Kamala.E.P Vs Ummer

Court: High Court Of Kerala

Date of Decision: Jan. 22, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 173, 210, 235(1), 372, 378(4), 397
Indian Penal Code, 1860 â€" Section 143, 147, 148, 323, 324, 354, 427, 452, 506(i)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€" Section 3(1)(x), 3(1)(xi)

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: Roy Chacko, P.S.George, Jency Micheal, Sojan Micheal, V.S.Boban, Chacko Simon, Antony Robert Dias, Sivasankar, Sangeetharaj.N.R

Final Decision: Dismissed

Judgement

G. Girish, J

1. The judgment dated 27.07.2017 in S.C.No.539/2011 and S.C.No.453/2016 on the files of the Special Court for SC/ST (POA) Act Cases, Manjeri is

under challenge in this revision petition filed at the instance of the de facto complainant.

Ã, 2. S.C.No.539/2011 was a case charge sheeted by the Deputy Superintendent of Police, Crime Detachment, Malappuram in respect of the

offences under Sections 143, 147, 148, 452, 427, 506(i), 323, 324 and 354 I.P.C read with Section 149 I.P.C and Section 3(1)(x) and 3(1)(xi) of the

SC/ST POA Act. S.C.No.453/2016 was a private complaint filed by the petitioner herein against 15 accused in S.C.No.539/2011 and two others in

respect of the same incident, alleging the commission of offence under Sections 143, 147, 148, 452, 427, 506(i), 323, 324 and 354 I.P.C read with

Section 149 I.P.C and Section 3(1)(x) and 3(1)(xi) of the SC/ST POA Act. However, the learned Special Judge, after recording the sworn statement

of the complainant and the witnesses, took cognizance of the offences under Sections 143, 147, 148, 452, 427, 506(i) and 323 I.P.C read with Section

149 I.P.C only in the above complaint case.

3. Both these cases were clubbed together and tried in a single trial by the learned Special Judge who recorded the evidence in S.C.No.539/2011. 18

witnesses were examined from the part of the prosecution as PW1 to PW18 and 41 documents were marked as Exts.P1 to P41. One material object

was identified as MO1. On the part of the accused, twelve contradictions were marked as Exts.D1 to D12 and three other documents were marked

as Exts.D13 to D15. After hearing both sides and evaluating the aforesaid evidence, the learned Special Judge arrived at the finding that the accused,

except A9 and A15 who were absconding, were not guilty of the offence alleged, and acquitted them under Section 235(1) Cr.P.C. It is the aforesaid

judgment which is under challenge in this revision filed by the de facto complainant.

4. Heard the learned counsel for the petitioner, the learned counsel for the party respondents 1 to 17 and the learned Public Prosecutor representing

the State of Kerala.

5. The judgment rendered by the learned Special Judge has been assailed by the petitioner on the following grounds:

Ã, (i) The learned Special Judge went wrong in clubbing these two cases and conducting joint trial resulting in the pronouncement of a common judgment.

Ã, (ii) The learned Special Judge erroneously found that the offence under Section 3(1)(x) of SC/ST POA Act is not attracted since the incident took place inside the

house of the de facto complainant.

Ã, (iii) The learned Special Judge went wrong in finding that the evidence given by PW1 and other witnesses are highly untrustworthy and hence not reliable.

Ã, 6. Though the de facto complainant has challenged the impugned judgment by filing a revision under Section 397 of the Code of Criminal Procedure,

I deem it appropriate to evaluate the evidence, as well as the other challenges raised by the petitioner in a broad perspective since it appears that the

de facto complainant, as a victim of the crime, could have filed an appeal against the impugned judgment as per the proviso to Section 372 Cr.P.C as

far as S.C.No.539/2011 charge sheeted by the police, is concerned. So also, she could have filed an appeal after getting special leave under Section

378(4) Cr.P.C in S.C.No.453/2016 which arose out of the private complaint filed by her.

Ã, 7. Coming to the first challenge raised by the petitioner about the error committed by the learned Special Judge in conducting a joint trial after

clubbing both the cases together, it has to be stated that the challenge raised by the petitioner in the above regard is in conformity with the provisions

contained in Section 210 Cr.P.C. As per the above provision, the question of clubbing a case instituted otherwise than on police report and a case

instituted upon a final report filed by the police, would arise only when during the course of enquiry or trial, in a case instituted otherwise than on police

report, it is brought to the notice of the court that the investigation by the police is in progress in respect of the same subject matter, and later on a final

report is filed by the police officer under Section 173 Cr.P.C resulting in cognizance being taken in respect of the offence committed by any person

who is an accused in the complaint case as well. As far as the present case is concerned, the Deputy Superintendent of Police concerned is seen to

have filed the final report in the year 2010, whereas the de facto complainant had filed the private complaint only on 2013, aggrieved by the exclusion

from the final report two persons who were originally proceeded against at the time of registration of crime. Thus, the clubbing of the two cases was

not possible under Section 210 Cr.P.C since the final report had been filed by the police officer two years prior to the date of filing of the private

complaint.

8. The proper course which ought to have been followed by the Special Judge was to conduct the trial of both these cases simultaneously with the

examination of the common witnesses in one case and adopting their evidence in the other case, along with the other witnesses cited and examined in

that case. Thereafter, separate judgments could have been pronounced in quick succession. However, the failure of the Special Judge to adopt the

above procedure cannot be taken as a ground to set aside the impugned judgment since the petitioner herein ought to have challenged the decision of

the learned Special Judge to conduct joint trial at the appropriate stage of the proceedings. As rightly pointed out by the learned Public Prosecutor, the

provisions contained in Section 465 Cr.P.C proscribe the court from reversing or altering a finding, sentence or order in appeal or revision on account

of any error, omission or irregularity in the proceedings unless there was failure of justice caused as a result of it. So also, in determining whether such

error or irregularity had resulted in failure of justice, the court shall have regard to the fact that the objection in this matter had not been raised at an

earlier stage of the proceedings. As far as the present case is concerned, the petitioner has no explanation for her omission to challenge the decision

of the Special Judge to conduct the joint trial, at the appropriate stage. So also, it is not possible to conclude that the joint trial conducted by the learned

Special Judge had resulted in failure of justice. This is because of the reason that the Special Judge had examined all the witnesses cited by the

complainant in S.C.No.453/2016, and took on record all the documents relied on by her. It is after evaluating all such evidence that the learned Special

Judge arrived at the finding that the accused were not guilty of the offence alleged against them. Therefore, the mere fact that the learned Special

Judge ventured to pronounce a common judgment in these cases, cannot by itself be taken as a circumstance which would vitiate the proceedings.

Needless to say that the challenge raised by the petitioner in the above regard is devoid of merit.

9. As regards the finding of the learned Special Judge that the offence under Section 3(1)(x) of SC/ST POA Act is not attracted, it is not possible to

find fault with the above finding since the evidence adduced by the petitioner and the other witnesses, are to the effect that the incident took place

inside the dining room of the house of the petitioner. For the applicability of Section 3(1)(x) of SC/ST POA Act, as it stood prior to the amendment of

the year 2015, it has to be established that the intentional insult or intimidation to cause humiliation to a member of Scheduled Caste or Scheduled Tribe

should be at a place within public view. As far as the present case is concerned, since the incident admittedly took place in the dining room of the

house of the petitioner, it is not possible to say that it so happened at a place within public view. The evidence adduced from the part of the

prosecution was also insufficient to establish the above aspect. Therefore, it is not possible to conclude that the finding of the learned Special Judge in

the above regard was erroneous.

10. A perusal of the impugned judgment would go to show that the learned Special Judge had evaluated the evidence in detail with special emphasis

given to the testimonies of each and every witness. There is absolutely no error or material irregularity in the appreciation of evidence done by the

Trial Court. Nothing could be brought out to show that the learned Special Judge failed to act upon any relevant evidence adduced from the part of the

prosecution and the complainant. Nor could it be said that the Trial Court relied on any evidence which were totally unacceptable. In this context, it is

pertinent to note that in the testimony of the petitioner herein as PW1, she had confided during cross-examination that she did not know the contents of

the complaint (Ext.P2) and that she had only signed the document as required by her counsel. It is further stated by the petitioner in her evidence that

she had no prior acquaintance with the accused and that she did not know how the names of the above 15 persons happened to be mentioned in

Ext.P1 First Information Statement. So also, it has been brought out through the evidence of PW1 (petitioner herein) that seven days prior to the filing

of Ext.P2 complaint, the police had arrested her husband in connection with the crime of attempting to commit murder of the 10th accused in this

case. She also stated that her husband had been accused in certain abkari cases, and that she believed that the accused were the persons who were

behind the inclusion of her husband in those cases. Taking into account the shabby and unreliable evidence tendered by PW1 and the other witnesses

examined as PW2 to PW8, the Trial Court cannot be found fault with for arriving at the conclusion that the offence alleged against the accused could

not be established by the prosecution. Thus, the challenge raised by the petitioner against the impugned judgment of the Special Court, is devoid of

merit.

In the result, the petition is hereby dismissed.