

State Rep by Vs. K.Sivanesan

State Rep by Vs. K.Sivanesan

SooperKanoon Citation : sooperkanoon.com/925844

Court : Chennai

Decided On : Mar-30-2012

Judge : P.R.Shivakumar, J.

Acts : Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 - Sections 3(1)(10) and 3(2)(7); Tamil Nadu Prohibition of Harassment of Women Act, 1998 - Sections 3, 4; Indian Penal Code (IPC) - Sections 34, 499; Code of Criminal Procedure (CrPC) - Sections 227, 197; Tamil Nadu Prohibition of Harassment of Women Act, 1998 - Sections 3 and 4 ; Women Harassment Act. - Sections 3 and 4

Appeal No. : CRL.R.C.(MD) No.6 of 2012 and CRL.R.C.(MD) No.27 of 2012

Appellant : State Rep by

Respondent : K.Sivanesan

Advocate for Pet/Ap. : Mrs.S.Prabha, Adv.

Judgement :

Prayer

Criminal Revision case filed under Sections 397 r/w 401 of Cr.P.C. to call for the records pertaining to the order passed in Cr.M.P.No.1184 of 2011 in Spl.S.C.No.36 of 2011 on the file of the III Additional District and Sessions Court (PCR), Madurai dated 11.10.2011 and set aside the same.

COMMON ORDER

1. Both the revision cases have been filed against the order of the trial judge, namely the learned III Additional District and Sessions Judge (PCR), Madurai as Special Judge under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 dated 11.10.2011 made in Crl.M.P.No.1184/2011 in Spl.S.C.No.36/2011 on the file of the trial court. By the said order, the learned trial judge has discharged the accused No.2 in the said case, who figures as the sole respondent in Crl.R.C.(MD) No.6 of 2012 and first respondent in Crl.R.C.(MD) No.27 of 2012. The Investigating Officer, namely Assistant Commissioner of Police, Town (Law & Order) Range, Madurai City, after investigation in Crime No.181/2011, submitted a final report alleging commission of offences punishable under sections 3(1)(x) and 3(2)(vii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and sections 3 and 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 r/w section 34 IPC by one Balakrishnan (arrayed as A1) and K.Sivanesan, sole respondent in Crl.R.C.(MD) No.6 of 2012 and first respondent in Crl.R.C.(MD) No.27 of 2012 (arrayed as A2).

2. The charge-sheet was taken on file as PRC by the learned Judicial Magistrate No.I, Madurai. The same was committed for trial to the court of the Special Judge under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, as the offences under sections 3(1)(x) and 3(2)(vii) are exclusively triable by such a special court, which is essentially a Sessions Court. Thus the case came to be taken on file by the learned trial judge as Spl.S.C.No.36/2011.

3. On appearance of the accused and when the case stood posted for consideration regarding framing of charges, A2-K.Sivanesan, the sole respondent in Crl.R.C.(MD) No.6 of 2012 and first respondent in Crl.R.C.(MD) No.27 of 2012 filed Crl.M.P.No.1184/2011 under section 227 Cr.P.C praying for an order of discharge contending that the prosecution launched against him could not be maintained since no sanction for prosecution had been obtained under section 197 Cr.P.C and that the materials placed before the court along with the final report as intended evidence to prove the prosecution case, did not make out a prima facie case for the offences alleged in the charge-sheet. The learned trial judge, after

hearing, accepted both the contentions and passed an order allowing the said petition and discharging A2-K.Sivanesan, the sole respondent in CrI.R.C.(MD) No.6 of 2012 and first respondent in CrI.R.C.(MD) No.27 of 2012, who figured as the second accused in the said criminal case.

4. The said order of the learned Special Judge under the SC/ST Act is challenged by the State represented by the Investigating Officer in CrI.R.C.(MD) No.6/2012. The de-facto complainant has also challenged the said order by filing a separate criminal revision case in CrI.R.C.(MD) No.27/2012, wherein the said K.Sivanesan (A2) is shown as the first respondent and the State represented by the Investigating Officer is shown as the second respondent. As both the criminal revision cases have been filed questioning the correctness and legality of one and the same order, they were heard jointly and are being disposed of by a common order.

5. The point that arises for consideration in both the criminal revision cases is: Whether the trial judge, namely the learned Special Judge under the SC/ST Act is correct and justified in passing an order of discharge discharging Sivanesan, arraigned as second accused in Spl.S.C.No.36/2011 on the file of the trial court?

6. The arguments advanced by Mrs.S.Prabha, learned Government Advocate (CrI.Side) for the State represented by the Investigating Officer, who figured as the petitioner in CrI.R.C.(MD) No.6/2012 and the second respondent in CrI.R.C.(MD) No.27/2012, by Mr.Rathnam for Mr.Rahul, learned counsel appearing on behalf of the counsel for the petitioner in CrI.R.C.(MD) No.27/2012 (de-facto complainant) and by Mr.A.Thiyagarajan, learned counsel appearing for K.Sivanesan, the sole respondent in CrI.R.C.(MD) No.6/2012 and first respondent in CrI.R.C.(MD) No.27/2012 were heard. The materials placed for the perusal of this court by both sides and also the records sent for from the trial court were perused.

7. On behalf of the petitioners in both the criminal revision cases, it has been contended that the order of the learned trial judge allowing the discharge petition and discharging Sivanesan (A2)/sole respondent in CrI.R.C.(MD) No.6/2012 and first respondent in CrI.R.C.(MD) No.27/2012, suffers from material defect and illegality in so far as the learned trial judge failed to note that sanction for

prosecution under section 197 Cr.P.C. is not at all required in this case, since the acts constituting the offences allegedly committed by him are outside the scope of his official functions and that hence no sanction is required. It is the further contention raised on behalf of the petitioners in both the revision cases that the court below committed a grave error in arriving at a conclusion that the evidence sought to be relied on by the prosecution, except that of the de-facto complainant, are hearsay and that hence no prima facie case for the offences alleged was made out. It is further contended on behalf of the petitioners in both the criminal revision cases that the learned trial judge transgressed the limits prescribed under section 227 Cr.P.C. for discharging an accused, which enables the judge to discharge the accused only if he considers that there is no sufficient ground for proceeding against the accused.

8. Per contra, the learned counsel for the sole respondent in Crl.R.C.(MD) No.6/2012 and first respondent in Crl.R.C.(MD) No.27/2012 would submit that the prosecution itself did not contend that no sanction order was necessary and on the other hand, it proceeded on the assumption that a letter of the Hindu Religious and Charitable Endowment Board bearing Na.Ka.No.60695/2010/1/B6 dated 14.02.2011 wherein the de-facto complainant had been advised to take criminal action against the accused for the alleged acts and recommendation of the Women's Commission for initiating criminal action against the accused were sufficient compliance with the requirement of obtaining sanction for prosecuting the second accused; that such a letter prior to the registration of the case and prior to the completion of the investigation could not be projected as an order sanctioning prosecution and that therefore the order of the court below discharging the respondent in Crl.R.C.(MD) No.6/2012 and first respondent in Crl.R.C.(MD) No.27/2012 on the ground of absence of sanction from the government or the competent authority, could not be successfully assailed. It is also the contention of the learned counsel for the respondent in Crl.R.C.(MD) No.6/2012 and first respondent in Crl.R.C.(MD) No.27/2012 that though there are specific allegations made against Balakrishnan (A1), no such specific allegation, excepting the grievance that the second accused, being the superior to the first accused, did not prevent the first accused from making such derogatory and insulting comments, has been made by the de-facto complainant against the second accused and that

therefore the second accused/respondent in Crl.R.C.(MD) No.6/2012 and first respondent in Crl.R.C.(MD) No.27/2012 cannot be prosecuted for the acts allegedly committed by the other person, namely Balakrishnan(A1). The learned counsel for the respondent in Crl.R.C.(MD) No.6/2012 and first respondent in Crl.R.C.(MD) No.27/2012 has contended further that on the said ground that the de-facto complainant herself has not made any specific allegation against the second accused, the order of discharge passed by the learned trial judge should not be interfered with and the same should be confirmed.

9. This court paid its anxious considerations to the respective submissions made on both sides.

10. Before dealing with the sustainability of the contentions raised on either side of this case, it shall be helpful to briefly narrate the facts. S.P.Shanthi, the de-facto complainant, belongs to Arunthathiyar community, which is notified by the presidential notification as Scheduled Caste. She joined as Inspector in the Audit Wing of Hindu Religious and Charitable Endowment Department in 2005. From 2008 she was functioning as Inspector of the said wing at Madurai and on the date of occurrence, she was functioning as Superintendent of the said wing at Madurai. The first accused Balakrishnan was employed as Regional Audit Officer, Kanchipuram region of HR&CE Department. The second accused Sivanesan was employed as the Deputy Chief Audit Officer, HR&CE Department, Chennai and Madurai. There was an audit inspection at Meenakshiamman temple, Madurai between 27.01.2009 to 30.01.2009. The audit was conducted by the accused 1 and 2. The de-facto complainant has alleged in her complaint that during the course of the said audit inspection, Balakrishnan (A1) made unsavory remarks against her by pointing the dress worn by her and also her lipstick. It is her further allegation that both A1 and A2 knew well that the de-facto complainant was a member of Scheduled Caste and A1-Balakrishnan made remarks to the effect that she belonged to a group of people who eat human excreta and the second accused, Sivanesan, who was the Superior to the first accused, besides allowing the first accused to make such derogatory remarks, also complemented and supplemented the remarks made by the first accused by branding the de-facto complainant as orthodox and that thus in a public office, both of them with a

common intention intentionally insulted the de-facto complainant in the name of her community and also jointly committed the offence of harassment of women in the place of work. A motive has also been alleged for such an unduly behaviour of the first accused, an officer of higher rank in the department. The motive alleged is that there was a previous enmity and animosity between the de-facto complainant and A1-Balakrishnan from 2005 in the matter of seeking transfer to Chennai and that from then onwards, the first accused being the superior officer to the de-facto complainant, used to harass the de-facto complainant and treat her with hostility.

11. Besides making such clear allegations in the complaint, the de-facto complainant also gave statements to the Investigating Officer in conformity with the contents of the complaint. In addition, there are also documents in the form of communications written by the de-facto complainant to the Chief Audit Officer of HR&CE Department, Chennai, Commissioner of HR&CE Department, Chennai and Tamil Nadu State Commission for Women. She has also produced a letter received from the Commissioner, HR&CE Department, Chennai advising her to prefer a criminal complaint and also the communication received from Chairperson of the Tamil Nadu State Commission for Women.

12. In the light of the above said facts, we have to consider whether the court below is right in discharging the second accused Sivanesan (A2), who is the sole respondent in CrI.R.C.(MD) No.6/2012 and first respondent in CrI.R.C.(MD) No.27/2012 and whether the reasons assigned by the court below are sustainable. Two reasons have been assigned by the court below for arriving at the conclusion that the second accused Sivanesan is entitled to be discharged. The first one is absence of sanction under section 197 Cr.P.C. and the second one is absence of direct evidence excepting the statement of the de-facto complainant Shanthi.

13. In support of the contentions raised on behalf of the revision petitioners that no sanction is needed in this case for prosecuting the accused 1 and 2 for the alleged offences, learned Government Advocate (CrI.Side) and learned counsel for the de-facto complainant/petitioner in CrI.R.C.(MD) No.27/2012 have relied on the following judgments:

1) Pukhraj v. State of Rajasthan and another reported in AIR 1973 Supreme Court 2591; and

2) B.S.Sambhu v. T.S.Krishnaswamy reported in AIR 1983 Supreme Court 64.

Though the decision of the Hon'ble Supreme Court cited as the first authority was decided regarding the scope of section 197 of the old Code, namely Criminal Procedure Code, 1898, it is obvious that substantially the said section has been reproduced in the new Code, namely the Code of Criminal Procedure, 1973 and there is no remarkable variation. While dealing with the case under the old Code, the Hon'ble Supreme Court held that, as a clerk of the Head Post Office was kicked and abused by the Post-Master General when the said clerk was submitting his representation for cancellation of his transfer, the said act of the Post-Master General, could not be said to have been done in purported exercise of his official duty and that hence the requirement of sanction under section 197 Cr.P.C. was not attracted.

14. In the second of the citations relied on by the learned Government Advocate (Crl.Side) and the counsel for the petitioner in Crl.R.C.(MD) No.27/2012, the Hon'ble Supreme Court decided the said question considering the scope of section 197 of the new Criminal Procedure Code, namely Code of Criminal Procedure, 1973. In the said case, when remarks were called for by a District Judge from the Munsif/Magistrate, the Munsif/Magistrate submitted a DO letter calling an advocate in a transfer petition a rowdy, big gambler and mischievous element. Such letter was read out by the District Judge in the open court and the said advocate filed a criminal complaint against the Munsif/Magistrate for defamation under section 499 IPC. When the question whether sanction for prosecution was needed, was raised, the Hon'ble Supreme Court referred to the earlier Judgment of the Hon'ble Supreme Court in Pukhraj case (cited supra) and followed the ratio decidendi. Hon'ble Supreme Court also relied on the judgment in Matajog Dubey v. H.C.Bhari reported in AIR 1956 SC 44 and quoted the observation made therein with approval, which runs as follows:

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay

a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

Applying the said test, it was held by the Hon'ble Supreme Court that the act of the Munsif/Magistrate could not be one held to be an act committed in discharge of or purported discharge of his official function and hence no sanction under section 197 Cr.P.C. was needed.

15. If the said principle and the yardsticks applied by the Hon'ble Supreme Court are applied to the case on hand, it can be well said that the alleged act on the part of the accused including the respondent in CrI.R.C.(MD) No.6/2012/first respondent in CrI.R.C.(MD) No.27/2012, does not bear a reasonable connection with the discharge of their official duty; that their claim that the same was committed in the course of performance of official duty will be nothing but a pretended or fanciful claim and that hence no sanction under section 197 Cr.P.C. for prosecuting the accused including the second accused/the respondent in CrI.R.C.(MD) No.6/2012/first respondent in CrI.R.C.(MD) No.27/2012, for the alleged offences punishable under sections 3(1)(x) and 3(2)(vii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and sections 3 and 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 r/w section 34 IPC is needed. For the said reason this court comes to the conclusion that the court below committed a grave error in holding that sanction for prosecuting the 2nd accused was necessary and since no sanction for prosecution was obtained, the 2nd accused/respondent in CrI.R.C.(MD) No.6/2012/first respondent in CrI.R.C.(MD) No.27/2012 was entitled to be discharged. The said finding is erroneous, defective and discrepant and the same is liable to be interfered with and set aside.

16. The next reason assigned by learned trial judge for passing the impugned order of discharge is that according to the learned trial judge, excepting the statement of the de-facto complainant, there is no other material to make out a prima facie case against the 2nd accused, since all the other witnesses have given statements to the effect that they simply heard about the occurrence and hence their evidence would be hit by the rule against hearsay evidence. The said finding

cannot be sustained for the simple reason that, apart from the statement of the de-facto complainant, there are other pieces of evidence in the form of communications to the higher officials of the HR&CE Department and to the Tamil Nadu State Commission for Women and also the letters received from the Commissioner, HR&CE Department and the Tamil Nadu State Commission for Women. Furthermore, out of the witnesses cited in the witnesses list apart from the witnesses named to speak about the fact that they heard about the occurrence, there are other witnesses who have been cited for deposing to the effect that they knew the accused persons making some derogatory statements against the de-facto complainant. Witness No.5-Muthramalingam, witness No.8-Jayaprakash, witness No.16-Uma are such persons. The learned trial judge seems to have failed to consider the fact that they have been projected as witnesses for the said occurrence and made a bald statement, without any basis, that all other witnesses are only capable of giving hearsay evidence. Even assuming that all the list witnesses, excepting the de-facto complainant, have given statements only to the effect that they heard about the occurrence, that alone shall not be enough to arrive at a conclusion that the evidence proposed to be adduced through the de-facto complainant could not get corroboration from such witnesses and that the evidence sought to be adduced through the de-facto complainant coupled with the documents would not be enough to prove the charge against the accused. The said observation shows that the learned trial judge has attempted at an evaluation of evidence sought to be adduced on the side of the prosecution and passed the impugned order of discharge. As rightly contended by the learned Government Advocate (Crl.Side) and the learned counsel for the revision petitioner in Crl.R.C.(MD) No.27/2012 the said reason assigned by the trial court is not sustainable.

17. However, the learned counsel for the respondent in Crl.R.C.(MD) No.6/2012/first respondent in Crl.R.C.(MD) No.27/2012/A2 would contend that there is no direct allegation made against the second accused to the effect that either he insulted the de-facto complainant in the name of her caste or he committed the offence of harassment to women. It is the contention of the learned counsel for the second accused that he simply appreciated the habit of the de-facto complainant of not taking food outside and that therefore he cannot be said

to have committed the offences alleged. In this regard it is pertinent to note that the complaint contains allegations to the effect that the first accused Balakrishnan offered a coffee and the de-facto complainant declined it; that when he asked for the reason, de-facto complainant replied that she would not take food from outside and that immediately the first accused Balakrishnan commented by asking mg;g btspf;fp (kyk;) rhg;gpLt PA;fsh? meaning whether the de-facto complainant would eat human excreta. The further averment found in the complaint is that when she answered that she was not in the habit of taking food on the expenses of others, the respondent in CrI.R.C.(MD) No.6/2012/first respondent in CrI.R.C.(MD) No.27/2012/A2 after putting a question to the de- facto complainant as to whether she was not having the habit of going out with her husband to take food and inviting an answer that she would go only with her husband, he simply enjoyed the first accused Balakrishnan making a comment that the de-facto complainant was capable of changing her policy instantly. The further averment found in the complaint is to the effect that the respondent in CrI.R.C.(MD) No.6/2012 and first respondent in CrI.R.C.(MD) No.27/2012/A2 commented that only brahmins would show orthodoxy by not taking food anywhere other than their home and he was proud to hear that the de-facto complainant was also having such a principle. The said observation itself, according to the prosecution, was unwarranted and it was capable of giving an hidden meaning showing that such comment was made sarcastically. It is also the averment made in the complaint that the first accused Balakrishnan made a comment that the de- facto complainant was not orthodox, but was orthodogs.

18. As per the complaint, the respondent in CrI.R.C.(MD) No.6/2012/the first respondent in CrI.R.C.(MD) No.27/2012 /A2, besides failing to curtail the first accused Balakrishnan, who was his subordinate, from crossing the Lakshman reka and making such derogatory remarks, he also acted in collusion with the first accused and made comments, which would amount to insulting the de-facto complainant referring to the community to which she belonged. There are also allegations to the effect that the de-facto complainant, as a woman had met with such a harassment in the hands of the accused 1 and 2 attracting sections 3 and 4 of Women Harassment Act. Detailed reference to various averments in the complaint and the statements shall not be necessary and it is sufficient to state

that there are averments to show that both the accused acted in unison with a common intention of insulting the de-facto complainant. Whether such allegations can be proved or not is not the question to be gone into at this point of time. Whether the evidence to be adduced through de-facto complainant can be believed or not cannot be gone into at this point of time. Whether the sole testimony of the de-facto complainant coupled with the documents, will be enough to hold the accused guilty, is a matter of appreciation of evidence for the court in the trial and any attempted evaluation at the time of consideration of the application for discharge before framing charge, shall be improper.

19. Viewed from any angle, this court comes to the conclusion that the learned trial judge, namely the Special Judge under the SC/ST Act, Madurai has committed a grave error in coming to the conclusion that no prima facie case has been made out for the offences alleged in the final report and that the court should not take cognizance of the offences without there being an order of sanction under section 197 of Cr.P.C. The order of the learned Special Judge for trial of offences under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 discharging the second accused, who is the respondent in CrI.R.C.(MD) No.6/2012 and first respondent in CrI.R.C.(MD) No.27/2012 is erroneous, wrong, discrepant and illegal and the same deserves to be set aside by this court in exercise of its power of revision.

20. In the result, both the criminal revision cases are allowed and the order of the learned special Judge for trial of cases under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, namely III Additional District and Sessions Court (PCR), Madurai dated 11.10.2011 made in Cr.M.P.No.1184 of 2011 in Spl.S.C.No.36 of 2011 is set aside. The learned trial judge is directed to proceed with the framing of charges and trial of the case and dispose of the case as expeditiously as possible avoiding unnecessary adjournments.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com