

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

CrI.MC.No. 478 of 2015

CRIME NO. 785/2014 OF PARASSALA POLICE STATION, THIRUVANANTHAPURAM

PETITIONER(S)/ACCUSED NO. 4 :

**CHITHRANGATHAN, AGED 43 YEARS,
SON OF GOPI, BINU NIVAS, PERUNCHARVILA,
KUNNANVILA, CHENKAL VILLAGE.**

BY ADV. SRI.R.V.SREEJITH

RESPONDENT(S)/COMPLAINANT :

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS, ERNAKULAM, KOCHI - 31.**

BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE I:** TRUE COPY OF THAT FIR NO. 774 OF 2014 DATED 30/06/2014.
- ANNEXURE II:** CERTIFIED COPY OF THAT FIR IN CRIME NO. 785 OF 2014 OF PARASSALA POLICE STATION.
- ANNEXURE III:** TRUE COPY OF THE COMPLAINT SUBMITTED BY THE DAUGHTER OF THE PETITIONER DATED NIL.
- ANNEXURE IV:** CERTIFIED COPY OF THAT ADDITIONAL REPORT DATED 11/08/2014.
- ANNEXURE V:** CERTIFIED COPY OF ADDITIONAL REPORT DATED NIL.
- ANNEXURE VI:** TRUE COPY OF THAT REMAND APPLICATION DATED 23/11/2014.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
Crl.M.C. No.478 2015
.....

Dated this the 10th day of February, 2015

O R D E R

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Petitioner is the 4th accused in Crime No.785/2014 of Parassala Police Station registered for the offences punishable under Sections 323 and 324 read with Section 34 IPC. Presently, the matter is pending investigation for the offences under Sections 362, 365, 323 and 324 read with Section 34 IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Petitioner is the father of the victim girl involved in Crime No.774/2014 of Parassala Police Station for the offences under Section 376 IPC and Section 3(a) read with Section 4 of the POCSO Act. It is alleged that the girl was

raped by one Vipin alias Unni. Subsequently, under the instigation of Vipin, his friends one Sajindas alias Chakki and Jagathkumar alias Jagan also attempted to entice the girl for committing rape on her. They had made specific sexual overtures towards the girl. Enraged by it, the relatives of the girl reacted, and reacted strongly.

3. It is alleged that the said Sajindas alias Chakki and Jagathkumar alias Jagan were abducted on 27.06.2014 and they were beaten up. Initially, there were no allegations of abduction, whereas the case was registered as Crime No.785/2014 for the offences under Sections 323 and 324 IPC only. Subsequently, the offence of abduction also was incorporated in the matter. It seems that the investigating officer has not stopped there. He proceeded further and filed another report for making out of a case for an offence under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He has discovered the fact that the said persons allegedly abducted are members

of a Scheduled Caste and the persons, who had allegedly abducted them, were not members of any Scheduled Caste or Scheduled Tribe. A case has been made out, even though it does not find a place in the F.I.Statement, that the 1st accused in the case had called the caste name of the *defacto complainant* in that case, thereby committing an offence under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Even as per the report, the specific allegation is that it was the 1st accused who had called the caste name. There is no allegation against the present petitioner that he had ever called the caste name of any of those persons. The present apprehension of the petitioner is that the said offence under the Special Act has been incorporated by the investigating officer at the instigation of the said Vipin and his associates only with a view to denying anticipatory bail to the present petitioner, who is even otherwise aggrieved as his daughter was raped by the associate of the *defacto*

complainant. The petitioner has got a specific case that the *defacto complainant* in Crime No.785/2014 and his associates had approached him to settle the rape case. The victim girl had preferred a complaint against all the said three persons. They wanted to see that the complaint is withdrawn and the matter is settled.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor. Perused the report of the investigating officer.

6. On hearing either side and on a perusal of the case records, I am satisfied that there is merit in the submission made by the learned counsel for the petitioner. At any stretch of imagination, the offence under Section 3(1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be extended to the case of the present petitioner. It is made clear that there is no allegation of the petitioner having committed any offence under the said Act, therefore, he is free to move

under Section 438 Cr.P.C. in the matter. In case any application seeking bail is filed by the petitioner before the court below, the court below shall consider and dispose of the same on the same day itself, provided advance notice on such application has been given to the Assistant Public Prosecutor also.

CrI.M.C. is disposed of as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/10/02

// True Copy //

PA to Judge