IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.08.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.1165 of 2022

Dr.R.Radhakrishnan ... Petitioner

Vs.

1.The Assistant Commissioner of Police,
Kotturpuram Zone, Kotturpuram, Chennai.

2.The Inspector of Police,
J-4, Kotturpuram Police Station,
Kotturpuram, Chennai – 600 085. ... Respondents

Prayer: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to call for the entire records connected with the order made in Cr.M.P.Sr.No.18115 of 2021 dated 09.06.2022 by the learned Special Judge for SC & ST Cases/Judicial Principal Sessions Judge, Chennai and set aside the same and consequently, direct the 2nd respondent to file an FIR and direct the 1st respondent to conduct investigation as per law within the time frame fixed by this Hon'ble Court.

For Petitioner : Mr.S.A.Sathia Chandran

For Respondents : Mr.S.Vinothkumar
Government Advocate (Crl.Side)

O R D E R

This revision is filed aggrieved by the order of the Court of Sessions, Chennai (Special Court under SC/ST (Prevention of Atrocities) Act), dated 09.06.2022, in Crl.M.P.Sr.No.18115/2021, in and by which, the prayer of the petitioner to refer his complaint, dated 26.07.2021, for investigation by the respondent police under Section 156 (3) Cr.P.C. was rejected by the learned Judge.

2.The learned counsel for the petitioner would submit that this is a case where the petitioner has suffered injustice in the matter of registration of complaint itself. He would submit that he filed the present petition on 30.09.2022 before the Trial Court. Strangely, the petition has not even been numbered and was returned with some queries. While representing, the petitioner had also filed the requisite affidavit and appropriate Judgments of the Hon'ble Supreme Court. However, a strange procedure of recording sworn statement was resorted to by the Trial Court and after recording the sworn statement without even numbering the petition, the Trial Court rejected the petition. The reasons given by the Trial Court that the complaint has been filed in a routine manner to harass the proposed accused is without any basis. The Trial Court has also given an erroneous

finding that the complainant did not file the affidavit. Therefore, he would submit that this is a case for interference by this Court.

3.Taking further through the complaint filed by the petitioner dated 26.07.2021 in this case, he would submit that the proposed accused, namely, *Dr.Rita John* had clearly and categorically made an allegation as if the petitioner misbehaved with the women students and he had written bad words on the whiteboard. The proposed accused knows the caste of the petitioner. Only because the petitioner belongs to Schedule caste she made such allegations against the petitioner. From the very fact that the University did not take any action against the petitioner, it is proved that there was no mistake on the part of the petitioner. Once the complaint is said to be a false complaint, offences under Sections 3 (1) (u) and 3(1) (zb) are made out. Therefore, when the complaint of the petitioner discloses prima facie cognizable offences, the Trial Court ought to have referred the same for investigation under Section 156 (3) Cr.P.C.

4.Per contra, the learned Government Advocate (Criminal side) would submit that this is a case in which the petitioner being a Professor had misbehaved with the women students. The said conduct on his part

was reported to the higher authority by way of a complaint. Therefore, as a counterblast this complaint is made. He would submit that as a Head of the Department, it was the duty of the proposed accused to bring it to the knowledge of the superior officer and she has only done the same. If FIR has to be registered even in respect of the said conduct, then the same would be beyond the scope and ambit of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. He would submit that the veracity of the complaint, whether the University had taken action or not is not known at this stage. Therefore, he would submit that there are no merits in the revision.

5.I have considered the rival submissions made on either side and perused the material records in this case. At the outset, I am in agreement with the learned counsel for the petitioner that the procedure adopted by the Trial Court, in this case, is not in accordance with the law laid down in ***Lalitha Kumari's case***[1]. The complainant eventhough had not initially filed the affidavit as directed by the Hon'ble Supreme Court, in the case of ***Priyanka Srivastava & Another Vs. State of U.P. & Ors***[2]**,** while representing, the complainant has filed the affidavit. Therefore, the Trial

1 (2013) 6 CTC 353
2 (2015) 6 SCC 287 : (2015) 4 SCC (Cri) 153

Court ought to have numbered the petition and heard the learned counsel. If the Trial Court had found that there are prima facie cognizable offences, the Trial Court ought to have referred the complaint under Section 156 (3) Cr.P.C. with an appropriate direction to register the FIR straightaway or to conduct primary enquiry. If the Trial Court had decided to take the case as a private complaint and conduct the enquiry under Sections 200 and 203 Cr.P.C., even then, the criminal miscellaneous petition ought to have been numbered and the procedures have to be taken into a logical conclusion. In this case, the Trial Court recorded the sworn statement in a petition but did not take the enquiry to a logical conclusion and passed an order under Section 203 Cr.P.C. Therefore, to that extent, I am in agreement with the learned Counsel for the petitioner.

6.But, thereafter, the prayer of the petitioner is to refer to the complaint dated 26.07.2021 for investigation. On a perusal of the said complaint, the gravamen of the allegations is that the proposed accused, namely, *Dr.Rita John* had sent a complaint to the Registrar of University wherein she had complained as follows:-

> "*When M.Sc male students were made to stand on the chair for 45 minutes, women students were*

asked to stand outside the class for more than an hour saying "women are always unworthy and not to be trusted" When he wrote "bad words on the whiteboard and asked students to read as the form of punishment, When students were asked to come during odd hours like 5:30 am for sky observation (for no proper purpose) and class at 8:00 am (students and parents complained which I could not disclose to him on their request), When he asked students to do whatever he says including standing facing one direction and repeating what he says - otherwise some evil including death will happen in their family. (For a period of time he was putting up the attire of a priest with long beard and claimed respect as he had supernatural power. When I asked him to stop such practices in the department he even "warned" me that my husband will die in six months if I oppose him.)."

On a reading of the same, it is seen that it is not a case of any public notice or insulting the petitioner in public. The complaint is given to the appropriate authority about the alleged acts of the misdeed. The learned counsel would submit that the allegations would amount to an offence under Section 3 (1) (u) of the Act. It is useful to extract Section 3 (1) (u).

3.(1)(u) by words either written or spoken or by

signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against the members of the Scheduled Castes or Scheduled Tribes;

7.A careful reading of Sections 3 (1) (r) and 3 (1) (s) shows that the legislature has carefully used the words that when 'a member' of a Scheduled Caste or a Scheduled Tribe is humiliated with an intent, then the offences under Sections 3 (1) (r) and 3(1) (s) come into play. As far as Section 3 (1) (u) the word used is the 'members of Scheduled caste' and on a clear reading of entire Section 3 (1) (u), it would be clear that when against the members of the Scheduled Caste or Schedule Tribe, as a group if any person is trying to promote ill feeling or enmity, then only the said offence will come to play. Therefore, I am of the view that Section 3 (1) (u) is not made out.

8.In this regard, it is relevant to extract the dictum of the Hon'ble Supreme Court of India in ***R. Kalyani v. Janak C. Mehta***[3], more specifically paragraphs 36 to 40 which is as under :

"36.Although the legal principle that a penal statute must receive strict construction, it is not in doubt or

3 (2009) 1 SCC 516

dispute, we may notice some authorities in this behalf. In Section 263 of Francis Bennion's Statutory Interpretation it is stated:"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."(emphasis supplied)

37.Maxwell in The Interpretation of Statutes(12th Edn.) says: "The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

38.In Craies Statute Law (7th Edn. at p. 529) it is said that penal statutes must be construed strictly. At p. 530 of the said treatise, referring to U.S.v.Wiltberger[5 L Ed 37 : 18 US (5 Wheat.) 76 (1820)] it is observed, thus: "The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislature, and not in the judicial department,

for it is the legislature, not the court, which is to define a crime and ordain its punishment."

39. In Tuck & Sonsv.Priester[(1887) 19 QBD 629 (CA)] , which is followed in London and Country Commercial Properties Investments Ltd.v.Attorney General[(1953) 1 WLR 312 : (1953) 1 All ER 436] , it is stated: "We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable. Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."(emphasis supplied)

40.Blackburn, J. inWillisv.Thorp[(1875) LR 10 QB 383] observed:"When the legislature imposes a penalty, the words imposing it must be clear and distinct."

9.The proposed accused in her complaint had claimed that the petitioner had supernatural powers and that she had warned her that the proposed accused and her husband will die in six months. He would submit that the same categorically amounts to Section 3 (1) (zb) in this regard. Section 3 (1) (zb) is extracted as follows:

"3.(1) (zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch;"

10.The allegations, in this case, is that the proposed accused only submitted the complaint and it cannot be an act of physical harm or mental agony on the petitioner by allegations of practicing witchcraft. Therefore, I am of the view that the allegations mentioned in the complaint does not prima facie constitute criminal offences under Section 3 (1) (u) or 3 (1) (zb) of the Act and accordingly, I am unable to persuade myself to refer the complaint for investigation by the respondent police. Therefore, eventhough I am in agreement in part with the learned counsel for the petitioner that the procedure adopted by Trial Court is incorrect, still this revision will not succeed and I find nothing in this complaint to refer the same to investigation to the respondent police. Accordingly, this revision is dismissed.

18.08.2022

Index : Yes/No
Speaking/Non-speaking order

sli/klt

To

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Chennai.

2.The Assistant Commissioner of Police,
Kotturpuram Zone, Kotturpuram, Chennai.

3.The Inspector of Police,
J-4, Kotturpuram Police Station,
Kotturpuram, Chennai – 600 085.

4.The Public Prosecutor,
High Court, Madras.

D.BHARATHA CHAKRAVARTHY, J.

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