
(2021) 01 KL CK 0385
In the High Court Of Kerala
Case No : Criminal Appeal No. 584 Of 2020

Ajumon And Ors	Vs	APPELLANT
State Of Kerala And Ors		RESPONDENT

Date of Decision : 15-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 498(A)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 18, 18(A)

Citation : (2021) 01 KL CK 0385

Hon'ble Judges : Shircy V, J

Bench : Single Bench

Advocate : Renjith B. Marar, Lakshmi N. Kaimal, Ajith Murali

Final Decision : Disposed Of

Judgement

1. Challenging the order dated 29.7.2020 in CrI.M.P (B.A (T)No.310 of 2020) of the learned Sessions Judge, Pathanamthitta, this appeal has been filed by the petitioners. They are the accused in Crime No.2434 of 2020 of Pathanamthitta Police station registered for the offences punishable under Sections 498A of the Indian Penal Code read with Section 3(1)(r)(s) of Scheduled Caste/Schedule Tribe (Prevention of Atrocities) Act (hereinafter referred to as 'the Act' for short).
2. The allegation against these petitioners in brief is that the defacto complainant, a member of Scheduled Caste Community, has married the first petitioner as per the rites and ceremonies of Hindu Marriage Act on 10.6.2019. While she was residing at her matrimonial home along with the first petitioner and second petitioner, her mother in law, she was intentionally insulted by the petitioners with the intent to humiliate her as she is member of

Scheduled Caste and abused her by calling her caste name. They have also tortured her demanding money from her family and thus they have committed the aforesaid offences.

3. Their application for pre-arrest bail was dismissed by the learned Sessions Judge by the order under challenge. Aggrieved by the same this appeal

has been filed. It is submitted by the learned counsel for the petitioners that a love affair for a long period of six years culminated in marriage and they

were residing together as husband and wife at her matrimonial home. But gradually the relationship has strained and resulted in separation since

21.7.2019. The first accused thereafter filed an O.P before the Family Court, Kottarakara for declaring their marriage as null and void. Thereafter, the

second petitioner has also filed a suit before the Munsiff Court and by an order in the I.A filed as 1236 of 2019, the learned Munsiff inter alia

restrained the defacto complainant from trespassing into the plaint schedule property or causing mischief in the property scheduled therein. That

instigated her to file this false case. So because of her vengeance towards the petitioners with ulterior motive she had lodged this false complaint

before the police and thus the crime happened to be registered against them, is their case. Though they are innocent they apprehend arrest and

undeserved harassment from the police and hence this appeal.

4. The learned Public Prosecutor has submitted that the investigation of the case is going on smoothly. But the application is opposed as a prima facie

case has been made out against the petitioners.

5. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

6. The main allegation levelled against these petitioners is that they have insulted the defacto complainant by calling her caste name within public view

and intentionally insulted and humiliated her as she is a member of Scheduled Caste. It is true that the defacto complainant is a member of Scheduled

Caste. But the offences under these sections are attracted only if the insult/intimidation or abuse was made by a member of another community within

the public view. The Act was enacted with laudable object and aim to protect as well to prevent or elude humiliation, harassment, indignities,

intimidation, atrocities, brutal caste violence etc against the members of Scheduled Castes and Scheduled Tribes. Therefore, the expression "Public

view" in the Act means a place where a public persons are present or public

has access. If the public has no access to the place where the alleged incident has happened, no offence under these sections are attracted. Prima facie, on a perusal of the materials available before me, it could be seen that the alleged offence had taken place within the four walls of the residential house of the petitioners where the public had absolutely no access. It is also not revealed prima facie that public were there when the alleged offences were committed by the petitioners. So apparently it is revealed from the records that no prima facie case has been made out to infer that the petitioners intentionally insulted or intimidated with the intent to humiliate the defacto complainant in a place within public view. In short, the essential ingredient required to attract the aforesaid offences, is conspicuously lacking, at least at this stage.

7. It would also be pertinent to refer to the following observation of the Apex Court in *Prathviraj Chauhan v. Union of India* [2020 (1) KLT 810 (SC)]

that if the complaint does not make out a prima facie case, the bar under Section 18 and 18A of the Act shall not apply. The records clearly indicate

that the investigation of the case is only in the preliminary stage, still I think that the request for anticipatory bail can be granted to the petitioners as

prima facie no case has been made out against them and the investigation is proceeding smoothly. Therefore, the order under challenge is liable to be

set aside.

This appeal is accordingly allowed and anticipatory bail is granted to the petitioners subject to the following conditions:

(i) The petitioners shall be released on bail on executing bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the

like sum each in the event of their arrest by the police in connection with the above crime.

(ii) The petitioners shall appear before the Investigating Officer for interrogation as and when required by him in writing. They shall co-operate with

the investigation of the case.

(iii) The petitioners 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 from disclosing such facts to the court or to any police officer or tamper with the evidence.

(iv) The petitioners shall not commit any offence while on bail.

In case of violation of any of the above conditions, the learned Sessions Judge is empowered to cancel the bail in accordance with the law.

(However, it is made clear that the observations made above are only for the limited purpose of consideration and disposal of this appeal.)