

**(2011) 6 Supreme Court Cases 405**

**Arumugam Servai v. State of T.N.**

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

ARUMUGAM SERVAI . . . Appellant;

*Versus*

STATE OF TAMIL NADU . . . Respondent.

Criminal Appeals No. 958 of 2011 with No. 959 of 2011, decided on April 19, 2011

**A. Constitution of India — Arts. 15(2), 17 and 21 — Freedom from discrimination and right to live with dignity — Insulting/hurting anyone's feelings on account of his caste, religion, tribe, language, etc., deprecated — One of the main causes holding up India's progress is linked to mental attitude of Indian society to regard a section of their own countrymen as inferior — This mental attitude is simply unacceptable — SCs, STs, OBCs and Minorities — Generally — (Paras 1 and 8)**

*Kailas v. State of Maharashtra*, (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401; *relied on*

**B. Constitution of India — Arts. 15(2), 17 and 21 — Caste-based bias — Two tumbler system prevalent in many parts of State of Tamil Nadu, where in many tea shops and restaurants, there are separate tumblers for serving tea or other drinks to SCs and non-SCs — Held, is highly objectionable and an offence under SC/ST Act — Directions for fixing accountability on all related administrative and police officers, not taking necessary measures against such practice, issued — Hence, those practising it, must be criminally proceeded against and given harsh punishment if found guilty. — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3 (Para 10)**

**C. Constitution of India — Arts. 25, 19(1)(a) and 21 — Rights to freedom of conscience and freedom of expression — Right to marry person of one's choice — Inter-caste/religion marriages — "Khap Panchayats" ("Katta Panchayats" in Tamil Nadu) decreeing or encouraging honour killings of or other atrocities in institutionalised way against boys and girls of different castes and religions, who wished to get married or had been married, or interference with personal lives of such people — These are acts of barbarism and feudal mentality — Need for ruthlessly stamping them out — Necessary directions to prevent such atrocious acts, issued — Penal Code, 1860 — S. 302 — Human and Civil Rights — Right to marry**

*Held:*

"Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. This is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case*, (2006) 5 SCC 475, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way, such acts of barbarism and feudal mentality, can be stamped out. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

(Paras 11 and 12)

*Lata Singh v. State of U.P.*, (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478; *followed*

Hence, the administrative and police officials are directed to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the

district as well as other officials concerned and charge-sheet them and proceed against them departmentally, if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance; or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as they will be deemed to be directly or indirectly accountable in this connection. (Para 13)

**D. SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(x) — Case of insulting person of Scheduled Caste, by calling him by his caste name in a derogatory sense to insult, and causing injuries thereafter — Conviction confirmed — On an altercation between appellant-accused (belonging to Backward Caste) and complainants PWs 1 and 2 (belonging to Scheduled Caste), appellant A insulted PW 1 by saying "you are a pallapaya and eating deadly cow bee", and thereafter, appellants caused injuries to both of them — Held, appellants belonged to Backward Caste, whereas complainants belonged to "Pallan" caste, which is a Scheduled Caste in Tamil Nadu — Word "Pallan" no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone — Even calling a person a "Pallan", if used with intent to insult a member of Scheduled Caste, is an offence under S. 3(1)(x) — To call a person as a "pallapaya" in Tamil Nadu is even more insulting, and hence is even more an offence — Hence, use of words "Pallan" or "pallapaya", with intent to insult, is highly objectionable and is also an offence under SC/ST Act — It is just unacceptable in this modern age — Appellants behaved like uncivilised savages, and hence, deserve no mercy — Copy of instant judgment directed to be widely circulated. (Paras 4 to 7, 9, 14, and 15)**

*Swaran Singh v. State*, (2008) 8 SCC 435; (2008) 3 SCC (Cri) 527, *relied on*

Appeals dismissed Y-D/47958/CR

Advocates who appeared in this case:

C.S. Rajan, Senior Advocate, [S.D. Dwāraakanath, (for Dr. Kallash Chand), P.V. Yogeswaran and S. Thananjayan, Advocates] for the appealing parties.

**Chronological list of cases cited on page(s)**

1. (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401, *Kallas v. State of Maharashtra* 408f-g
2. (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527, *Swaran Singh v. State* 408g
3. (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478, *Lata Singh v. State of U.P.* 409g-h, 411c

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J. —**

*"Har zarre par-ek qalfiyat-e-neemshahi hai  
Ai saaki-e-dauraan yeh gunahon Ki ghadi hai"*

— Firag Gorakhpuri

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator by certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.

— *American Declaration of Independence, 1776*

Over two centuries have passed since Thomas Jefferson wrote those memorable words, which are still ringing in history, but a large section of Indian society still regard a section of their own countrymen as inferior. This mental attitude is simply unacceptable in the modern age, and it is one of the main causes holding up the country's progress.

2. Leave granted. These appeals have been filed against the common judgment and order of the Madras High Court dated 25-1-2008 in Criminal

Appeals Nos. 536-37 of 2001 upholding the judgment of the learned 4th Additional District and Sessions Judge, Madurai:

3. The allegation against the appellants is that on 1-7-1999, there was an altercation between the appellants and the complainants PW 1, Panneerselvam and PW 2, Mahamani in a temple festival regarding the method of tying bullocks in the Jallikattu. The appellant, Arumugam Servai then insulted PW 1 by saying "you are a pallapayal and eating deadly cow beef". Then Accused 1, 7 and 9 attacked PW 1 with sticks causing him injuries on his left shoulder. When PW 2 Mahamani intervened he was attacked by the accused with sticks, and he sustained a fracture on his head, on which there was a lacerated wound. Apart from the two injured eyewitnesses, there are 3 other eyewitnesses to the occurrence. The doctor has testified to the injuries. The head fracture on Mahamani indicates the deadly intent of the accused.

4. Both the courts below have believed the prosecution case, and we see no reason to differ. We have carefully perused the testimony of the witnesses, and we see no reason to disbelieve them.

5. The accused belong to the "Servai" caste which is a Backward Caste, whereas the complainants belong to the "Pallan" caste which is a Scheduled Caste in Tamil Nadu. The word "Pallan" no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word "Chamar" denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a "Pallan", if used with the intent to insult a member of the Scheduled Caste is, in our opinion, an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ST Act"). To call a person as a "pallapayal" in Tamil Nadu is even more insulting, and hence is even more an offence.

6. Similarly, in Tamil Nadu there is a caste called "Parayan" but the word "Parayan" is also used in a derogatory sense. The word "paraparayan" is even more derogatory.

7. In our opinion use of the words "Pallan", "pallapayal", "Parayan" or "paraparayan" with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words "Nigger" or "Negro" are unacceptable for African-Americans today (even if they were acceptable 50 years ago). In the present case, it is obvious that the word "pallapayal" was used by Accused 1 to insult Panneerselvam. Hence, it was clearly an offence under the SC/ST Act.

8. In the modern age nobody's feelings should be hurt. In particular in a country like India with so much diversity (see in this connection the decision of this Court in *Kailas v. State of Maharashtra*<sup>1</sup>) we must take care not to insult anyone's feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong.

9. In *Swaran Singh v. State*<sup>2</sup> this Court observed (vide SCC paras 21-24) as under: (SCC pp. 442-43)

"21. Today the word 'Chamar' is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person 'Chamar' today is nowadays an abusive language and is highly offensive. In fact, the word 'Chamar' when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of

SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word 'Chamar' which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word 'Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the 'Chamar' caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity—so many religions, castes, ethnic and lingual groups, etc.—all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used."

10. We would also like to mention the highly objectionable two tumbler system prevalent in many parts of Tamil Nadu. This system is that in many tea shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons. In our opinion, this is highly objectionable, and is an offence under the SC/ST Act, and hence those practising it must be criminally proceeded against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits.

11. In *Lata Singh v. State of U.P.*,<sup>3</sup> this Court observed (vide SCC paras 14-18) as under: (SCC pp. 479-80)

"14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

15. We are of the opinion that no offence was committed by any of the accused [the couple who had an inter-caste marriage] and the whole criminal case in question is an abuse of the process of the court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out above), the police has instead proceeded against the petitioner's husband and his relatives.

16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our

history, and this Court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news is coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

12. We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case* there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

13. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly

apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

14. The appellants in the present case have behaved like uncivilised savages, and hence deserve no mercy. With these observations the appeals are dismissed.

15. A copy of this judgment shall be sent to all Chief Secretaries, Home Secretaries and Directors General of Police in all States and Union Territories of India with the direction that it should be circulated to all officers up to the level of District Magistrates and SSPs/SPs for strict compliance. A copy will also be sent to the Registrars General/Registrars of all the High Courts who will circulate it to all Hon'ble Judges of the Court.

† Arising out of SLP (Cri.) No. 3084 of 2009. From the Judgment and Order dated 25-1-2008 of the High Court of Madras in Cri. A. No. 536 of 2001

# Arising out of SLP (Cri.) No. 8428 of 2009

1 (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401

2 (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527 : (2008) 12 SCR 132

3 (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478