

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945

CRL.A NO. 906 OF 2023

CRMC 1684/2023 OF SESSIONS/SPECIAL COURT FOR SCHEDULED
CASTES AND SCHEDULED TRIBES (PREVENTION OF ATTROCITIES)
ACT, 1989, ERNAKULAM DIVISION

APPELLANT/S:

SHAJAN SKARIA
AGED 51 YEARS
S/O SKARIA, KARIYILAKULAM HOUSE, EDAKADATHY,
ERUMELY SOUTH, KOTTAYAM- 686510, PIN - 686510
BY ADVS.
THOMAS J.ANAKKALLUNKAL
JAYARAMAN S.
LITTY PETER
ANUPA ANNA JOSE KANDOTH
MELBA MARY SANTHOSH
SRUTHY K K
P.VIJAYA BHANU (SR.) (K/421/1984)
P.M.RAFIQ(K/45/2001)
M.REVIKRISHNAN(K/1268/2004)
AJEESH K.SASI(K/166/2006)
SRUTHY N. BHAT(K/000579/2017)
RAHUL SUNIL(K/000608/2017)
NIKITA J. MENDEZ(K/2364/2022)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA- 682031, PIN - 682031
- 2 SREENIJAN
AGED 45 YEARS
S/O M.A VASU, KEERTHANAM HOUSE, KEERTHI NAGAR,
ELAMAKKARA P.O, ERNAKULAM- 682026, PIN - 682026
BY ADVS.
P.K.VARGHESE
K.S.ARUN KUMAR(K/1588/2003)
M.T.SAMEER(K/3346/1999)
DHANESH V.MADHAVAN(K/298/2006)
JERRY MATHEW(K/658/2015)
REGHU SREEDHARAN(K/653/2020)

OTHER PRESENT:

ADV.P.VIJAYABHANU (SR) FOR THE APPELLANT;
SR.GP.S.SAJU; SR.GP. AND ADDL.PP. SALIL
NARAYANAN;DGP T.A.SHAJI

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26.06.2023, THE COURT ON 30.06.2023 DELIVERED THE FOLLOWING:**

JUDGMENT

Dated this the 30th day of June, 2023

The appellant is the first accused in Crime No.899 of 2023 of Elamakkara Police Station, registered for offences punishable under Sections 3(1)(r) and 3(1)(u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) and Section 120(o) of the Kerala Police Act.

2. The crime is registered on the allegation that the appellant had intentionally humiliated the second respondent by making false allegations and accusations through a video uploaded in the appellant's online news channel "Marunadan Malayali" on 24.05.2023. The appellant's application for pre-arrest bail was dismissed by the Special Court as per Annxure A4 order, finding that publication of the video containing derisive and derogatory comments, is

sufficient to attract the alleged offences and hence, the bar under Section 18 of the SC/ST (PoA) Act would apply.

3. Senior Advocate P.Vijaya Bhanu appearing for the appellant put forth the following arguments;

The second respondent is an elected MLA and hence, his actions are open to criticism. In the video, the appellant had only criticized certain actions of the second respondent. Even if the second respondent feels that the allegations raised against him are false and defamatory, that is not sufficient to attract offences under the SC/ST (PoA) Act. Mere insult or humiliation is not sufficient to attract the offence under Section 3(1)(r). For that, the victim should have been insulted and humiliated by reason of that person being a member of the Scheduled Caste or Scheduled Tribe. In the video clip, there is absolutely no mention about the second

respondent's caste. Further, there is nothing in the news to draw an inference that the allegations are intended to insult and humiliate the second respondent for reason of he being a member of the Scheduled Caste. To buttress this argument, reliance is placed on the decision of the Apex Court in Hitesh Verma v State of Uttarakhand and another [(2020) 10 SCC 710], with particular emphasis on paragraph 11 to 13 therein;

"11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26-1-2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

"3. (1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "(1) intentionally insults

or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view".

13. The offence under Section 3(1) (r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to 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. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have

invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste."

Reliance is also placed on the findings at paragraph 18 of **Ramesh Chandra Vaishya v. State of U.P. [2023 SCC OnLine SC 668]**;

"18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge- sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x)

of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr. P.C. and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopaedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper

opinion in the conspectus of the situation before it, prior to taking cognisance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1) (x) warranting him to stand a trial."

Reference is made to this Court's decisions in **XXX v. State of Kerala and another [ILR 2022 4 Ker.620]** and **State of Kerala v. Hassan [2002 (2) KLT 505]**. It is contended that the offence under Section 3(1)(u) will be attracted only if feelings of enmity, hatred or ill-will is promoted or attempted to be promoted against members of Scheduled Castes or Scheduled Tribes as a class and not on criticising an individual member. It is submitted that provisions of the Act cannot be utilised for curtailing the journalistic freedom of the appellant.

4. Senior Advocate T.A.Shaji, learned Director General of Prosecution, made the

following submissions;

The second respondent being a politician and people's representative, can be criticized with respect to his actions. Even then, the criticism cannot be taken to the extent done by the appellant. In his complaint, the second respondent has specifically alleged that he is being singled out by the appellant for reason of being a Scheduled Caste member. On plain reading of Section 3(1)(r), it will be clear that the offence is attracted when a member of Scheduled Caste or Scheduled Tribe is intentionally insulted with intent to humiliate him. The observations in **Hitesh Verma** (*supra*) were made, based on the facts of that case and cannot therefore be made applicable to a case like the one at hand, where there is clear evidence of intention to insult and humiliate.

5. Adv.P.K.Varghese, learned Counsel

appearing for the second respondent, submitted that the appellant himself appeared in the video and made the unsubstantiated allegations and aspersions against the second respondent. The appellant had gone to the extent of calling the second respondent a 'murderer' and 'Mafia Don'. He even made insinuations against the second respondent's father-in-law, a former Chief Justice of the Supreme Court of India. The appellant also did not spare the judiciary. As such, it is evident that the intention behind the video was to insult and humiliate the second respondent, he being a person belonging to the Scheduled Caste. In First Information Statement, the second respondent has raised this allegation. Reliance is placed on the decision in **Sumesh GS and another v. State of Kerala [2023 (2) KLT 513]** to contend that, publication of news and video intended to insult members of the Scheduled Caste

will attract the offence under Section 3(1)(r). The appellant having attempted to promote enmity and hatred against the second respondent, the offence under Section 3(1)(u) is also attracted.

6. The four W's of journalism that used to guide journalists in their reporting and helped in ensuring accuracy and completeness of news stories are: Who, What, When and Where. The four W's and sometimes the fifth "Why" used to serve as a framework for journalists to gather information. Videos like the one under consideration makes one wonder whether the W's have been replaced with D's; Defame, Denigrate, Damnify and Destroy.

7. It is pertinent to note that the allegations levelled against the second respondent include murder and contains insinuation against the second respondent's father in law, aspersions on unnamed judicial officers and bestows the title 'Mafia Don' on the

second respondent. As such, it can unhesitatingly be held that the video contains insults, which are intended to humiliate the second respondent in public view.

8. Now the question arises whether the offence under Section 3(1)(r) will be attracted, in the absence of reference to the caste status of the second respondent in the news item. In my opinion that question cannot be decided, oblivious of the object behind the enactment and the reason for amending the Act in 2019. The Act was brought into force for preventing the commission of atrocities against members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of such offences and provide relief and rehabilitation to the victims of such offences. The Act was amended on finding that, despite various measures to improve the socio-economic conditions of the scheduled Castes and Scheduled Tribes, they still

remained vulnerable. Of course, as held by the Apex Court in Hitesh Verma and Ramesh Chandra Vaishya (supra), all insults or intimidation will not be an offence under the Act, unless such insult or intimidation is on account of the victim belonging to the Scheduled Castes or Scheduled Tribes. As observed earlier, materials on record do indicate that the video is intended to insult and humiliate the second respondent. At this stage, the court can only go by the allegations in the complaint and the attendant circumstances. The allegation is specific to the effect that the appellant has been insulting and humiliating the second respondent only for the reason that he belongs to the Scheduled Caste. The attendant circumstances are the wanton nature of the allegations and the repeated news items published against the second respondent. Going by the wording of Section 3(1)(r), reference to the

caste name of the victim is not necessary for attracting the offence. This is clear from the distinction between the wording of Section 3(1)(r) and 3(1)(s). As such, it is not possible to hold that there are no *prima facie* materials to attract the offence under Section 3(1)(r).

In view of the finding on Section 3(1)(r), I am not venturing to decide whether the offence under Section 3(1)(u) is attracted or not. For the aforementioned reasons, the impugned order of the Special Court is upheld.

In the result, the Criminal Appeal is dismissed.

Sd/-

V. G. ARUN
JUDGE

Scl/

APPENDIX OF CRL.A 906/2023

PETITIONER ANNEXURES

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| Annexure A1 | TRUE COPY OF THE F.I.R IN CRIME NO.
899/2023 OF ELAMAKKARA POLICE STATION,
ERNAKULAM CITY |
| Annexure A2 | TRUE COPY OF THE F.I.S IN CRIME NO.
899/2023 OF ELAMAKKARA POLICE STATION,
ERNAKULAM CITY |
| Annexure A3 | THE TRANSCRIPT OF THE NEWS/VIDEO
PUBLISHED BY THE PETITIONER ON
24.05.2023 |
| Annexure A4 | CERTIFIED COPY OF THE ORDER DATED
16.06.2023 IN CRL.M.C 1684/2023 PASSED
BY THE HON'BLE PRINCIPAL DISTRICT &
SESSIONS COURT, ERNAKULAM |