

IN THE COURT OF SESSION/SPECIAL JUDGE FOR
SCHEDULED CASTES AND SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) ACT, 1989, ERNAKULAM DIVISION

Present:-

Smt. Honey M. Varghese, Sessions Judge/Special Judge

Friday, the 16th day of June, 2023/26th Jyaishta, 1945

Crl. M.C. No.1684 of 2023

(Crime No.899/2023 of Elamakkara Police Station)

Petitioner/Accused:-

Shajan Skaria, aged 51, S/o. Skaria, Kariyilakulam House, Edakkadathy, Erumeli South, Kottayam, Pin - 686510

By Advs.Thomas J.Anakkallunkal , Jayaraman.S, Melba Mary Santhosh, Litty Peter, Anupa Anna Jose Kandoth

Respondents /State and Defacto Complainant:-

1. SHO, Elamakkara Police Station, Ernakulam City, represented by Public Prosecutor, Sessions Court, Ernakulam.
2. Sreenijan, S/o. M.A. Vasu, Keerthanam House, Keerthi Nagar, Elamakkara P.O., Ernakulam -682026.

R1 By Public Prosecutor Sri. Manoj. G. Krishnan.

R2 by Advs.P.K.Varghese, K.S.Arun Kumar, M.T Sameer, Dhanesh V.Madhavan, Jerry Mathew, Reghu Sreedharan, Rameez M.Azeez and Sudarsanan U

This petition filed u/s.438 of Cr.P.C., praying this Court to grant anticipatory bail to the petitioner.

This petition coming on for hearing on 16.06.2023 and the court on the same day, passed the following:-



ORDER

This petition is filed U/S. 438 of Cr.P.C for anticipatory bail by the accused in Crime no. 899/2023 of Elamakkara police station registered for the offences under section 3(1)(r) and 3(1)(u) of Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment Act 2015) and section 120(O) of Kerala Police Act.

2. The prosecution allegation in brief is that the defacto complainant belongs to scheduled caste and he is the member of Legislative Assembly representing Kunnathunad Constituency. Petitioner herein belongs to Christian community. Kunnathunad Assembly Constituency is reserved for scheduled caste. This fact is known to public. The petitioner herein has also clear knowledge that the defacto complainant is the member elected from Kunnathunad Constituency reserved for scheduled caste. Petitioner herein is the editor, news reader and publisher of YouTube channel by name Marunadan Malayali. Accused 2 and 3 are the Managing Director-cum-CEO and Chief Editor respectively of the said news channel. On 24/05/2023 accused persons broad -casted a news item against the defacto complainant. This news item was transmitted and transferred through several social media platforms. This item was shared widely. In the news item several defamatory and derogatory comments were made against the defacto complainant. All the comments are baseless and without any iota of truth. The aim of the petitioner is to intentionally insult the defacto



complainant who belongs to scheduled caste in the presence of public. The contents of the news item lowered the status of the defacto complainant in the society and thus committed the offence alleged against him.

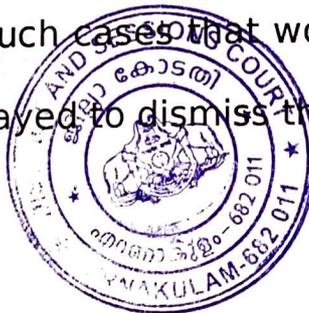
3. The learned counsel for the petitioner submitted that he is innocent of the allegations leveled against him. He never intended to insult the defacto complainant with the knowledge that he belongs to scheduled caste. He published a news item. His action is justified by truth. He is having 30 years of experience in the media field. He received award for best journalist introduced by the State Government in the year 2000. According to him, he telecast the video against the defacto complainant on 24/05/2023, but the petitioner has no intention to insult the defacto complainant among the public. He did not mention anything about the cast or community of the defacto complainant in the news item. Transcript of the news item is produced as document no.3. The learned counsel had taken all efforts to convince this court that the offence under the Prevention of Atrocities Act will not attract in this case. In order to substantiate this contention the learned counsel relied on the decision of **Hon'ble Supreme Court in Hitesh Verma vs. State of Uttarakhand and Another reported in AIR 2020 SC 5584.** According to him, all insults or intimidations will not be an offence under the Act unless such insult or intimidation is with the knowledge that the victim belongs to scheduled cast or



scheduled tribe. It is also argued that the bar under section 18 of the Act is not an absolute bar and the supreme court in **Prathvi Raj Chauhan V. Union of India and Others(2020(2)KHC 423)** specifically held that despite the bar under section 18 and 18A in exceptional cases where a prima - facie case under the Act is not made out the bar of section 18 and 18A will not be attracted.

According to him, the allegations involved in this case are insufficient to attract the offences alleged under the Act prima-facie. He also submitted that the allegations can at the most be considered as defamatory but not as an insult under section 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. He further submitted that the petitioner is a media person and there is no chance for absconding from the clutches of law. He is ready to co-operate with the investigation and abide by any conditions that may be imposed by this court. On the basis of above, he prayed to allow this petition.

4. The learned Public Prosecutor objected the petition stiffly. According to him, the news item is perse an derogatory and also insult to the defacto complainant. According to him the allegations are prima-facie sufficient to attract the offences alleged against the petitioner. It is also submitted that the allegations are contemptuous also as the news contains derogative comments against the judiciary also. It is also submitted that if bail is granted in such cases that would definitely give wrong message to the society and prayed to dismiss the petition.



5. The defacto complainant appeared before this court in response to the notice issued to him. The defacto complainant filed objection in detail. It is contended that since the offence under section 3(1)(r) and 3(1)(u) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1986 as alleged, petition under section 438 is not maintainable. The bar under section 18 of the Act is squarely applicable in this case. According to him, the defacto complainant belongs to Scheduled Caste community. He represents the Kunnathunad Assembly Constituency which is reserved for the candidates belong to the scheduled caste community. The accused has clear knowledge that the defacto complainant is a person belongs to scheduled caste community and he represents Kunnathunad Assembly Constituency reserved for scheduled caste. The petitioner committed the offence with this clear knowledge, It is also submitted that document no.3 produced before the court at the instance of the petitioner claimed to be the news item telecast on 24/05/2023 is an edited version. The petitioner suppressed the original content with an intention to cause disappearance of the evidence. The petitioner humiliated the defacto complainant intentionally among the general public by making false allegations of intimidations through the said video uploaded in his YouTube channel on 24/05/2023. The accused himself stated in the video that the defacto complainant is the MLA who represents Kunnathunad Constituency. According to him, the allegations in the video are untrue statements. The video has



received much viewer-ship. Many people contacted the defacto complainant and enquired about the allegations in the video. The contents of the video was transmitted through several social media platforms.

6. The learned counsel for the defacto complainant relied on the decision of Hon'ble High Court in **Sumesh GS and Another vs. State of Kerala & Another (2023 volume 2 KLT 513)** and argued that the publication of news and videos containing scenes intended to insult or abuse the defacto complainant belongs to scheduled caste is sufficient to attract the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He also relied on the decision of **Hon'ble High Court of Kerala in XXX vs. State of Kerala reported in 2022 (6) KHC 672** and argued that if the materials produced by the prosecution are sufficient to arrive at a conclusion that the offences are made out prima-facie the bar under section 18 is applicable. On the basis of the above contentions the learned counsel prayed to dismiss the petition.

7. Heard both sides and perused the records.

8. The gist of the prosecution case is that petitioner in his capacity as the editor, news reader and publisher of YouTube channel Marunadan Malayali telecast the news item through his channel on 24/05/2023 containing false, baseless and defamatory allegations against the accused. The broadcasting of said news item by the accused



is with an intention to insult the defacto complainant who belongs to scheduled caste. It is also alleged that news item promotes feeling of enmity hatred or ill-will against member of scheduled caste or the scheduled tribe.

9. The learned counsel for the petitioner argued that even if the allegations are considered as derogative in nature those are insufficient to attract the offence under scheduled caste and scheduled tribe (Prevention of Atrocities) Act 1989. According to him, the petitioner never intended to insult the defacto complainant with the knowledge that he belongs to scheduled caste. It is also argued that he published a news item regarding the mal-administration of Sports Hostel at the instance of defacto complainant in his capacity as the Chairman, District Sports Council. The office bearers of State Sports Council also condemned the acts of the defacto complainant. He published the news item to protect the interest of the society. His action is justified by truth.

10. On the other hand, the learned Public Prosecutor as well as the defacto complainant refuted the contentions and submitted that the news item is published with an intention to insult the defacto complainant with specific and clear knowledge that he belongs to scheduled caste. It is also submitted that the defacto complainant is a member of Legislative Assembly elected from Kunnathunad Assembly Constituency reserved for scheduled caste and the petitioner has every



chance to know the fact that defacto complainant belongs to scheduled caste.

11. In the light of above factual scenario let me ascertain the maintainability of this petition filed under section 438 of Cr.P.C. Since the offences alleged includes the offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, this court is bound to consider whether the bar under section 18 and 18A is applicable herein.

Sec. 18 . Section 438 of the Code not to apply to persons committing an offence under the Act -Nothing in sec. 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

Sec. 18-A.No enquiry or approval required-

1) for the purposes of this Act:-

- (a) Preliminary enquiry shall not be required for registration of a First Information Report against any person; or*
- (b) the investigating officer shall not require approval for the arrest , if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.*

(2) The provisions of sec. 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any court.



12. The learned counsel for the petitioner relying on the decision of **Hon'ble Supreme Court reported in Prithvi Raj Chauhan vs. Union of India and Others** mentioned supra and argued that in exceptional cases if the allegations are insufficient to attract the offence alleged, the bar under section 18 and 18A of the Act will not be attracted. According to him, the prosecution records are silent regarding the fact that the petitioner insulted the defacto complainant with the knowledge that he belongs to scheduled caste. In order to attract the offence under section 3(1)(r) and 3(1)(u) of the Act the accused should have knowledge that victim belongs to scheduled caste. It is also contended that the allegations can be at the most be considered as defamatory but will not be attracted the ingredients for the offence under section 3(1)(r) and 3(1)(u) of the Act. He also relied on the decision of the **Hon'ble Supreme Court in Hitesh Verma vs. State of Uttarakhand** mentioned supra and argued that all insults or intimidations to a person will not be an offence under the Act.

13. Section 18 and 18A of the Act clearly put a bar in considering the petition under section 438 of the Cr.P.C where the offences alleged under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Let me analyse the allegations involved in this case. The news item allegedly telecast through the YouTube channel is produced by the prosecution in a pen-drive and that has been verified. The allegations made in the news item are against the defacto complainant. This fact remains undisputed.



The transcript of the news item is produced before the court as Annexure- 3 by the petitioner himself. The learned counsel for the defacto complainant submitted that it is an edited version. While considering the matter, the learned counsel for the petitioner conceded before the court that in the earlier version of the news item telecast, the defacto complainant was being addressed as Mafiya head. That item was removed and hence that is not included in document no.3 transcript.

14. The learned counsel for the defacto complainant argued that, though the said item had withdrawn, that generated insult and bad impression among the public against the defacto complainant. The present item also contains several remarks against the defacto complainant. On verification it is seen that the defacto complainant is being addressed as "Mafia don". It is also stated that the defacto complainant is notorious and he committed murder of a person. It is also alleged that he is infamous for corruption. The people in the Kunnathunad assembly constituency committed a grave mistake in electing the defacto complainant as their MLA. It is also alleged that the defacto complainant is facing corruption charge in connection with the Sports Hostel issue. It is claimed that the defacto complainant is a blatant liar. He closed one industry which was started in his constituency. It is also alleged that the father-in-law of defacto complainant was the Chief Justice of Hon'ble Supreme Court. He grabbed



crores illegally making use of that situation. Corrupt and tainted money is with him. He with the aid of judiciary made damage to one Mr. Sabu. He is having influence in cinema field also. He is funding in the film industry. He is possessing immense black money. He wants to launder the black money. He is being acted as a mafia don. It is also stated that there are some tainted and corrupted judicial officers. Defacto complainant has clear knowledge about such officers and he is supporting them for the corruption. Ruling as well as opposition parties are supporting him. Even the judiciary is closing eyes against him. These are the summary of the news item aired in the YouTube channel of petitioner.

15. On an analysis of the above news item it can be held that the allegations are insulting and defamatory. The learned counsel relying the decision of **Hitesh Verma vs. State of Uttarakhand** stated that all insults or intimidations to a person will not be an offence under the Act. With due respect let me say that factual situations involved in the decision referred to by the learned counsel is different than the factual situation involved in this case. In the decision relied on by the learned counsel the issue was in connection with civil dispute. Going through the dictum laid down by the Supreme Court it is held specifically that the offence under the Act is not applicable merely on the fact that the victim is a member of scheduled caste unless there is an intention to humiliate



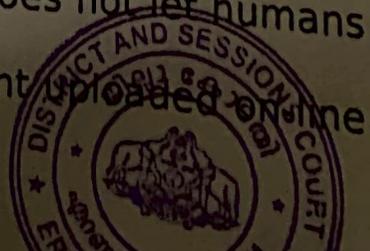
a member of scheduled caste or scheduled tribe for the reason that victim belongs to such caste. Here as rightly pointed out by the learned counsel for the defacto complainant the petitioner has clear and specific knowledge that the defacto complainant is a member of Legislative Assembly representing Kunnathunadu Assembly Constituency reserved for scheduled caste. Section 3(1)(r) says that whoever not being a member of scheduled caste or scheduled tribe intentionally insults or intimidates with intent to humiliate a member of scheduled caste or scheduled tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than 6 months which may extend to 5 years with fine. The news prima-facie shows that the petitioner made comments against the defacto complainant with an intention to insult him. As held by the Hon'ble High Court in the decision **XXX vs. State of Kerala** that when considering the question of prima facie case for the purpose of considering plea of bail during investigation and the period before trial, the knowledge of the accused that the defacto complainant is a member of scheduled caste shall be understood and inferred from the prosecution records. This dictum is squarely applicable in this case. The word knowing or knowledge has to be found on the basis of the evidence tendered. In this matter the defacto complainant is a member of Legislative Assembly elected from a Constituency reserved for scheduled caste and the accused has clear knowledge about him. The news item itself clearly mentions that the



defacto complainant is a member of Legislative Assembly. The knowledge of the accused that the *defacto* complainant belongs to scheduled caste could be discernible from the prosecution records and other materials. Therefore, the required knowledge of the accused that the *defacto* complainant is a member of scheduled caste is well discernible from the materials available before this court.

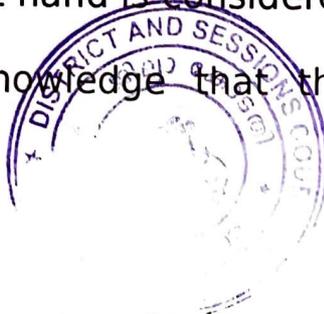
16. Similar is the dictum in ***Sumesh GS and Another vs. State of Kerala & Another*** also. It is held that section 3 and 18 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 specific allegation is that accused had knowledge that the *defacto* complainant belongs to scheduled caste and the publication of news items and videos containing scenes intended to insult or abuse the *defacto* complainant is sufficient to attract the offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

17. In the said decision the situation similar to the situation in this case was considered. The Hon'ble High Court had taken note about the present scenario of social media intruding the privacy of individuals. It is held that no person whether it be the media or government agencies, have the right to peep into the private lives of the citizens. Humans forget, but the internet does not forget and does not let humans forget. Therefore, any defamatory or abusive statement



will remain as a permanent scar on the affected person. Therefore, the on-line news channels have a duty to ascertain the veracity of the news before making disparaging remarks against individuals and publishing videos. Unlike a speech made within an enclosed space in front of an audience, the content, when uploaded, has its impact felt the world over. The influence of the internet is in its universal accessibility. The uploaded content can be viewed or heard by any member of the public at any time, as if they are present either viewing or hearing it, not only at the time it was telecast but even when the program is accessed. Each time a person accesses the content of the uploaded program, he or she becomes present, directly or constructively in the broadcast or telecast of the content.

18. In this case also as rightly conceded by the learned counsel for the petitioner they themselves have withdrawn the earlier news item addressing the petitioner as Mafia don. The said item was viewed by several persons before its withdrawal. The learned counsel for the defacto complainant submitted that, that was transmitted through social medias for two or three days. The act on the side of petitioner withdrawing the said item is an appreciable one but at the very same time fortifies the fact that they themselves considered it as a derogative comment. As far as the case at hand is considered the specific allegation is that the petitioner had knowledge that the defacto complainant



belongs to scheduled caste. It shows that the publication of news and videos containing the derogative comment through the YouTube channel of the petitioner is sufficient to attract the offence alleged under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. Hence, the contention of the learned counsel for the petitioner that materials are insufficient to constitute the offence alleged against him prima-facie as he never intended to insult the defacto complainant with the knowledge that he belongs to scheduled caste can only be rejected. On the basis of above discussions I hold that the allegations are prima-facie sufficient to attract the offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and hence the bar under section 18 is squarely applicable in this case.

In the result, the petition is dismissed.

Dictated to the confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 16th day of June, 2023.

Sd/-

Honey M.Varghese
Sessions Judge



True Copy


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