

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Crl.MC.No. 2633 of 2015 ()

CRIME NO. 31/2015 OF MUKKOM POLICE STATION , KOZHIKODE

PETITIONER(S)/ACCUSED 1 AND 2:

1. FAISAL AGED 28 YEARS
S/O. ABOOBACKER, THEKKEDATH HOUSE, AMBALAMKANDY
PUTHPUR P.O., KOZHIKODE.
2. ABOOBACKER,
S/O. AHAMEDKUTTY, THEKKEDATH HOUSE, AMBALAMKANDY
PUTHPUR P.O., KOZHIKODE.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S)/STATE AND COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. PATHMAVATHY,
W/O. UNNIKRISHNAN, PILATHOTTM COLONY, AMBALAKANDY
PUTHOOR P.O., KOZHIKODE.

R2 BY ADV. SMT.PREMLATHA K.NAIR
R1 BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2633 of 2015

APPENDIX

PETITIONERS EXHIBITS:

ANNEXURE A: CERTIFIED COPY OF THE FIR IN CRIME NO.31 OF 2015 OF
MUKKOM POLICE STATION

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.2633 of 2015**  
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Dated this the 13th July, 2015

ORDER

The petitioners herein seeks orders quashing the F.I.R and further proceedings in Crime No.31 of 2015 of Mukkom Police Station registered under Sections 448, 323 and 354 read with 34 I.P.C and also under Section 3 (1) (x) (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC/ST Act). The petitioners seek orders on the contention that there is absolutely nothing in the complaint of the de facto complainant to attract the alleged offence under the SC/ST Act. On a perusal of the F.I. Statement, I find allegations of trespass and assault and also the allegation of use of criminal force against a woman. Of course, it is settled that a mere assault on a woman, or mere use of criminal force against a woman, will not by itself attract Section 354 I.P.C. Such assault or use of criminal force must have been made with the required intent, to come under Section 354 I.P.C. As regards the allegation under the SC/ST Act, I find that

merits of such allegation cannot be now looked into.

2. It is submitted by the learned Public Prosecutor that investigation stands stayed by this Court at the crime stage. Investigation cannot be installed or stayed. In the particular facts and circumstances, the case will have to be properly and legally investigated. It appears that the petitioners have an apprehension that when pre-arrest bail is barred under Section 18 of the SC/ST Act, the possibility of obtaining regular bail from the Court of the learned Magistrate is also bleak.

3. On hearing both sides, I find that the petitioners will have to surrender before the learned Magistrate having jurisdiction and seek regular bail. Though pre-arrest bail is barred under Section 18 of the SC/ST Act, the learned Magistrate having jurisdiction is competent to consider the application for regular bail and pass appropriate orders. This Court has cleared the legal position in so many cases. Bar under Section 18 of the SC/ST Act will not stand in the way of the learned Magistrate having jurisdiction deciding the request for regular bail.

4. In the present circumstances, I feel it appropriate to direct the learned Magistrate to examine the case records and consider the application for bail judiciously, and decide whether this is in fact a case coming under Section 354 I.P.C or a case attracting the provisions of the SC/ST Act. The possibility of the special law being misused for personal or political ends will have to be seriously considered by the learned Magistrate in the process of taking decision on the request for bail. For a prosecution under Section 3 (1) (x) (ii) of the SC/ST Act, certain ingredients are prescribed. One is that the alleged offence must have been committed within public view, and the other is that such insult or humiliation was made by the accused with the object of abusing or humiliating a member of Scheduled Caste or Scheduled Tribe on the ground that she/he belongs to such a caste. Mere abuse or humiliation without any such intent will not come under Section 3 (1) (x) of the SC/ST Act. All these aspects will have to be considered by the learned Magistrate while taking decision on the request for bail. I find that this Crl.M.C can be closed with a direction to the

learned Magistrate to decide the request for bail legally and judiciously as indicated above. The question of quashing the crime cannot be now thought of. However, when final report is submitted, the petitioners can file proper application, if they are really aggrieved by the final report . Preserving that right, this application will have to be closed.

In the result, this Crl.M.C is disposed of with a direction to the learned Magistrate having jurisdiction that in case the petitioners surrender before the learned Magistrate and make application for regular bail in connection with Crime No.31 of 2015 of Mukkom Police Station, the request shall be legally and judiciously considered as indicated above, and appropriate decision regarding bail shall be taken without being carried away by the provisions incorporated by the Police in the F.I.R.

**Sd/-
P.UBAID
JUDGE**

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/True copy/
P.S to Judge