

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 10TH DAY OF JUNE 2024 / 20TH JYAISHTA, 1946

CRL.A NO. 733 OF 2024

CRIME NO.335/2024 OF Cantonment Police Station,
Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED 22.04.2024 IN CMP NO.171
OF 2024 OF SPECIAL COURT-TRIAL OF OFFENCE UNDER
SC/ST(POA)ACT1989, NEDUMANGAD

APPELLANT/S:

SATHYABHAMA
AGED 65 YEARS
D/O. KUNJIYAMMA, SINDHOORAM, RISHIMANGALAM -
WARD, VANCHIYOOR-POST/VILLAGE, THAMPURANMUKKU,
THIRUVANANTHAPURAM -DISTRICT,, PIN - 695035
BY ADVS.
BIJU ANTONY ALOOR
K.P.PRASANTH
HASEEB HASSAN.M
KRISHNASANKAR D.
ASOKAN K.V.
REBIN VINCENT GRALAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031
- 2 RAMAKRISHNAN.
AGED 49 YEARS
S/O RAMAN, KUNNISSERY VEEDU, CHALAKKUDY-
VILLAGE/THALUK THRISSUR-DISTRICT, PIN - 680307
BY ADV C.K.RADHAKRISHNAN (CHALIL)
SRI G SUDHEER PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 10.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.BABU, J

Crl.A No.733 of 2024

Dated this the 10th day of June, 2024

O R D E R

This is an appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'). The challenge in the appeal is to the order dated 22.04.2024 in Crl.M.P.No.171 of 2024 passed by the Special Court for the trial of Offences under SC/ST(POA) Act, 1989, Nedumangad.

2. The appellant is accused No.1 in Crime No.335/2024 of Cantonment Police Station. The appellant and the other accused are alleged to have committed offence punishable under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Prosecution case:-

3.1 Respondent No.2/the *de facto* complainant is a member of the Scheduled Caste community. The appellant is not a member of the Scheduled Caste or Scheduled Tribe. She is a classical dancer and trainer. On 08.10.2018, respondent No.2 made a complaint against the appellant before the Kerala State Commission for Scheduled Castes/Scheduled Tribes, alleging that she humiliated him on account of his belonging to a Scheduled Caste. On 19.03.2024, the appellant was interviewed by Shri.Sumesh, the Chief Editor of 'DNA You Tube' Channel, for 30.59 minutes at her residence at Vanchiyoor. The appellant knew that the *de facto* complainant belonged to a Scheduled Caste. In the interview, she made the following remarks intentionally to insult and humiliate the *de facto* complainant:-

"There is a dance teacher. He is hailing from Chalakkudi. I am not disclosing his

identity. In between this conversation, everybody will identify who he is. This person from Chalakkudi is a dance teacher. He has disciples in Kerala and abroad, including Abudabi and Dubai. On seeing him, his complexion is that of a crow.. Looking on him, is intolerable even to God and his mother. He is the member of a community of beggars.”

3.2 The *de facto* complainant was a winner of the Kerala Sangeetha Nataka Academy Fellowship, CCRT Senior Fellowship in Mohiniyattom. He is an `A' Grade Artiste of the Doordarshan Kendra. He has been working as a Guest Lecturer in Mohiniyattam in RLV College, Thrippunithura, and Samskrita University, Kalady. He is a holder Ph D. Degree in Performing Arts. He has participated in many dance programmes, including Mohiniyattam, inside and outside India.

3.3 The video of the interview was uploaded on the YouTube and later aired on Online Channels. The appellant intentionally humiliated and insulted

respondent No.2 by making the above-mentioned remarks.

4. Based on the complaint of respondent No.2, the Cantonment Police registered the above-referred crime, alleging an offence punishable under Section 3(1)(r) of the Act.

5. I have heard Sri. B.A. Aloor, the learned counsel for the appellant, Sri. C.K. Radha Krishnan, the learned counsel for respondent No.2 and Sri. G. Sudheer, the learned Public Prosecutor.

6. The learned counsel for the appellant submitted that the prosecution failed to produce the materials to prima facie establish the ingredients of Section 3(1)(r) of the Act. It is further submitted that there is nothing to show that the remarks allegedly made by the appellant referred to the *de facto* complainant.

7. The learned counsel further submitted that as the appellant has not used the caste name of the de facto

complainant in the alleged remarks, the offence under Section 3(1)(r) is not attracted.

8. The learned counsel for the victim submitted that the prosecution materials prima facie reveal the offence under the SC/ST Act. The learned counsel submitted that the remarks made by the appellant would lead to the inference that it was on account of the victim belonging to the Scheduled Caste. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes.

9. The learned Public Prosecutor submitted that the appellant's remarks were to humiliate the de facto complainant, and the offence was made within public view. The learned Public Prosecutor opposed the bail plea on the ground that the bar under Sections 18 and 18-A of the SC/ST Act is applicable to the facts of the case.

10. It is trite that the express exclusion under Section 18 of the Act is limited to genuine cases and inapplicable where no prima facie case is made out.

11. In ***Prathvi Raj Chauhan v. Union of India*** [(2020) 4 SCC 727], the Supreme Court held that the bar created under Sections 18 and 18-A shall not apply if the complaint does not make out a *prima facie* case for the applicability of the provisions of the Act.

12. In ***Subhash Kashinath Mahajan (Dr.) v. State of Maharashtra and Another*** 2018 (2) KHC 207, while dealing with the pre-amended Act, the Supreme Court held that there is no absolute bar against grant of anticipatory bail in cases under the Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

13. The essential question to be considered is whether the prosecution materials prima facie reveal the

ingredients of the offence under Section 3(1)(r) of the SC/ST Act.

14. Section 3(1)(r) reads thus:-

“3.Punishable for offences of atrocities:-(1)Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,-

xxxxx

xxxxx

(r)intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

The Section indicates the ingredients of intentional insult or intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. The basic ingredients of the offence are (1) intentionally insults or intimidates with intention to humiliate a member of Scheduled Caste or Scheduled Tribe (2) in any place within public view.

15. All insults or intimidations to a person will not be an offence under the Act unless such insult or

intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe [Vide ***Hitesh Verma v. State of Uttarakhand and Another*** [2020(10) SCC 710].

16. There is no dispute that the appellant made remarks as mentioned above in the interview with the Chief Editor of 'DNA YouTube' Channel. It is also admitted that the interview, extending to 30.59 minutes, was uploaded on the You Tube and later aired on the Online Channels. The prosecution places materials to show that the appellant is well aware that the *de facto* complainant belongs to the Scheduled Caste Community. In 2018, the *de facto* complainant had filed a complaint before the Kerala State Commission for Scheduled Castes/Scheduled Tribes against the appellant, alleging that she mentally ill-treated him and humiliated him within public view on account of his belonging to scheduled caste. The

appellant had appeared in that proceedings as early as in 2018.

17. It is true that the appellant has not used the name of the *de facto* complainant in her remarks. The remarks made by her are sufficient to infer that she intended *de facto* complainant and that she was aware that those who viewed the video could easily understand that she had intended the *de facto* complainant. In the alleged statements, the appellant made a conscious attempt to make it appear that she intended none other than the *de facto* complainant.

18. The video clearly exposes humiliating statements. The remarks or allegations made by the appellant are sufficient to cause extreme humiliation to the *de facto* complainant. The intention of the appellant to humiliate or insult the *de facto* complainant is *prima facie* revealed from the various comments she made. The appellant states that the *de*

facto complainant is a member of a community of beggars (*alavalathi koottam*). The Special Court observed that remarks regarding the skin colour of the de facto complainant is on account of his belonging to Scheduled Caste community. There is sufficient material to come to an inference that the appellant made the comments with the intent to humiliate the de facto complainant on account of his belonging to Scheduled Caste.

19. The learned counsel for the appellant raised a challenge that the alleged offence was not committed within public view as the interview was within the four walls of her residence. Admittedly, the video containing the interview was uploaded on the YouTube and aired in the Online Channels. The appellant knew that the interview would be uploaded on the Online Channels. When the interview was uploaded on the Online Channels, there was presence of the appellant

in the Online media. After the advent of the internet, the uploaded content can be viewed or heard by the members of the public, at any time, as if they were present either viewing or hearing it not only at the time it was telecasted but even when the programme is accessed. Each time a person accesses the content of an uploaded programme, he or she becomes present directly or constructively in the broadcast or telecast of the content. [Vide: **Sooraj V. Sukumar v. State of Kerala** [2022 (5) KHC 269].

20. The learned counsel for the appellant submitted that the present case is an example of misuse of the provisions of the SC/ST (POA) Act.

21. It is apposite to refer to the observation of the Apex Court in **Union of India v. State of Maharashtra and Ors.** (2019 (5) KHC 57), which reads thus:-

“49. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class

and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false / unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under S.482 of the Cr.PC.“

22. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter “the Act”) was enacted to address the gulf between the rights which the Constitution guaranteed to all people, particularly those who continued to remain victims of ostracism and discrimination. Rules under the Act were framed in 1995 to prevent the commission of atrocities against members of Scheduled Castes and Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for

matters connected therewith or incidental thereto. The Statement of Objects and Reasons appended to the Bill, when moved in Parliament, observed that despite various measures to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes, they remained vulnerable. They are denied a number of civil rights and are subjected to various offences, indignities, humiliation and harassment. They have been, in several brutal instances, deprived of their life and property. Serious atrocities were committed against them for various historical, social and economic reasons. The Act, for the first time, puts down the contours of "atrocities" so as to cover the multiple ways through which members of Scheduled Castes and Scheduled Tribes have been for centuries humiliated, brutally oppressed, degraded, denied their economic and social rights.

23. It is important to reiterate and emphasise that unless provisions of the Act are enforced in their true

letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalisation of Scheduled Caste and Scheduled Tribe communities is an enduring exclusion and is based almost solely on caste identities. It is to address problems of a segmented society, that express provisions of the Constitution which give effect to the idea of fraternity, or *bandhutva*(बन्धुत्व) referred to in the Preamble, and statutes like the Act, have been framed. These underline the social — rather collective resolve — of ensuring that all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams. The question which each of us has to address, in everyday life, is can the prevailing situation of exclusion based on caste identity be allowed to persist in a democracy which is committed to equality and the rule of law? If so, till when? And, most importantly, what

each one of us can do to foster this feeling of fraternity amongst all sections of the community without reducing the concept (of fraternity) to a ritualistic formality, a tacit acknowledgment, of the “otherness” of each one's identity. [Vide:-[***Prathvi Raj Chauhan v. Union of India***].

24. Therefore, I come to the following conclusions:-

The prosecution could prima facie establish that the appellant intentionally insulted the *de facto* complainant with intent to humiliate him in public view on account of his belonging to Scheduled Caste Community. Therefore, the bar under Section 18 of the SC/ST Act is applicable to the present facts, and hence the application seeking anticipatory bail is not maintainable. Resultantly, the prayer for anticipatory bail is rejected.

25. It is legally permissible for this Court to direct the accused to surrender before the Jurisdictional Court while rejecting a prayer for anticipatory bail [See: ***Nathu***

Singh v. State of Uttar Pradesh MANU/SC/0360/2021 : (2021 (3) KLT Online 1113 (SC) and ***Rahul v. State of Kerala*** (ILR 2021 (4) Kerala 64)].

26. I find no material warranting the custodial interrogation of the appellant. The appellant is a woman. There is no chance for her to abscond.

27. The appellant is directed to surrender before the jurisdictional Court within a period of one week from this date. On her surrender before the jurisdictional Court, if the appellant prefers an application seeking regular bail, the Court shall dispose of the application on the same day itself in the light of the principles declared by the Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation*** [(2022) 10 SCC 51].

In the Special Court, the appellant is at liberty to serve a copy of the application seeking bail in advance to the Public Prosecutor and the counsel who appeared for the *de facto* complainant. On receipt of the advance copy

of the bail application, the Public Prosecutor shall see that notice is served on the victim before the bail application is heard.

**Sd/-
K.BABU JUDGE**

kkj

APPENDIX OF CRL.A 733/2024

PETITIONER ANNEXURES

- Annexure 1** **A FREE COPY OF THE ORDER IS HEREBY PRODUCED AND MARKED AS ANNEXURE-A1. DATED ON 22.03.2024**
- Annexure 2** **A TRUE COPY OF THE FIR DATED 30/03/2024 OF CANTONMENT POLICE STATION**

RESPONDENT ANNEXURES

- Annexure R2-3** **The True Copy of the Interim Order dated 20.7.2018 passed by the Chairman, Kerala State Commission for Scheduled Cast and Scheduled Tribes, issued on 8.10.2018**
- Annexure R2-4** **The True Copy of the News Paper of Mathruboomi Daily dated 5.10.2020**
- Annexure R2-2** **The True Copy of the Written Complaint dated 15.2.2018 submitted before The Chairman, Kerala State Commission for Scheduled Cast and Scheduled Tribes**
- Annexure - R2-5** **TRUE COPY OF THE O.S.NO.1235/19, FILED BEFORE THE MUNSIFF COURT, THIRUVANANTHAPURAM, DTD. 20/7/2019, FILED BY THE APPELLANT**