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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 14TH DAY OF JANUARY 2025 / 24TH POUSHA, 1946

CRL.A NO. 2385 OF 2024

AGAINST THE ORDER DATED 25.11.2024 IN CRMP NO.430 OF
2024 OF SPECIAL COURT- OFFENCES UNDER SC/ST (POA) ACT,1989,
ERNAKULAM.

APPELLANT(S)/3RD ACCUSED:

SARATH.K.S
AGED 32 YEARS,
S/O.SASI, KUNDELIPPADAM HOUSE,
ANTOPURAM KARA, OKKAL.P.O.,
CHELAMATTAM VILLAGE, KUNNATHUNAD TALUK,
ERNAKULAM DISTRICT, PIN - 683550

BY ADVS.
MINI.V.A.
ROSS ANN BABU

RESPONDENT(S)/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 VINOD KUMAR.P.V
AGED 39 YEARS
S/O.VELAYUDHAN, PALAKKALPADAM HOUSE,
OKKAL KARA, OKKAL.P.O.,
CHELAMATTAM VILLAGE,
KUNNATHUNADU TALUK, PIN - 683550
SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08.01.2025, THE COURT ON 14.01.2025 DELIVERED THE
FOLLOWING:



C.S.SUDHA, J.

Crl.Appeal No.2385 of 2024

Dated this the 14th day of January 2025

JUDGMENT

This appeal under Section 14A of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the Act) has been filed by the petitioner/third accused in crime no.1707/2024 of Perumbavoor police station, aggrieved by the dismissal of his petition under Section 482 of BNSS, namely, C.M.P.No.430/2024, on the file of the Court of Special Judge for the trial of offences under SC/ST (POA) Act, 1989, Ernakulam, seeking pre-arrest bail.

2. In the light of the extensive arguments advanced, a reference to the facts of the case is necessary. The prosecution case as revealed by Annexure A2 FIS of the informant/injured is that on 12/11/2024 at 10:05 p.m., the accused persons, three in number, abused him and his brother-in-law Abiraj and voluntarily



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caused hurt to them. A1 to A3, his neighbours and his brother-in-law Abiraj, are acquaintances. A1 is the son of A2. The accused persons are aware that he belongs to the Pulaya Community. A few days back his relative Arun while riding the motorbike of Abiraj was pushed down and beaten by A1. In the incident, the vehicle was damaged. Though they demanded A1 to repair the vehicle, he refused to do so. This resulted in a quarrel between A1 and Abiraj. On the date of the incident at 09:50 a.m. there was an altercation between Abiraj and A1 and A3, which ended in a scuffle. Hearing this, the informant proceeded to the place where the said incident took place, by which time, Abiraj had returned home. Thereafter at about 10:05 p.m., he along with Abiraj were standing in his car porch and discussing the issue, at which time A2-Liju came into the courtyard of his house and asked as to who had beaten A1 and then hurled abuses at them. He and Abiraj told A2 that they could discuss the issue the next morning and so asked A2 to leave their place, at which time A2 fisted him on the left side of his face resulting in a bleeding injury



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on his lip. A2 fisted Abiraj on his neck. They then tried to send A2 away, at which time A1 and A3 arrived and entered his courtyard. On seeing Abiraj, A1 questioning the presence of the former abused him and beat Abiraj on his head and neck. A1 to A3 pushed Abiraj onto the road in front of the house and A1 with a scissor stabbed Abiraj on the left shoulder resulting in a bleeding injury. A1 again stabbed Abiraj above the left side of his lip causing an injury. Hearing their cries when people rushed to the scene, A1 to A3 took to their heels. A1 voluntarily caused injuries to Abiraj as the latter had questioned the former's act of damaging his vehicle. The informant further states that A1 and A2 insulted and attacked them as they were confident that nobody would question them for attacking the former and his relative as they belonged to the scheduled caste community. As per the FIR, A1 to A3 are alleged to have committed the offences punishable under Section 329 (3), 115(2), 118(1) read with 3(5) of the BNS and 3(2) (va) of the Act.

3. The trial court dismissed the petition for pre-



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arrest bail finding that the bar under Section 18 and 18A of the Act is attracted.

4. Heard both sides. Notice was served to the informant/injured through the SHO concerned.

5. It was quite strenuously and persuasively argued by the learned counsel for the appellant/A3 that no offence(s) under the Act is/are made out as the abusive word alleged to have been used by A1 is "പുലയത്തിന്റെ മോനെ", which means 'son of a prostitute', which is not a casteist slur and hence no offence under Section 3(1)(r) or (s) of the Act is made out. *Per contra*, it was submitted by the learned public prosecutor that the informant belongs to the Pulaya Community and hence the word used by A1 is certainly a casteist slur.

6. It is pertinent to note that in the FIR the prosecution has no case of commission of an offence punishable under Section 3(1)(r) or (s) of the Act. I went through the CD which was handed over to me during the course of hearing by the learned public prosecutor. According to the investigating officer,



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the investigation has revealed the commission of the offence under Section 3(1)(r) also. The offence under Section 3(1)(r) of the Act would indicate the ingredients of intentional insult and intimidation with an intent to humiliate a member of a scheduled caste or a scheduled tribe. All insults or intimidation to a person will not be an offence under the Act unless such insult or intimidation is on account of the victim belonging to the scheduled caste or scheduled tribe. The object of the Act is to improve the socio-economic conditions of the scheduled castes and the scheduled tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. An offence under the Act is not established merely on the fact that the informant is a member of the scheduled caste unless there is an intention to humiliate a member of scheduled caste or scheduled tribe for the reason that the victim belongs to such caste. (See **Hitesh Verma v. The State Of Uttarakhand, 2020 KHC 6631: (2020) 10 SCC**



710).

7. Going by the dictionary meaning, the word "പുലയടി മോനെ" means son of a prostitute. That being so, the learned counsel for the appellant/A3 is right in saying that the same is not a casteist slur. There is no case that any other abusive word(s) had been used by the accused.

8. Moreover, a reading of the FIS shows that the incident happened due to a dispute relating to the vehicle of Abiraj and not because the informant and Abiraj belong to the scheduled caste community. In **Hitesh Verma (Supra)**, the appellant therein *inter alia* was alleged to have committed the offences punishable under the Act. The respondent in the said case belonging to the scheduled caste community complained that the appellant therein and others were not allowing her to work in her fields. According to her, the appellant and others used to abuse her and her family members and used caste coloured abuses. The appellant therein brought to the notice of the court that there were disputes pending relating to the property before



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the civil court and that the crime had been registered on patently false grounds to harass the appellant. The Apex Court after referring to the Statement of Objects and Reasons of enactment of the Act held that the object of the Act is to prevent the commission of offences of atrocities against members of the scheduled castes and the scheduled tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences ; for relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. The Act was enacted to improve the social economic conditions of the vulnerable sections of society as they have been subjected to various offences such as indignities, humiliations and harassment. They were deprived of life and property as well. The object of the Act is thus to punish the violators who inflict indignities, humiliations and harassment and commit offences as defined under Section 3 of the Act. The Act is thus intended to punish the acts of the upper caste against the vulnerable section of society for the reason that they belong to a particular community.



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After referring to the background of the case, it was held that there were civil disputes between the parties relating to the property and it was due to the said dispute, the appellant and others were not permitting the respondent therein to cultivate the land. Since the matter was regarding possession of property pending before the civil court, any dispute arising on account of possession of said property would not disclose an offence under the Act unless the victim was abused, intimidated or harassed only for the reason that she belonged to the scheduled caste or scheduled tribe community.

9. Further, referring to the dictum in **Khuman Singh v. State of Madhya Pradesh, 2019 KHC 6858: AIR 2019 SC 4030**, it was held that an offence under the Act is not established merely because the informant is a member of the scheduled caste unless there is an intention to humiliate a member of the scheduled caste or scheduled tribe for the reason that the victim belongs to such caste. In **Khuman Singh (Supra)**, the parties were litigating over possession of land. The allegation of



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hurling of abuses was against a person who claimed title over the disputed property. If such a person happened to be a scheduled caste, the offence under Section 3(1)(r) of the Act would not be made out.

10. In the case on hand also, the incident in question occurred due to a dispute relating to the vehicle of Abiraj and therefore the allegation of hurling of abuse by A1 was in the background of the said dispute. Therefore, *prima facie* it is doubtful whether the offence under Section 3(1)(r) of the Act will be made out.

11. Further, to attract the offence under Section 3(1)(r), the abuse should have taken place in public view. Going by the allegations in FIS, it appears that the nearby residents gathered on hearing the cries of the informant and Abiraj. When A1 is alleged to have abused the informant and Abiraj, nobody else seems to have been present there. Therefore, if at all the aforesaid word is taken as a casteist slur, it does not seem to have been done in public view. Hence with the available materials on record, it



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prima facie appears that the offence under Section 3(1)(r) or (s) is not made out. However, it is made clear that the above observations have been made only for the purpose of disposing of this bail application. The investigating officer is at liberty to produce all material(s) to prove the commission of the offence under Section 3(1)(r) or (s) of the Act. The trial court will decide based on the evidence adduced at the trial whether the offence under Section 3(1)(r) or (s) of the Act is made out untrammelled by any observation(s) made in this order.

12. The allegations in the FIS *prima facie* make out the commission of offences of criminal trespass, voluntarily causing hurt/grievous hurt etc. In **Khuman Singh** (*Supra*), it has been held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belongs to scheduled caste would not be enough to inflict enhanced punishment. The offence must have been committed against a person **on the ground** that such person is a member of the scheduled caste or scheduled tribe community. In the said case there was no dispute regarding the



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fact that the aggrieved therein belonged to the scheduled caste, but there was no evidence to show that the offence was committed only on the ground that the victim was a member of the scheduled caste and therefore the conviction of the appellant/accused under Section 3(2) of the Act was held to be not sustainable. In the case on hand, the attack appears to have been made in the background of the dispute herein above referred to and not only on the ground that the informant and Abiraj are members of scheduled caste. Further, the overt act alleged against the appellant/A3 is only voluntarily causing simple hurt to the informant. It was A1 who attacked and caused hurt and grievous hurt to Abiraj. It is true that Section 3(5) BNS dealing with common intention has also been incorporated. During the course of arguments, it is brought to my notice that A1 and A2 were arrested and remanded. Thereafter they were released on bail. Again the question whether the offences under Section 3(2) (va) of the Act have been committed only on the ground that the informant and his relative are members of scheduled caste and



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scheduled tribe is a matter that will have to be brought out in evidence. In the circumstances of the case, custodial interrogation of the appellant/A3 does not appear necessary. Hence, I find that he is entitled to be granted pre-arrest bail. Therefore, the impugned order is set aside, and it is ordered thus: -

- i) The appellant/third accused in the event of his arrest shall be released on bail on execution of a bond to the satisfaction of the officer concerned.
- ii) The appellant/ third accused shall co-operate with the investigation and appear before the investigating officer as and when required/ directed.
- iii) He shall not leave the country without the prior permission of this Court.
- iv) He shall surrender his passport to the jurisdictional court. If the appellant does not have a passport, he shall file an affidavit to the said effect before the jurisdictional court within seven



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days of his release on bail.

v) The appellant/third accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.

The appeal is allowed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

Jms



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APPENDIX OF CRL.A 2385/2024

PETITIONER ANNEXURES

- Annexure A1** **THE TRUE COPY OF THE FIR NO.1707/2024
DATED 13-11-2024 OF PERUMBAVOOR POLICE
STATION**
- Annexure A2** **THE TRUE COPY OF THE FIRST INFORMATION
STATEMENT IN FIR NO.1707/2024 DATED 13-
11-2024 AND ITS TYPEWRITTEN COPY**
- Annexure A3** **THE FREE COPY OF THE ORDER IN
CRL.M.P.NO.430/2024 DATED 25-11-2024 OF
THE SPECIAL JUDGE FOR THE TRIAL OF
OFFENCES UNDER SC/ST(POA) ACT, 1989,
ERNAKULAM**