WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2022

Pronounced on : 30.08.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.14081 of 2016

1.Pirapa Kalvimani @ Kalyani
2.P.V.Ramesh ... Petitioners / A1 & A2

Vs.

1.The State
Rep.by its Deputy Superintendent of Police
Thirukovilur,
Villupuram District.

2.Thangamani ... Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to quash the proceedings in Spl.S.C.No.26 of 2016, on the file of the Special Court for Exclusive trial of cases registered under SC & ST (POA) Act, Villupuram, Villupuram District in P.R.C.No.54 of 2013, on the file of the Judicial Magistrate, Thirukovilur in Crime No.908 of 2011 on the file of Thirukovilur Police Station, Villupuram District.

For Petitioners : Mr.P.Vijendran

https://www.mhc.tn.gov.in/judis

WEB COPY

For Respondent-1 : Mr.L.Baskaran
Govt. Advocate (Crl.side)

For Respondent-2 : Mr.D.Prasanna
for M/s.Giridhar & Sai
(Legal Aid Counsel)

O R D E R

This Criminal Original Petition has been filed, praying to quash the proceedings in Spl.S.C.No.26 of 2016, on the file of the Special Court for Exclusive trial of cases registered under SC & ST (POA) Act, Villupuram in P.R.C.No.54 of 2013, on the file of the Judicial Magistrate, Thirukovilur. in Crime No.908 of 2011, on the file of Thirukovilur Police Station, Villupuram District.

2. The brief facts of the case reads as follows:-

On 30-11-2011, at 8.00 pm, when the victims in Crime No.887 of 2011 coming out of the Judicial Magistrate Court, after statements under Section 164 Cr.P.C., the defacto complainant Thangamani forced the girls to come with him, resisting the same, it is alleged that the Petitioners scolded the defacto complainant with filthy words, by calling his caste name and threatened to kill him. It is further case of the prosecution that the 2nd Petitioner pulled down the defacto complainant. Since, the police interfered, petitioners left the scene along with 4 girls.

https://www.mhc.tn.gov.in/judis

WEB COPY

Thereafter, the defacto complainant gave a complaint to the Superintendent of Police, Villupuram, on 03-12-2011, which was forwarded to the Deputy Superintendent of Police with endorsement "for personal enquiry necessary action as per law'', who in turn, forwarded the same to the Sub-Inspector of Police, Thirukovilur Police Station. The Sub-Inspector of Police registered the case on the same day at 18.00 hours, in Crime No.908 of 2011, under Sections 294(b), 323 and 506(ii) IPC., r/w Section 3(1)(x) of the schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The Deputy Superintendent of Police after investigation, filed a charge sheet in P.R.C.No.54 of 2013, dated 13-08-2013. The case was committed to Special Court for Exclusive Trial of Cases registered under SC & ST (POA) Act, Villupuram, for trial in Spl.SC.No.26 of 2016.

3. Mr.P.Vijendran, the learned counsel appearing for the petitioners submitted that the 1st Petitioner/A1 is a retired Professor, social activist, dedicated himself for upliftment of the socially and educationally downtrodden communities like Irular in and around the Villupuram District, from the date of his retirement. The 1st Petitioner is a Coordinator of the “Pazhangudi Irular Pathukappu Sangam”. At the instance of the 1st Petitioner, number of false, frivolous criminal cases foisted against the Irulas in Villupuram District were exposed. The State

https://www.mhc.tn.gov.in/judis

WEB COPY

of Tamil Nadu appointed the 1st Petitioner as Convenor & Head of the Expert Committee, for the purpose of conducting camps among the Adi-Dravida & Tribal people for creating awareness, understanding on the social issues in Districts of Tirunelveli, Ramanthapuram, Tuticorin, Sivaganga & Kanyakumari. The 2nd Petitioner /A2 is a public spirited personality, a co-ordinator of the "Pazhangudi Irular Padhukappu Sangam". The said Sangam was formed with an object to redress the grievance of the Tribal Irulas. The 2nd petitioner is President of "Makkal padhukappu Kazhagam" created for the purpose of fighting for the justice and human right for the marginalized people. The 2nd petitioner actively involved in rescuing the victims of the Bonded Labour System, violence, custodial rape, human rights violations and other atrocities against the weaker sections of the society, in particular, the members of the Irular community.

4. The learned counsel for the petitioner further submitted that the petitioners were informed by the member of the "Pazhangudi Irular Padhukappu Sangam" that four Irula Girls were subjected to custodial sexual assault / abuse by the Thirukoilur Police Personnel on 22-11-2011. At the instance of the Petitioners, a complaint was given to the Superintendent of Police on 26-11-2011, by one of the affected victims namely, Lakshmi. The same was registered in Crime No.887 of 2011, for

https://www.mhc.tn.gov.in/judis

WEB COPY

the offence under Sections 323, 427, 363, 380 and 376 of IPC., and Section 3(1)(xii) of SC & ST Act. Pursuant to the same, five police personnel namely, (i) Srinivasan - Inspector of Police, (ii) Ramanathan -SSI of Police, (iii) Dhanasekaran - Head Constable, (iv) Karthikeyan – Constable and (v) Bakthavatchalam, Constable, were suspended from service on 29-11-2011. On the very next of their suspension, on 30-11-2011, the 1st Petitioner went along with the Frontline Reporter, waiting to meet the victims in front of the Judicial Magistrate Court, Thirukovilur. The victims and advocates were coming out of the court campus, at that time, the defacto complainant, claiming himself as the State President, “Pazhangudi Makkal Viduthalai Katchi”, tried to kidnap the said victims in the guise of protecting them. On the other hand, the victims resisted the move, inclined to go along with the 2nd Petitioner. But, the 2nd respondent restrained them from boarding into the car of the 2nd petitioner. Immediately, the 1st petitioner interfered, requested the 2nd respondent to allow the victims to go on their own, as per their wish, but the 2nd respondent refused, created unpleasant atmosphere, a false story to save the Police personnels involved in crime No. 887 of 2011, tactfully.

5. It is further submitted that immediately the 1st petitioner approached the Deputy Superintendent of Police, who was standing

https://www.mhc.tn.gov.in/judis

WEB COPY

outside the court campus, requested him to allow the four girls to go on their own as per their wish. The Deputy Superintendent of Police interfered, enquired all the four girls individually, confirming the victim wish, allowed them to go along with the 2nd petitioner. Again on 01-12-2011, the 2nd respondent and his henchmen attempted to kidnap the victims, while coming out of the court. Since, there were objections raised by the members of the "Pazhangudi Irular Padhukappu Sangam", they left the scene. The intension of the 2nd respondent/defacto complainant is only on the compensation of Rs.5,00,000/- awarded by the Government to the victims, and to tactfully save the police personnels. Therefore, in order to safeguard the interest of four girls, the 1" petitioner submitted a complaint to the Director General of Police on 02-12-2011, marked a copy to the Superintendent of Police, Villupuram District, Deputy Superintendent of Police, Thirukovilur and the Inspector of Police, Thirukovilur, requesting them to take action against the 2nd respondent. But, the complaint was taken on file by the Thirukovilur Police Station only on 31-12-2011, registered a case under Sections 147, 341, 366(A) r/w 511 of IPC., in Crime Number 982 of 2011.

6. It is further submitted that 2nd respondent after coming to know about the complaint of the Petitioners, as a counter blast, the 2nd

https://www.mhc.tn.gov.in/judis

WEB COPY

respondent filed the present complaint, on 03.12.2011, which was registered in Crime No.908 of 2011, on 03.12.2011 at 18.00 hrs., and the same was forwarded to the Judicial Magistrate Court, Thirukovilur, on 03.12.2011. The complaint lodged by the 1st petitioner, dated 02.12.2011, got belatedly registered in Crime No.982 of 2011, only on 31.12.2011 by Thirukovilur Police Station, no steps taken to enquire the complainant and the witnesses by the police till date. On the other hand, the complaint, dated 03.12.2011 given by the 2nd respondent registered on the same day in Crime No.908 of 2011 against the petitioners as A1 and A2 and the police laid the charge sheet before the learned Judicial Magistrate, Thirukovilur, who in turn, committed the same to the Special Court.

7. It is further contended by the learned counsel for the petitioners that the Police conveniently avoided enquiring the victims, who are the main witnesses to the incident that happened on 30.11.2011, for the reasons best known to them. The Respondent police failed to enquire the police officer, who were present at the time of the alleged occurrence on 30.11.2011, for extraneous reasons. The police enquired only the office bearers of the party floated by the defacto complainant and his close family members and filed the charge sheet, it is clear case of abuse of process of law. The respondent police acted in

https://www.mhc.tn.gov.in/judis

WEB COPY

a partisan manner, using the defacto complainant, foisted the case against the petitioners, for the reasons that the 1st petitioner involved in exposing the police atrocities discrimination meted to Irular community people in Villuppuram and other Districts. On the sustained efforts taken by the petitioners, several Police Officials and Personnel, number of police officials were suspended for their excess, against Irular Communities victims. The charge sheet laid by the Police in a hurried and hasty manner without following the procedure contemplated under the Criminal Procedure Code. Further, the respondent police ought to have conducted investigation on the case in Crime No.982 of 2011, registered at the instance of the 1st Petitioner along with the case in Crime No.908 of 2011, since cause of action for the both cases are one and the same, it is crystal clear that the Police acted in a partisian manner to desist petitioners from espousing the case of Irular and marginalized community victims. The 2nd respondent came in handy to the police.

8. The Court of committal without furnishing the copies of report to the petitioners, under Section 207 of the Criminal Procedure Code, committed the case to the Special Court in Spl.SC.No.26 of 2016. The Court of Committal failed to follow the mandatory requirements contemplated under Section 207 of the Criminal Procedure Code before committing the case to the Special Court under Section 209 of Cr.P.C.

https://www.mhc.tn.gov.in/judis

WEB COPY

The 1st petitioner is the Correspondent of a Middle School namely, "Thai Tamil Palli", Rosanai, Tindivanam. For the purpose of intentionally destroying the name of the 1st Petitioner, the respondent police filed the charge sheet by showing the 1st Petitioner, as absconding accused. From the above said action of the Police, the malafideness on the part of the Respondent Police is crystal clear. The occurrence alleged to have happened on 30.11.2011 at 18.00 hrs., but, the complaint was given by the defacto complainant only on 03.12.2011, at 18.00 hrs. Therefore, there was substantial delay in filing alleged complaint before the respondent. The entire contents of the alleged complaint is only an after thought, a counter blast to the complaint, of the petitioner dated 02.12.2011. Therefore, the delay is vital and vitiates the entire proceedings. It is further submitted that the respondent ought to have conducted investigation in both cases namely Crime No.908 of 2011 and Crime No.982 of 2011 and filed the charge sheet before the Court. Failure to investigate Crime No.982 of 2011 will prove the case in Crime No. 908 of 2011 is a foisted case against the social activist to prevent them from pursuing the rape victim case in Crime No.887 of 2011. Therefore, it is clear that the case in Crime No. 908 of 2011 was foisted against the petitioner in order keep away the petitioner from pursing the criminal case in Cr.No.887 of 2011. Hence, the charge sheet is tainted with *mala fide* and the same is liable to be quashed.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. The learned counsel appearing for the petitioners, in support of his contentions, relied on the Judgment of the Hon'ble Apex Court in ***Krishna Lal Chawla and Others Vs. State of Uttar Pradesh and Another*** reported in ***(2021 (5) SCC 435)***, wherein the Hon'ble Supreme Court had an occasion to examine lodging of a second complaint against the same accused with respect to the same incident / transactions and had categorically held that such attempt is impermissible. It was also held that such a complaint would also be violative of Article 21 of the Constitution of India.

10. The learned counsel further relied on the Judgment of the Apex Court in ***Rajiv Thapar v. Madan Lal Kapoor [(2013) (3) SCC 330],*** wherein it has been held as follows : -

> "The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused."

https://www.mhc.tn.gov.in/judis

WEB COPY

11. The learned counsel in support of his contentions relied on a decision of this Court in ***Ms.Arokia Mary Lucia Vs. The State of Tamil Nadu, represented by the Secretary to Government, Home Department, Chennai and others)*** reported in ***(2004 M.L.J. (Crl.) 360)*** wherein this Court has held that the act of the police officer in concert with other persons, in filing false case against the innocent and service minded persons, is to be severely condemned. The Court in quashing such a false case against a service minded person, directed the State to pay sum of rupees one lakh as compensation to the service minded person, and to recover the same from erring police officers. The Court directed the State Government to take disciplinary action against such officers.

12. Mr.L.Baskaran, the learned Govt.Advocate (Crl.side) appearing for the 1st respondent Police would submit that the defacto complainant / 2nd respondent belongs to 'Hindu Irular Community'; the accused person viz., Pirapa Kalvimani @ Kalyani(A1) belongs to Maravar Community and P.V.Ramesh(A2) belongs to Hindu Porkollar Community. The defacto complainant was the State President, 'Pazhangudi Makkal Viduthalai Katchi'. On 26.11.2011, the defacto complainant came to know that the police persons committed rape, an 'Irular Community' victims at T.K.Mandapam, Tirukovilur Taluk, through News Channel. On the same

https://www.mhc.tn.gov.in/judis

WEB COPY

day, the defacto complainant met A-2, asked the whereabouts of the victims, in turn, A-1 and A-2 replied that that the above said victims were subjected to custodial sexual assault/abuse by the Thirukoilur Police personnel. On 30.11.2011, after completion of medical examination, the victims produced before the Judicial Magistrate Court in connection with the case in Crime No.887 of 2011, for the offence under Sections 427, 363, 380 and 376 IPC r/w. Section 3(1)(X11) of SC/ST Act. After that, at about 06.00 hours, the defacto complainant called the victims to come along with him, at that time, A-1 and A-2 abused using filthy language abusing his community status and threatened with dire consequences.

13. On the complaint of the defacto complainant, a case was registered in Thirukovilur Police Station, in Crime No.908 of 2011, under Sections 294(b), 323 and 506(ii) IPC r/w. Section 3(1)(XII) of SC/ST Act on 03.12.2011. As per the proceedings of the Superintendent of Police, the Deputy Superintendent of Police, conducted investigation, visited the scene of occurrence, prepared the observation mahazar, rough sketch in the presence of witnesses, examined witnesses, recorded their statements, collected the community certificates of the defacto complainant and A-1 and A-2. During the course of investigation, Deputy Superintendent of Police produced the victims before the learned

https://www.mhc.tn.gov.in/judis

WEB COPY

Judicial Magistrate, Thirukovilur, for recording 164 Cr.P.C Statements. On that day, there was an attempt to kidnap the victims, there was commotion and threat. The 1st petitioner / A1, lodged a complaint before the Director General of Police, Chennai, through post, and the same was forwarded to Thirukovilur Police Station through proper channel on 31.12.2011, wherein it has been stated that on 01.12.2011, the defacto complainant / 2nd respondent and 10 others kidnapped the victims. In this regard, a case in Crime No.982 of 2011, registered by Thirukovilur Police Station, for the offence under Sections 147, 341 and 366-A IPC., r/w.511 IPC and took up for investigation, after investigation case closed as Mistake of Fact. Notice served to the petitioners now. If the petitioners aggrieved, they can file protest petition before the concerned court.

14. As regards the case in Crime No.908 of 2011, the petitioner are A1 and A2. It is submitted that after completion of investigation, on 13.08.2013, the Deputy Superintendent of Police filed a Charge sheet against A-1 and A-2 before the learned Judicial Magistrate, Thirukovilur, and the same was taken on file in P.R.C.No.54 of 2013, on 19.11.2013. The case was committed to the Special Court for Exclusive Trial of Cases Registered under the SC & ST (POA) Act, Villupuram and of assigned in Spl.S.C.No.26 of 2016, dated 17.06.2016. It is submitted that the respondent police conducted the investigation in a fair, free and

https://www.mhc.tn.gov.in/judis

WEB COPY

impartial manner, in accordance with law. Further the learned Government Advocate, in support of his contentions, relied on the Judgment of the Hon'ble Apex Court ***Ramveer Upadhyay and Anr. Vrs. State of U.P., (2022 SCC OnLine SC 484),*** wherein it has been held that " Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.". Hence, the learned Government advocate prayed for dismissal of the petition.

15. It is seen that, in this case, private notice had been served on the second respondent/defacto complainant. Since he had not responded, this Court, by order dated 07.09.2021, directed the Tamil Nadu State Legal Services Authority to appoint a counsel to represent the second respondent. Accordingly, a Legal Aid Counsel was appointed. Further, in view of Section 15-A(3) of the SC/ST Act, the victim to be informed about the pendency of any proceedings. Hence, the 1st respondent/Police was directed to serve notice to the second respondent/defacto complainant. Simultaneously, the learned Legal Aid Counsel also took private notice on 07.09.2022 to the second respondent, who received the said notice on 11.09.2022. Despite the

https://www.mhc.tn.gov.in/judis

WEB COPY

same, there was no representation. Hence, this Court directed the Registry to print the name of the second respondent/Thangamani in the cause list and list the matter for further hearing.

16. Mr.D.Prasanna, the learned counsel appearing for the 2nd respondent / defacto complainant, while advancing argument in similar line, as that of the learned Government Advocate for the State submitted that the defacto complainant is the State President, “Pazhangudi Makkal Viduthalai Katchi” on 30-11-2011, when the victims coming out of the Judicial Magistrate Court, the defacto complainant Thangamani invited them to come along with him, at that time, the 1st Petitioner scolded the defacto complainant with filthy language by calling his community, and threatened to kill him. The 2nd petitioner pulled down the defacto complainant. Based on the complaint given by the defacto complainant, the Sub-Inspector of Police registered the case in Crime No.908 of 2011. He further submitted that the respondent-Police acting in an honest and transparent manner in filing the charge sheet. Hence, he prayed for dismissal of the petition.

17. I have heard the learned counsels appearing on either side and perused the materials available on record.

https://www.mhc.tn.gov.in/judis

WEB COPY

18. Before considering the case on hand, it becomes necessary to see the genesis of the case filed against the petitioners / A1 and A2. The petitioners were informed by the member of the "Pazhangudi Irular Padhukappu Sangam" that four Irula Women were subjected to custodial sexual assault / abuse by the Thirukoilur Police Personnel on 22-11-2011. At the instance of the Petitioners, a complaint was given to the Superintendent of Police, on 26-11-2011, by one of the affected Irula Women, namely, Lakshmi. The same was registered in Crime No.887 of 2011, for the offence under Sections 323, 427, 363, 380 and 376 of IPC., and Section 3(1)(xii) of SC & ST Act. Pursuant to the registration of the case, five police personnel namely, (i) Srinivasan - Inspector of Police, (ii) Ramanathan -SSI of Police, (iii) Dhanasekaran - Head Constable, (iv) Karthikeyan – Constable and (v) Bakthavatchalam, Constable were suspended from service on 29-11-2011. On 30-11-2011, after recording 164 statements of the victims, the victims came from the Court, joined the petitioners, which was objected by the second respondent for the reason that the victims and the de-facto complainant, belong to same community. It is proper for the victims to go with defacto complainant and not with petitioners, who belong to intermediate caste, though they might fight for marginalized people. Subsequently, there was a commotion. The Deputy Superintendent of Police, Thirukovilur, who was present at the scene,

https://www.mhc.tn.gov.in/judis

WEB COPY

pacified both the groups, enquired the victims and found victims willingness to go along with the petitioners. Due to exchange of heated words, there were complaint and counter complaints. The complaint lodged by the second respondent is now culminated into charge sheet in Spl.S.C.No.26 of 2016. As regards the complaint of the first petitioner, dated 02.12.2011, F.I.R. registered on 31.12.2011, in Crime No.982 of 2011, later closed as "mistake of fact" on 09.01.2012.

19. It is not in dispute that the 1st Petitioner / A1 is a retired Professor, social activist, involving himself for upliftment of the socially, educationally downtrodden communities like 'Irular' in and around the Villupuram District. The 1st Petitioner is a Co-ordinator of “Pazhangudi Irular Pathukappu Sangam”. At the instance of the 1st Petitioner, number of false, frivolous criminal cases filed against the Irulas in Villupuram District were exposed earning displeasure of police. The State of Tamil Nadu appointed 1st Petitioner as Convenor & Head of the Expert Committee, for conducting camps among the Adi- Dravida & Tribal people for creating awareness, understanding on the social issues in respect of Tirunelveli, Ramanthapuram, Tuticorin, Sivaganga & Kanyakumari Districts. The 2nd Petitioner /A2 is a co-ordinator of “Pazhangudi Irular Padhukappu Sangam” and President of “Makkal Padhukappu Kazhagam” formed for fighting for the justice and human

https://www.mhc.tn.gov.in/judis

WEB COPY

rights for the deprived people.

20. It is seen that in respect of the complaint lodged by the first petitioner on 02.12.2011, F.I.R., came to be registered only on 31.12.2011, with a delay in Crime No.982 of 2011. After investigation, it was closed as "mistake of fact" on 09.01.2012. On the other hand, the complaint lodged by the de-facto complainant, on 03-12-2011, registered on the same day, in Crime No.908 of 2011, under Sections 294(b), 323 and 506(ii) IPC r/w Section 3(1)(x) of SC & ST Act. The Deputy Superintendent of Police, after investigation, filed a charge sheet in P.R.C.No.54 of 2013, dated 13-08-2013, showing 1st Petitioner as absconding accused. The incident in both cases in Crime No.908 of 2011 and Crime No.982 of 2011 are one and the same, the respondent in all prudence ought to have conducted investigation in both the cases together, but it is not done so, no reason given, which is in violation of Police Standing Orders. This Court in plethora of cases, deplored the partisan act of Investigating Officers, conducting investigation in such situation. The case against the petitioners / A1 and A2 foisted against the petitioners, for the reason that, the 1st petitioner involved in exposing the excess and brutality by the Police and powerful person on the Irular community people in Villuppuram and other Districts, number of police officials were suspended for their excess. In view of the above, the

https://www.mhc.tn.gov.in/judis

WEB COPY

allegation against the petitioners to be considered in this background to find out truthfulness on the complaint, find whether at all *prima facie* case exist to proceed against the petitioners.

21. On 22.11.2011, one Murugan and 5 others from T.K.Mandapam Village were picked up by the Tirukovilur Police, detained them in Police Station, on the same day night, one Valli W/o. Murugan, Lakshmi W/o Kasi, Karthiga W/o Vellikannu, Vaigeshwari D/o Murugan, Radhika, D/o Murugan, Padaiyppa S/o Murugan, Manikam S/o Murugan, Rengan S/o Murugan, Selvi. W/o. Kumar, nine of them were forcibly taken by the police, to an isolated Eucalyptus grove, out of the nine, four young women selected by the Police, and committed rape. Not knowing what to do, they were under shock and terrified. The Irular Community People, who are marginalized from the Society were helpless and voiceless, one Boopathy, of 'Pazhangudi Irular Pathukappu Sangam', on 25.11.2011, brought victims to P.V.Ramesh, Co-ordinator of the Sangam, he along with Professor Kalvimani, enquired the victims, finding victims helpless and directionless, they took the victims to the Superintendent of Police, Villupuram, gave a complaint, the Superintendent of Police, directed the Women Police to enquire the victims, during enquiry the victims were forced to withdraw the complaint.

https://www.mhc.tn.gov.in/judis

WEB COPY

22. On 27.11.2011 the Judicial Magistrate, enquired the victims individually. Sent victims for medical examination, since it was sexual offence. On 30.11.2011, after completion of medical examination, the victims produced before the Judicial Magistrate for recording 164 Cr.P.C., statements later at 7.30 p.m. The victims came out from the court and they were attempted to be forcibly taken by Thagamani / Defacto Complainant / R2. The first petitioner, informed Pannerselvam, the Deputy Superintendent of Police, present there, who enquired, found the defacto complainant forcing the victims to come along with him, enquired victims confirmed that they voluntarily willing to go with the petitioners, restrained 2nd respondent. The Deputy Superintendent of Police allowed the victims to go along with the petitioners, which gave loss of face to the defacto complainant, before his clan, who were present in group. The defacto complainant is the President of ''Pazhangudi Makkal Viduthalai Katchi''. The petitioners made complaints about the incident to the Deputy Superintendent of Police on 02.12.2011.

23. The petitioners knocking the doors of the higher officials of the police upto the level of Director General of Police, seeking protection for the victims narrating the sequence of events from 25.11.2011 and about the incidents, which took place before the Court with the defacto

https://www.mhc.tn.gov.in/judis

WEB COPY

complainant on 30.11.2011. The complaint of petitioners said to have reached the respondent police belatedly only on 31.12.2011 and the FIR in Crime No.980 of 2011 filed that is a different story. From the statement of witnesses in t he present case. it is seen that L.W.1 defacto complainant narrates the incident from 26.11.2011. He seems to be mainly concern about the undue publicity given to the victims, his enquiry with the victims and finding that the victims tutored and adverse publicity in print and visual media considering the future of the victim girls, he attempted to rescue the victims from the petitioners, commotion arouse, petitioners used abusive words and force against L.W.1 statement records.

24.Further, he categorically state that he alone had gone and questioned the petitioners, which is further fortified by the statement of his son L.W.2, who categorically state that the defacto complainant alone gone and questioned the petitioners. Section 3(i)(x) of SC/ST Act is said to have committed, any person if intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste or a Schedule Tribe in any place within public view. In this case, admittedly, the wordy duel in between petitioners and defacto complainant alone.

https://www.mhc.tn.gov.in/judis

WEB COPY

25. The victims were enquired by the Judicial Magistrate and revenue officials on 02.12.2011 and 03.12.2011. The victims not whispered anything about the petitioners. The petitioners are toiling for the upliftment of Irular Community People. They have brought to light excess of Police and other Officials. They have given confidence and support to the marginalized people to raise above their oppression and suppression. Since petitioners belong to intermediate caste, they have been targeted by the persons, who are uncomfortable, agitated by the repressive act of the petitioners.

26. In view of the categorical assertion by L.W.1 and L.W.2, it cannot be said that insult taken place in public view. Though, later, attempt made to improvise, by the statement of L.W.3, L.W.4, L.W.5 and L.W.6, who are none other than party workers of L.W.1, said to have witnessed the incident, from a distance and nothing more. Added to it, the undisputed fact is that the Deputy Superintendent of Police, who was present, enquired the victims, got satisfied their willingness to go along with the petitioners, allowed victims to go along with petitioners. This cuts the root of the case. L.W.7 and L.W.8 are the Village Administrative Officer and Village Assistant, who are witnesses to the Observation Mahazar. L.W.9, L.W.10, L.W.11 and L.W.12 are the Revenue Divisional Officers, who issued the Community Certificates to the witnesses and the

https://www.mhc.tn.gov.in/judis

WEB COPY

petitioiners. L.W.13 is the Judicial Magistrate, who recorded 164 statements of some of the witnesses; L.W.14 is the Sub-Inspector of Police, who registered the FIR; L.W.15 is the Investigation Officer; L.W.16 to L.W.18 are the Investigation Officers, who collected the documents and filed the final report.

27. Thus, from the statements of witnesses and documents collected it is seen that the Deputy Superintendent of Police, who was present, intervened during commotion and the four victims, neither shown as witnesses nor their statements recorded. The genesis and triggering point of the case is completely withheld, not produced. Further, as stated above, the petitioners' service to the marginalized society, recognized and appreciated by the Government. The Petitioners are working for upliftment of the marginalized society belonging to all communities. From the statement and materials it is seen that the above case primarily focusses more as a defence and the explanation to the case in Crime No.887 of 2011, in which five of the police personnel are facing trial of the case, which is of the year 2011 is being kept pending without much progress till date.

https://www.mhc.tn.gov.in/judis

WEB COPY

28. It is seen that the Judicial Magistrate, who enquired the victims girls about the incidents, the medical Doctors, who examined the victims, opined that the victims sufferings both mentally and physically and the victims given 164 statements, for sexual offences in Crime No.887 of 2011.

29. From the above, it is clear no case made out against the petitioners / A1 and A2. Considering the nature of allegations against the petitioners, the manner in which the case registered against them and the consequence thereof, this Court is of the considered view that this is a fit case where the extraordinary jurisdiction needs to be exercised in favour of the petitioners.

30. For the forgoing reasons, the Criminal Original Petition is allowed and the entire proceedings in Spl.S.C.No.26 of 2016, on the file of the Special Court for Exclusive trial of cases registered under SC & ST (POA) Act, Villupuram, is hereby quashed.

Index : Yes/No
Internet : Yes / No
mpk/vv2

30.08.2023

https://www.mhc.tn.gov.in/judis

WEB COPY

To

1.The Special Court for Exclusive trial of cases
registered under SC & ST (POA) Act,
Villupuram,
Villupuram District

2. The Judicial Magistrate,
Thirukovilur

3. The Deputy Superintendent of Police,
Thirukovilur,
Villupuram District.

4.The Public Prosecutor,
High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

M.NIRMAL KUMAR, J.

MPK/VV2

Pre-Delivery Order made in

CRL.O.P.No.14081 of 2016

30.08.2023

https://www.mhc.tn.gov.in/judis