

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.UBAID**

**TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937**

**Crl.MC.No. 3020 of 2014 (A)**  
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**CRIME NO. 202/2014 OF BADIADKA POLICE STATION, KASARGOD**

**PETITIONER(S)/ACCUSED NOS.1-4 :-**  
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1. K.G. LAKSHMEESHA,  
S/O.GOPALA, MANYA, BELA VILLAGE,  
BADIADKA PANCHAYATH, KASARAGODE.
2. SANTHOSH, S/O.VIJAYA, MANYA, BELA VILLAGE,  
BADIADKA PANCHAYATH, KASARAGODE TALUK.
3. RATHEESHA, S/O.KUNHIKANNAN, BELA VILLAGE, MANYA,  
BADIADKA PANCHAYATH, KASARAGODE.
4. RATHNAKARAN, S/O.RAGHAVAN, MANYA,  
BADIADKA PANCHAYATH, KASARAGODE TALUK.

**BY ADV. SRI.T.G.RAJENDRAN**

**RESPONDENT(S)/COMPLAINANT /STATE :-**  
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1. SUB INSPECTOR OF POLICE,  
BADIADKA POLICE STATION - 673 001.
2. STATE OF KERALA,  
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM- 682 031.

**\*ADDL.R3**

**SAVITHA M.V., AGED 28 YEARS,  
W/O.EASHWARA NAIK,  
"MANYA", MAEGHENADUKA HOUSE,  
BELA GRAMAM, BADIADKA GRAMA PANCHAYATH,  
KASARAGODE DISTRICT - 671 124.**

**IS IMPEADED AS PER ORDER DATED 3.7.2014 IN CRL.M.A.5466/14 IN  
CRL.M.C.NO.3020/14.**

**R3 BY ADVS. SRI.JAWAHAR JOSE  
SRI.JAISON M.EASOW  
R BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06-10-2015,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**rkj**

**Crl.MC.No. 3020 of 2014 (A)**  
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**APPENDIX**

**PETITIONER(S)' ANNEXURES :-**  
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**ANNEXURE I : COPY OF THE FIRST INFORMATION REPORT IN CR.NO.202/2014 OF  
BADIADKA POLICE STATION.**

**ANNEXURE II : COPY OF THE SCHEDULE.**

**RESPONDENT(S)' EXHIBITS :-       NIL**  
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**//TRUE COPY//**

**P.A. TO JUDGE**

**rkj**

**P.UBAID, J.**

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**Crl.M.C.No.3020 of 2014**  
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Dated this the 6<sup>th</sup> day of October, 2015

**ORDER**

The petitioners herein are the four accused in Crime No.202 of 2014 of the Badiadka Police Station of Kasargod District registered under Section 3(1)(x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities Act). The victim of offence in this case claims to be a member of Scheduled Tribe of the Kasargod District. Her complaint is that these petitioners abused and humiliated her by calling her caste name, on the ground that she belongs to Scheduled Tribe. The petitioners seek orders quashing the FIR in the further proceeding on the ground that the victim is not a member of Scheduled Castes or Scheduled Tribes.

2. It is submitted by the learned Public Prosecutor, and also the learned counsel for the victim that the Government of India has already issued a notification in terms of the Constitution Scheduled Tribes Order (Amendment) Act, 2013 including the

Marathi Tribes of the Kasargod and Hosdurg Taluks of Kasargod District in the schedule of Scheduled Tribes. Copy of the notification was also made available to the Court during the proceedings. In such a circumstance, the learned counsel for the petitioners made a request to direct the Court below to consider the application for bail appropriately without delay. In view of the Government Order on the point, the prosecution as such cannot be quashed on the ground that the victim is not a member of the Marathi castes, or that she does not belong to a Scheduled Tribe. However, the learned counsel submitted that proof is required, as to whether the victim in fact is a member of Scheduled Tribe. That is a matter to be considered by the trial court. This Court can quash the prosecution if the victim does not belong to any Scheduled Caste or Scheduled Tribe. But, here the situation is different. The victim is said to be a member of Marathi community. She is also said to be a resident of Kasargod Taluk, In such a situation, it cannot be said that the prosecution is baseless. Whether the victim is in fact a member of Marathi community, or whether the Marathi community is in fact included in the schedule, etc will be considered by the trial court. However, as requested by the learned counsel, the petitioners can be permitted to surrender before the learned Magistrate having jurisdiction, and

the learned Magistrate can be directed to consider the application for bail appropriately.

In the result, this Cri.M.C. is disposed of as follows;

a. The petitioners can surrender before the learned Magistrate having jurisdiction over the area, or before the Investigating Officer, as they opt.

b. The learned Magistrate having jurisdiction is hereby directed that in case application for bail is filed by the petitioners under Section 437 Cr.P.C. in Crime No.202 of 2014 of the Badiyadka Police Station, the same shall be judiciously and appropriately considered on the date of application itself.

c. Though pre-arrest bail is barred under Section 18 of the SC/ST Act, the learned Magistrate having jurisdiction over the area can pass appropriate orders, when application for regular bail is made under Section 437 Cr.P.C.

d. The stay of proceedings ordered by this Court will stand cancelled. Accordingly, the police will proceed for investigation appropriately.

Sd/-

**P.UBAID  
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE