fact, a further reading of the statement u/s 161(3) of the Code of Criminal Procedure given by some of the witnesses would show that the deceased is said to have questioned the second petitioner that in view of the illicit relationship, the second petitioner is creating problem to the village.

18. In *C. Vijaya v. State of Tamil Nadu* represented by Secretary to Government, Home Department and Ors. 1999 MLJ(Crl) 600, this Court has observed as follows:

9. As rightly pointed out by the learned Government Advocate, Section 3(2)(v) of the S.C/S.T. Act, cannot be applied in the instant case, as the victim was not raped on the ground that the victim was a member of a Scheduled Tribe. Section 3(2)(v) provides as under:

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

10. The investigation done in this case discloses that the gang rape was committed when the victim was in the custody of the police personnel not on the ground that she belongs to a Scheduled Tribe, so as to insult the said Tribe. But this offence was committed since she was a young woman taking advantage that she was in their custody. Therefore, there may not be any difficulty to conclude that Section 3(2)(v) of the Act cannot be invoked.

19. Similarly, in *Dinesh @ Buddha Vs. State of Rajasthan*, , the Honourable Apex Court has observed as follows:

15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution

that the rape was committed on the victim since she was a member of a Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

20. Applying the said ratio to the facts of the present case, this Court is of the opinion that it is crystal clear that the alleged occurrence has happened not because of the fact that the deceased belonged to the Scheduled Caste, but in view of the alleged illicit relationship of the second petitioner with one Jayanthi, which was questioned by the deceased.

21. The decisions relied on by the learned Counsel for the second respondent are not applicable to the present case on hand.

22. As observed earlier, there is absolutely no material or evidence to substantiate the charges framed against the petitioners u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

23. Therefore, when the charges are not maintainable against the petitioners, there is no useful purpose in allowing the trial to be proceeded with insofar as the charge u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with other alleged offences. Further, the charges framed by the Court being a judicial act, the same can be questioned and set aside if it is found that the said charges are without any basis on the admitted facts of a particular case.

24. Therefore, the proceedings in P.R.C. No. 10 of 2009 pending on the file of the learned Judicial Magistrate No. II, Thoothukudi, is quashed insofar as the charge regarding Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is concerned, against the petitioners/A.1 to A.4. It is made clear that the order passed by this Court is specifically confined to the above said charge alone and not pertaining to the other charges which have not been challenged before this Court.

25. In the result, this Criminal Original Petition is allowed to the extent indicated above. Consequently, the connected Miscellaneous Petitions are closed.