

(2011) 08 MAD CK 0350

Madras High Court

Case No: Criminal R.C. No. 32 of 2007

P. Susila

APPELLANT

Vs

Usharani and The
State

RESPONDENT

Date of Decision: Aug. 10, 2011

Acts Referred:

- Companies Act, 1956 - Section 621, 77
- Criminal Procedure Code, 1973 (CrPC) - Section 200, 4, 438
- Electricity (Supply) Act, 1948 - Section 77
- Foreign Exchange Regulation Act, 1973 - Section 61
- Gold (Control) Act, 1968 - Section 97
- Imports and Exports (Control) Act, 1947 - Section 6
- Income Tax Act, 1961 - Section 271, 279
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1), 3(10)
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 - Rule 7
- Sea Customs Act, 1878 - Section 187A

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: N.R. Elango for R. Vijaya kumar, for the Appellant; S. Parthasarathy, for R1 and P. Govindarajan, Assistant Public Prosecutor for R2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.T. Selvam, J.

This revision is preferred against the order of the learned Principal Sessions Judge,

Chengalpet in CrI.M.P. No. 15595 of 2005 in S.C. No. 538 of 2005 dated 14.12.2006 discharging the accused in a complaint u/s 3(1)(x) SC/ST (Prevention of Atrocities) Act.

2. The Petitioner and Respondent were working as head constables in All Women Police station, Mamallapuram. The Petitioner preferred a complaint to the Deputy Superintendent of Police through RPAD alleging an occurrence of commission of offence u/s 3(1)(x) Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act that took place on 22.02.2004. Finding no action taken there on, the Petitioner preferred a private complaint before the Chief Judicial Magistrate, Chengalpet. As offence u/s 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act was alleged, the matter stood committed to the Sessions court, Chengalpet. The factual details of the complaint are not relevant to the purpose of disposal of this petition. Suffice to state that the accusation of the point was that the Respondent/accused harassed the Petitioner and heaped abuse upon her as she belonged to a scheduled community. Though before the court below question of delay in filing the complaint and of the complaint having been preferred before a court not having jurisdiction were also informed, it was impressed upon the court below, by reference to a circular issued by this Court in R.O.C.1062/2003/F-1 dated 22.5.2003, that complaints against Police personnel were to be preferred before the Chief Judicial Magistrate. The court below, restricted itself to the question of propriety or otherwise of preference of the complaint before the Magistrate and found that the Chief Judicial Magistrate ought to have outright rejected the complaint and directed the Petitioner to seek resort to relevant rules of procedure established by law.

3. The court below reasoned that since the Petitioner had already preferred a petition before the concerned authorities, it would have been for the Deputy Superintendent of Police or the Superintendent of Police to take appropriate action as per procedure laid down in Rules 6 and 7 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act. Bypassing such provisions, in the absence of a referred charge sheet, was faulted.

4. Heard Mr. R. Vijayakumar, Learned Counsel for the Petitioner and Mr. N.R. Elango, learned Senior counsel for Mr. S. Parthasarathy, for the 1st Respondent and the learned Additional Public Prosecutor for the 2nd Respondent.

5. Learned Counsel for the Petitioner would submit that the Petitioner had resorted to filing a complaint upon finding no action taken on her representation to the Superior Police Authorities. The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act did not contain any specific bar against preference of a private complaint. While so, the recourse by the petitioner to a remedy available in law by preference of complaint u/s 200 Code of Criminal Procedure could not be found fault with. Amidst other decisions, Learned Counsel placed heavy reliance on the judgment of Apex court in A.R. Antulay v. Ramdas Srinivas Nayak.

6. Learned Senior Counsel Mr. N.R. Elango, appearing on behalf of the 1st Respondent would place heavy reliance on the judgment of this Court reported in 2003 1 L.W. (Crl) 171, referred to here above. He would submit that if this Court were now to take a different view the proper course would be to cause a reference upon the matter to a large bench. He would further contend that the decision of the Apex court in A.R. Antulay's case would not be of much relevance in the present matter. A.R. Antulay's case deals with offences under Prevention of Corruption Act. The objective behind such act was quite different from that of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act. It was to avoid abuse of the provisions of Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act given the inapplicability of Section 438 of Code of Criminal Procedure in cases where the act stood attracted, that rules had been framed requiring investigation by a higher cadre of police and more particularly by one well suited to the job. Such provisions cannot be passed by resort to a private complaint.

7. I am unable to accept the contentions of learned Senior Counsel. Though it is with some reluctance that this Court informs its inability to accept the views expressed in the decision of K.P. Sathyamoorthy v. State of Tamil nadu and 3 others in 2003 (1) L.W. (Crl.) 171, we are emboldened to do so given the decision of the Apex Court in [A.R. Antulay Vs. Ramdas Srinivas Nayak and Another](#), wherein it has been informed as follows:

16. Section 4 of the Code of Criminal Procedure provides as under:

4. (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." Section 4(1) provides for investigation, inquiry or trial for every offence under the Indian Penal Code according to the provisions of the Code. Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations.

8. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 deals with certain offences and provides for punishment apart from fine by way of imprisonment for a period of six months upto life and in certain cases even death. The same provides for constitution of special courts to try cases there under for conduct of prosecution by a Special Public Prosecutor. There is no specific provision therein which detracts from the prosecution of a private complaint. Paragraph 6 of the judgment of the Apex court in [A.R. Antulay Vs. Ramdas Srinivas Nayak and Another](#), informs as follows:

6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (i) Section 187-A of Sea Customs Act, 1878 (ii) Section 97 of Gold Control Act, 1968 (iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the Code of Criminal Procedure. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) Code of Criminal Procedure] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and

irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.

9. Rule 7 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1995, reads as follows:

7. Investigating Officer. -(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/ Director General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule

(1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.

The above rule can only be read as applicable to a case which is to investigated pursuant to registration of a crime.

10. As regards the other contention of learned Senior Counsel on the objectives of the Prevention of Corruption Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act being different, this Court may state that the same cannot be pressed in aid while construing a statute. In [A.C. Sharma Vs. Delhi Administration](#), the Hon"ble Supreme Court has observed as follows:

12. Statement of objects and reasons for introducing a Bill in the Legislature is not admissible as an aid to the construction of the statute as enacted; far less can it control the meaning of the actual words used in the Act. It can only be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose for doing so. The preamble of a statute which is often described as a key to the understanding of it may legitimately be consulted to solve an ambiguity or to ascertain and fix the meaning of words in their context which otherwise bear more meanings than one. It may afford useful assistance as to what the statute intends to reach, but if the enactment is clear and unambiguous in itself then no preamble can vary its meaning. While construing a

statute one has also to bear in mind the presumption that the legislature does not intend to make any substantial alteration in the existing law beyond what it expressly declares or beyond the immediate scope and object of the statute.

11. For the above reasons, this Court would set aside the order passed in Crl.M.P. No. 15595 of 2005 in S.C. No. 538 of 2005 on the file of learned Principal Sessions Judge, Chengalpet. The revision shall stand allowed and the learned Principal Sessions Judge, Chengalpet shall now take the case on file and proceed further in accordance with law.