

(2024) 02 KL CK 0151

In the High Court Of Kerala

Case No : Criminal Leave Petition No.385 Of 2023

Jagadhi @ Sreedharamenon

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 16-02-2024

Acts Referred:

Constitution of India, 1950 — Article 17
Code of Criminal Procedure, 1973 — Section 378(4)
Protection of Civil Rights Act, 1955 — Section 2(a), 7(2)(i)

Citation : (2024) 02 KL CK 0151

Hon'ble Judges : P.G. Ajithkumar, J

Bench : Single Bench

Advocate : Rajesh Sivaramankutty, Arul Muralidharan, P.B.Subramanyan, P.B.Krishnan, Sabu George, Manu Vyasan Peter, Seena C.

Final Decision : Dismissed

Judgement

P.G. Ajithkumar, J

1. This is a petition filed under Section 378(4) of the Code of Criminal Procedure, 1973. The petitioner is the complainant in C.C.No.1102 of 2017 of the files of the Judicial Magistrate of the First Class, Chittur. Respondents No.1 and 2/accused were acquitted as per the judgment dated 18.03.2023. Seeking leave to appeal against the said judgment, this petition has been filed.

2. Heard the learned counsel for the petitioner, the learned counsel for respondents No.1 and 2 and the learned Public Prosecutor.

3. The complaint was instituted with the following allegations:

The petitioner belongs to Kollengode Thorattil Puthan Veedu Tharavad situated at Eranjimandam. On the north-western side of this Tharavad, Eranjimandam Sree Purattil Bhagavathi Temple is situated. Respondents No.1 and 2 formed Eranjimandam Desom Sree Purattil Bhagavathi Temple Committee for the management of the Temple. In October, 2015 they tried to construct a new

Temple in a different property after demolishing the existing one. The petitioner instituted a suit challenging the said act. In retaliation, respondent Nos.1 and 2 issued notice to members of the petitioner's family to expel them from the membership of the Nair society. Thereafter, the petitioner and his family members were not permitted to participate in the affairs of the Temple and religious matters of Nair community. Since their civil rights are thereby affected, respondent Nos.1 and 2 have committed the offence punishable under Section 7(2)(i) of the Protection of Civil Rights Act, 1955 (Act).

4. At the trial, on the aforesaid accusation, PWs.1 and 2 were examined and Exts.P1 to 12 were marked on the side of prosecution. Exts.D1 to D5 were marked on the side of respondents No.1 and 2.

5. The trial court, after considering the said evidence, found that Ext.P1 series notices issued to the members of family of the petitioner were show cause notices and there was absolutely no evidence to substantiate that any of the civil rights of the petitioner or any member of his family was denied. It was found that the allegation of ex-communication and expulsion of the members of the petitioner's family have not been proved. The evidence of PWs.1 and 2 and the documents produced on the side of the prosecution were found insufficient to prove commission of an offence under Section 7(2)(i) of the Act.

6. The learned counsel appearing for the petitioner would submit that when the petitioner and other members of his family are excluded from participating the affairs of the Temple and also the religious matters connected to their community, that amounts to denial of right and privilege to which they are entitled as a members of the Nair community and therefore the said act tantamount to an offence under 7(2)(i) of the Act. It is submitted that from the evidence of PWs.1 and 2 and Ext.P1 series, the said fact is proved.

7. The learned counsel for respondents No.1 and 2, on the other hand, would submit that the dispute pertains to the Temple committee and that has nothing to do with the civil rights of the petitioner or any member of his family. The dispute was the subject matter of civil litigation and only to wreak vengeance, this prosecution was initiated without any basis.

8. Denial of right and privilege of a person entitled as a member of his community in the context of Section 7(2)(i) of the Act has to be understood in the light of the term 'untouchability' used in Article 17 of the Constitution of India. The Act was enacted to prescribe punishment for the preaching and practice of untouchability as described in Article 17 of the Constitution of India. The definition of 'civil rights' contained in Section 2(a) of the Act, convey such meaning. It reads:-

"(a) 'Civil rights' means any right accruing to a person by reason of the abolition of 'untouchability' by Article 17 of the Constitution."

9. Of course on a wider interpretation of Section 7(2)(i) it may be possible to

include in its ambit denial of a right or privilege available as a member of a particular community, be that any community or caste. In this case, if the allegations are considered in the light of the evidence, particularly Ext.P1 series notices, it cannot be said that any right entitled by the petitioner or any member of his family as members of their community has been denied. What can be gathered is that respondents No.1 and 2 initiated action against a few persons as members of a particular committee. In the absence of any further evidence, it cannot be said that any right as members of Nair community of the petitioner was denied by respondents No.1 and 2. Hence it cannot be said that the view taken by the trial court is incorrect.

10. In *State of Maharashtra v. Sujay Mangesh Poyarekar* [(2008) 9 SCC 495] the Apex Court held that at the stage of granting leave, the court is not expected to consider the correctness or not of the findings in the impugned judgment and what is required is only whether the petitioner has made out arguable points for challenging the impugned judgment. In deciding whether or not leave should be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside. Also, it was held that it cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial Court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the Court should not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial Court could not be said to be 'perverse' and, hence, no leave should be granted.

11. On a reading of the judgment and considering the submissions of the learned counsel for the petitioner, I am of the view that there is no reasonable grounds for appealing against the impugned judgment. Viewed in the light of the law laid down in the aforesaid decision, the petitioner failed to make out a prima facie case for preferring an appeal and therefore this petition is liable to be dismissed. Hence, the petition to leave to appeal is dismissed.