

Chinnasamy Vs The State

Court: Madras High Court

Date of Decision: Oct. 4, 1999

Acts Referred: Criminal Procedure Code, 1973 (CrPC) " Section 177(8), 190, 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 " Section 23, 23(1), 3(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 " Rule 7

Citation: (2000) CriLJ 956

Hon'ble Judges: A. Ramamurthi, J

Bench: Single Bench

Advocate: M. Balasubramanian, for the Appellant; N.R. Elango, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A. Ramamurthi, J.

Petitioner/Accused in CC 215 of 1998 on the file of learned IV Additional District and Sessions Judge (PCR),

Madurai, has filed this petition u/s 482 of the Code of Criminal Procedure, to quash the proceedings pending against him.

2. The case in brief is as follows:

One Periampillai gave a complaint against the petitioner alleging that he had abused him by calling his caste name. On the said complaint, the

respondent-Police registered a case in Crime No. 12/95 u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

(hereinafter called as S.C. and S.T. Act) and the case was investigated by the Police and ultimately , the case was referred. He sent petitions to

higher officials for proper investigation and dropping of the case. With the result, the respondent-Police after investigation has not only referred the

case but also sent intimation to the petitioner stating that the case had been referred. While so, it seems that the police have re-opened the case on

the pretext of making further investigation and found out materials to file a charge-sheet against him for an offence u/s 3(1)(x) of S.C. and S.T. Act.

3. The first informant had pledged his sovereign gold jewel to the petitioner and borrowed Rs. 700/- from him. About few days prior to the date of

occurrence, the first informant paid a sum of Rs. 1,000/- to the petitioner and asked for the return of the gold jewel. But the petitioner had evaded

to return the same. On 23-6-95 when the petitioner was coming along the bus stop of the colony, the first informant who came along with one

Panneerselvam, Murugesan and Kalyani, demanded the petitioner to return back the jewel. He had also declared by calling him in his community.

He had also used filthy words and attempted to beat him. The entire allegations even if they are taken as true, no offence can be said to have been

made out and the case has to be quashed.

4. Learned Government Advocate (Cri. side) opposed the petition and stated that no communication whatsoever was sent either to the petitioner

or to the Court, stating that the case has been referred. The records from the Court was also sent for and there is no material that any such report

was sent. However, perusal of the case diary indicated that there is a letter in the case diary showing that action was dropped, signed by the

Inspector of Police, but the same has not been sent to the Court. He further pointed out even assuming that the Inspector of Police had referred the

same, nothing prevented the respondent from further investigating the case u/s 177(8) of the Code of Criminal Procedure and the materials now

projected by the petitioner are not sufficient to quash the proceedings.

5. Heard the learned counsel of both sides.

6. The petitioner is the accused in C.C.No. 215/98 on the file of learned IV Additional Sessions Judge (PCR) Madurai. He had been charged for

an offence u/s 3(1)(x) of S. C. and S.T. Act. Learned counsel for the petitioner mainly stated that even if it is taken as true, no prima facie case is

made out for the offence. In the complaint, the specific caste of the first informant has not been mentioned. Originally on the complaint, a case u/s

3(1)(x) of S.C. and S.T. Act was registered and finally the case was referred as mistake of fact by one Inspector of Police Muthuvelan and after

dropping the same, it is illegal and unwarranted to re-open the case. Though a superior Police Officer can further investigate in a case of this

nature, the entire records of the case consisting of 162 statements of witnesses and charge-sheet do not show that there was any further

investigation having been permitted to be conducted especially after the case was earlier investigated and referred. The only course open to the

police is to serve the referred notice on the first informant and intimate the said result. Moreover, only a Deputy Superintendent of Police can

investigate into such case as per Rule 7 of the S.C. and S.T. Rules, and hence, the case is liable to be quashed. He has also produced a true copy

of the intimation received by him from Inspector of Police, PCR unit and also the communication signed by him.

7. The Petitioner/accused has been charge-sheeted for the offence u/s 3(1)(x) of S.C. and S.T. Act. The first contention raised by the learned

counsel for the petitioner is that after registration of the case, the Inspector of Police Muthuvelan referred the case on 30-11-95 and there is no

record to show that any further investigation was done. However, the learned Government Advocate stated that the case was not referred and

moreover, no such communication was also sent to the Court. Case diary was also sent for and perused. Perusal of the same indicates that there is

a paper in the case records to show as if on 30-11-95 the case has been referred. Similarly, the case records were also sent for from the Court. A

perusal of the same indicates that no such communication was sent by the Inspector of Police to the Court. However, it is not known how such a

communication, which was in the case diary, was secured by the petitioner/accused. It is only when the referred information was sent to the Court,

then alone much weight can be attached to the same. Simply because some referred communication was available in the case diary and also the

copy of the same was produced by the petitioner, no conclusion can be drawn that the case was legally referred.

8. Learned Government Advocate (Criminal Side) relied on State of Rajasthan v. Aruna Devi 1995 SCC 1, wherein it is observed that

Acceptance of final report by Magistrate does not debar him from taking cognizance of the offence if on further investigation fresh material comes

to light". There is no dispute about this proposition, but there is no record to show that for further investigation, any request was made by any

Officer and there was any permission granted by the Court. However, considering the fact that such a referred communication was available in the

case diary and it is not available in the Court records, the only conclusion that can be drawn is that it was not legally referred at any point of time.

9. Learned counsel for the petitioner next contended that there is no allegation or averment to invoke the provisions of S.C. and S.T. Act. It is a

matter that can be considered only during the time of trial. Prima facie according to the first information report, there are materials to show that the

complainant was abused by caste name. Hence, it cannot be said that if the entire materials are taken into consideration, no offence under S.C.

and S.T. Act is made out.

10. The last contention raised by the learned counsel for the petitioner is that only the Deputy Superintendent of Police can investigate in such a

case as per Rule 7 of S.C. and S.T. Rules. I am of the view that there is some force in the contention. Learned counsel also relied upon D.

Ramalinga Reddy @ D. Babu Vs. State, , wherein it is observed that the investigation into an offence under S.C. and S.T. Act has to be done by

an Officer not below the rank of Deputy Superintendent of Police who should be specifically appointed by State Government. This decision is

applicable to the case on hand. On a bare perusal of Rule 7 of the Rules, it becomes abundantly clear that even all Deputy Superintendents of

Police cannot investigate offences under S.C. and S.T. Act. Only these officers who are not below the rank of Deputy Superintendent of Police

and are specifically appointed by the State Government, or the Director General of Police, or Superintendent of Police are competent for the

purpose of investigating the cases under the Act. This order of appointment can either be specific or general. However, the investigation records

clearly disclosed that the statement of the witnesses has been recorded only by the Inspector of Police and the investigation has not been done by

the Deputy Superintendent of Police.

11. Learned counsel for the petitioner also relied upon another decision H.N. Rishbud and Inder Singh Vs. The State of Delhi, for the proposition

that "A defect or illegality in investigation, however, serious, has no direct bearing on the competence or the procedure relating to cognizance or

trial. No doubt a police report which results from an investigation is provided in Section 190 of the Criminal Procedure Code as the material on

which cognizance is taken. Investigation is a normal preliminary to an accused being put up for trial for a cognizable offence. Therefore, when the

Legislature made the offences in the Act cognizable, prior investigation by the appropriate Police Officer was contemplated as the normal

preliminary to the trial in respect of such offences under the Act.

12. These Rules have been framed by the Central Government in exercise of rule-making power conferred u/s 23 of the Act. The Central

Government has been authorised u/s 23(1) of the Act to make rules for carrying out the purposes of the Act. Since the purpose and objective

sought to be attained by the Act is to minimise the offences against the S.C. and S.T. Act. Therefore, in order to ensure any misuse of the Act,

Rule 7 of the Rules lays down not only that the investigation should be done by an Officer not below the rank of Deputy Superintendent of Police

but also lays down that such officer should be specifically appointed by the State Government for investigating the Offences under the Act. It

further lays down that, while appointing such Officers the Government should take into consideration his past experience, sense of ability and

justice to perceive the implications of the case. Under these circumstances I am of the view that the investigation done by the Inspector of Police

goes to the root of the matter and it vitiates the entire proceedings.

13. For the reasons stated above, the petition is allowed, and the proceedings in C.C. 215/98 are liable to be quashed against the petitioner and,

accordingly, it is quashed. There is no bar for fresh investigation by a qualified Deputy Superintendent of Police to this offence if warranted.

Consequently, Cri. M.P.No. 4978/99 is closed.