

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

Crl.MC.No. 2151 of 2013 ()

C.P.NO.54/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, SASTHAMCOTTA

PETITIONER(S)/ACCUSED NOS. 1 TO 3:

1. **ANIL KUMAR,**
S/O.VASUDEVAN, AGED 39 YEARS,
PALAVILA VADAKKATHILHOUSE, KIDANGAYAM NADUVIL,
SURANAD SOUTH, PATHAL P.O.
2. **BROTHER PRASANNA KUMAR, AGED 42 YEARS,**
PALAVILA VADAKKATHIL HOUSE,
KIDANGAYAM NADUVIL, SURANAD SOUTH,
PATHAL P.O.
3. **SUBASH, S/O.NANU, AGED 24 YEARS,**
CHIRAYUDE KIZHAKKATHIL HOUSE,
PATHAL P.O.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENT(S)/COMPLAINANTS:

1. **ASHOK KUMAR,**
S/O.KARUNAKARAN, AGED 36 YEARS, HIGH SCHOOL TEACHER,
THARAYIL PUTHAN VEETIL HOUSE, KIDANGAYAM NADUVIL,
SURANAD SOUTH, PATHAL P.O., KOLLAM DIST, PIN - 690 522
2. **STATE OF KERALA REP. BY PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031

R1 BY ADV. SRI.VINCENT JOSEPH
R2 BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-I: F.I.R. IN CRIME NO.770/11 OF SURANADU POLICE.

ANNEXURE-II: CHARGE SHEET FILED BY SURANADU POLICE BEFORE JFCM COURT, SASTHAMKOTTA.

ANNEXURE-III: PRIVATE COMPLAINT FILED BY 1ST RESPONDENT BEFORE JFCM COURT, SASTHAMKOTTA.

RESPONDENT(S)' EXHIBITS

ANNEXURE - R1(a) : TRUE COPY OF THE COMPLAINT FILED BY DEFACTO COMPLAINANT BEFORE SOORNADU POLICE STATION DATED 31.7.2011 AS CRIME NO.770/2011

ANNEXURE- R1(b) : TRUE COPY OF THE PETITION FILED BY THE DEFACTO COMPLAINANT BEFORE SUPERINTENDENT OF POLICE, KOLLAM DATED 2.8.2011.

ANNEXURE - R1(c) : TRUE COPY OF THE PETITION FILED BY THE DEFACTO COMPLAINANT BEFORE THE CHAIRMAN, SC & ST COMMISSION CHAIRMAN DATED 16.8.2011.

//True Copy//

P.A. To Judge

Bb

C.R.

K. Ramakrishnan, J.

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Crl.M.C.No.2151 of 2013

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Dated this, the 12th day of February, 2015.

ORDER

Accused in C.P.No.54/2012 on the file of the Judicial First Class Magistrate Court, Sasthamkotta have filed this petition to quash the proceedings under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that earlier, on the basis of the statement given by the first respondent as de facto complainant that the petitioners have wrongfully restrained him and abused him with obscene language and beaten with dangerous weapon and also with hands, the Suranadu police had registered a case as Crime No.770/2011 against the present petitioners and one Krishnan Kutty and one Subash. After investigation, the investigating officer deleted Krishnan Kutty and Subash and filed Annexure II final report against the present petitioners 1 and 2 alone alleging offences under Sections 341, 324 read with Section 34 of Indian Penal Code. After five months of filing Annexure II final report, the first respondent filed Annexure III private complaint alleging

offence under Section 3(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act also and the learned magistrate, after taking the sworn statement of the complainant and his witnesses, took cognizance of the case as C.P.No.54/2012 for the offence under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. According to the petitioners, none of the ingredients of Section 3(1)(x) have been attracted. There is no allegation in the complaint that he belongs to a particular community which comes under the protection of that Act and the accused persons were not belonging to that community and using their domination of higher caste and with an intention to humiliate, they have abused him in the public view. There is no case that anybody heard the words uttered by him as well. So, under the circumstances, according to the petitioners, there is no offence made out and proceeding with the case will only amount to abuse of process of court and they have no other option except to approach this court seeking the following relief:

"To call for the record in C.P.54/12 pending before JFCM Court, Sasthamkotta and quash the same."

3. Heard the Counsel for the petitioners and the first respondent and the learned Public Prosecutor.

4. The Counsel for the petitioners submitted that in the earlier First Information Statement, namely., Annexure I, there is no case that on a particular date on which the incident happened, they have abused him by using caste name. That was a subsequent development made by him when the private complaint was filed. Further, the allegation in Annexure I First Information Statement was that, since he had questioned the act of the accused persons calling his caste name, the incident mentioned in the statement had happened. The words spoken were not mentioned as well. So, the subsequent allegation of calling caste name is an embellishment made by him when the complaint was filed after five months of filing of Annexure II Final report which was already taken on file as C.C.No.559/2011 and pending before the Judicial First Class Magistrate Court, Sasthamkotta. He had relied on the decisions reported in **Mohammed Kutty Vs. State of Kerala [2004 (1) KLJ 618]** and **E.K.Nayanar Vs. Dr.M.A.Kuttappan [1997 (1) K.L.J. 280]** and **Kuriakose Vs. State of Kerala [2000 (1) KLT 117]** in support of his

case.

5. On the other hand, the Counsel for the first respondent argued that necessary ingredients have been made out in the complaint and even his case was that even on earlier occasions, they have abused him by calling his caste name and he had mentioned his caste and the burden is on the accused to prove that they belong to that particular caste to get exemption from the criminal action. Further, the other things are the matter for evidence.

6. Heard the Public Prosecutor also.

7. It is an admitted fact that on the basis of Annexure I First Information Statement given by the first respondent, Crime No.770/2011 of Suranadu police station was registered under Sections 341, 294(b), 324, 323 read with Section 34 of Indian Penal Code against the present petitioners and others. There is no allegation in Annexure I that on the date on which the particular incident happened, any of the accused persons have abused him calling his caste name. Further, even in Annexure I statement, he did not mention that he belongs to Scheduled Caste or Scheduled Tribe or the accused persons belong to some other caste not belong to Scheduled Caste or

Scheduled Tribe. His allegation was that, on earlier occasions, the accused persons have abused him by calling his caste name and that was questioned by him and on account of that enmity, the present incident mentioned in the First Information Statement has occurred. After investigation, Annexure II final report was filed only for the offences under Sections 341, 324 read with Section 34 of Indian Penal Code against the present petitioners alone. This final report was filed before the court on 20.09.2011 and it was on that basis, case was taken on file as C.C.No.559/2011 which is evident from the endorsement made in Annexure II final report produced by the petitioners. The present private complaint was filed on 13.02.2012, that is., nearly after three months of filing of the final report. Further, in Annexure AIII complaint, the allegation was that,

“വീടിനു സമീപമുള്ള മുള്ളിൽ സ്റ്റോഴ്സ് എന്ന കടയുടെ സമീപത്ത് എത്തിയ സമയം ഒന്നും, രണ്ടും പ്രതികൾ വാദിയുടെ വണ്ടി തടഞ്ഞു നിർത്തുകയും എല്ലാവരും കേൾക്കെ ഉച്ചത്തിൽ ഒന്നാംപ്രതി ‘നിന്നെ ഭൂമിക്കു മുകളിൽ വച്ചേക്കില്ലെടാ പുലയ തായോളി’”

and thereafter beaten him etc. There is no allegation that the second and third accused had abused him by using such words. There is no allegation in the complaint that the accused persons do not belong to Scheduled Castes or

Scheduled Tribes. He had not produced any document along with the complaint to prove that he belongs to Scheduled Caste or Scheduled Tribe or showing the caste of the accused persons also.

8. In order to attract the offence under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the main ingredients that has been alleged and proved is, whoever, not being a member of the Scheduled Caste or a Scheduled Tribe intentionally insults or intimidates with intend to humiliate a member of a Scheduled Caste or a Scheduled Tribe at any place within public view and only if these allegations were made, the offence under Section 3(1)(x) will be attracted.

9. In the decision reported in **Mohammed Kutty Vs. State of Kerala [2004 (1) KLJ 618]**, this court has observed that in order to attract the offence under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, mere calling of the caste name alone is not sufficient, but, it must be made with an intention to humiliate the person against whom such words were used.

10. Further, in the decision reported in **E.K.Nayanar**

Vs. Dr.M.A.Kuttappan [1997 (1) K.L.J. 280], it has been observed that, in order to attract the Section the public must view the person insulted and the person being insulted should be present at the time of insult.

11. It is true that in the complaint, it was not mentioned that the persons who were all the persons mentioned in whose presence the words were uttered except stating that it was uttered which can be heard by others. But, when CWs 1 to 3 were examined before the court, they have stated that they have heard the accused persons calling the caste name. But, I am not at this stage, going to the question as to whether that alone is sufficient for this purpose. In the decision reported in **Kuriakose Vs. State of Kerala [2000 (1) KLT 117]**, this court has held that in order to attract the offence under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, it must be alleged and proved by the complainant that the accused do not belong to that community while complainant belong to that community. In order to attract the offence under this Section, it must be alleged that the complainant belonging to Scheduled Caste or Scheduled Tribe and the accused do not

belong to that category and having domain over the caste position, they have used these words. But, in this case, there is nothing mentioned in the complaint that the accused persons do not belong to that community. No document has been produced along with the complaint to prove that the complainant belonging to Scheduled Caste or Scheduled Tribe and the accused belonging to some other community other than the Scheduled Castes or Scheduled Tribes. None of the witnesses examined also stated that the accused do not belong to Scheduled Castes or Scheduled Tribes, but, they belong to some other community. So, under the circumstances, on the basis of the evidence available on record, court below was not justified in taking cognizance of the case for the offence under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act as the allegations in the complaint and the evidence adduced are not sufficient to attract the offence and proceeding with the case as against them is nothing, but, an abuse of process of court, especially when no such allegation has been made in Annexure I First Information Statement and that was the subsequent development made by the complainant when he filed Annexure

III complaint and the proceedings as against the petitioners initiated on the basis of Annexure III resulted in taking cognizance as C.P.No.54/2012 on the file of the Judicial First Class Magistrate Court, Sasthamkotta has to be quashed invoking the power under Section 482 of Code of Criminal Procedure as on the basis of the allegations and the evidence, proceeding with the case as against them will only amount to abuse of process of court. So, the petition is allowed and further proceedings in C.P.No.54/2012 on the file of the Judicial First Class Magistrate Court, Sasthamkotta is hereby quashed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge