

Syam Raj. R.S vs State Of Kerala on 13 September, 2024

Author: K.Babu

Bench: K. Babu

Crl.A.No.1686/2024

.1.

2024:KER:70000

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024 / 22ND BHADRA, 1946

CRL.A NO. 1686 OF 2024

CRIME NO.586/2024 OF Naruvamoodu Police Station,

Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED 14.08.2024 IN CRMP

NO.482 OF 2024 OF SPECIAL COURT-TRIAL OF OFFENCE UNDER

SC/ST(POA)ACT1989, NEDUMANGAD

APPELLANT/S:

SYAM RAJ. R.S
AGED 36 YEARS
S/O RAJAN, SOUMYA NILAYAM, KIZHAKKEKKARA PUTHEN
VEEDU, VALLOTTUKONAM, MOTTAMOODU,
NARUVAMOODU.P.O., THIRUVANANTHAPURAM, PIN -
695528

BY ADVS.
K.K.DHEERENDRAKRISHNAN

Crl.A.No.1686/2024

.2.

2024:KER:70000

N.P.ASHA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031
- 2 VISWAMBARAN
S/O KOCHUCHERUKKAN, THANNIYARATHALA MEME PUTEHN
VEEDU, MOTTAMOODU, NARUVAMOODU.P.O.,
THIRUVANANTHAPURAM, PIN - 695528

BY PUBLIC PROSECUTOR SRI G SUDHEER

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 13.09.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:
Crl.A.No.1686/2024

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"C.R."

K.BABU, J

Crl.A No.1686 of 2024

Dated this the 13th day of September, 2024

JUDGMENT

This is an appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'). The challenge in the appeal is to the order dated 14.08.2024 in CrI.M.P.No. 482 of 2024 passed by the Special Court for the trial of Offences under SC/ST(POA) Act, Nedumangad.

2. The appellant is accused No.2 in Crime No.586/2024 of Naruvamoodu Police Station. The appellant is alleged to have committed the offences punishable under Sections 115(2), 296(b), 333, 351(2), 74 .4.

2024:KER:70000 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'the BNS') and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Act.

The Prosecution case:-

3. The appellant is not a member of the Scheduled Caste or Scheduled Tribe. The victim/respondent No.2 is a member of a Scheduled Caste community. On 24.07.2024 at 10.15 pm, the appellant and the other accused criminally trespassed into the residence of the victim and voluntarily caused hurt to him. They abused the victim by calling his caste name within the public view. Accused No.1 caught hold of the hair of the de facto complainant's wife and pushed her down. The appellant dragged her. Accused No.3 fisted the brother of the de facto complainant. Accused No.1 criminally intimidated the victim and other members of his family, .5.

2024:KER:70000 showing an iron rod. The de facto complainant suffered mental torture and humiliation.

4. I have heard the learned counsel for the appellant, the victim and the learned Public Prosecutor.

5. The learned Counsel for the appellant made the following submissions:-

(1)The FIS and the other material placed before the Court do not contain any specific allegation as to the overt acts allegedly committed by the appellant, insofar as the offences under Sections 3(1)(r) and 3(1)(s) of the Act are concerned.

(2)The de facto complainant is a local political leader, and therefore, there is every possibility that he influenced the Police to register a false case against the appellant and the other accused.

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2024:KER:70000 (3)The learned Special Judge has not considered the motive behind the incident that allegedly occurred. (4)The offence under Section 3(2)(va) is not attracted as the offences alleged under the BNS cannot be treated as scheduled offences since the schedule appended to the Act has not been amended after the repeal of the IPC by the Act 45 of 2023.

6. The victim made the following submissions:-

The appellant and the other accused committed the offences alleged, knowing that he is a member of the Scheduled Caste. Even after the incident, the appellant and the other accused are continuously making threats to his life. The attempt of the appellant and the other accused is to pressurize him to withdraw the complaint. On 28.08.2024, he filed a complaint before the Chief Minister of Kerala, stating the threats on the part of the .7.

2024:KER:70000 appellant and the other accused, pressurizing him to withdraw the complaint. On 27.07.2024, his wife filed a petition before the Kerala Women's Commission stating that they are facing threats from the appellant and the other accused. If anticipatory bail is granted to the appellant, his life and property will be put to danger.

7. The learned Public Prosecutor made the following submissions:-

(1)The bail plea of the appellant is barred under Section 18 of the Act.

(2)The prosecution has placed sufficient materials to attract the offences alleged.

8. The learned counsel for the appellant submitted that the victim has raised the allegations of threat for the first time before this Court which is evident from the .8.

2024:KER:70000 impugned order, in which the learned Special Judge has not recorded any of the contentions raised by the victim.

9. The learned Public Prosecutor countered and submitted that the victim cannot be blamed for the fact that the Special Judge has not recorded his submissions. The victim had made specific mention regarding the threats to his life and property before the Special Judge also.

10. The Special Judge has recorded that he heard the victim but did not mention the submissions made by him in the order impugned.

11. I shall first consider the argument of the learned counsel for the appellant that the offence under Section 3(2)(va) of the Act is not attracted on the ground that the schedule to the Act has not been amended subsequent to the repeal of the Indian Penal Code.

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12. Section 3(2)(va) of the Act reads thus:-

"3. Punishments for offences of atrocities.- xxxxx (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;"

13. Section 3(2)(va) is attracted when a person commits any offence punishable under the Indian Penal Code specified in the schedule against a person or property, knowing that such person is a member of the Scheduled Caste or the Scheduled Tribe.

14. Section 8 of the General Clauses Act, 1897, deals with the construction of references to repealed enactments.

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15. Section 8 of the General Clauses Act reads thus:-

8. Construction of references to repealed enactments.-- [(1)] Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any [Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

16. The object of Section 8, obvious and patently made known, is that where any Act or Regulation is repealed and re-enacted, references in any other .11.

2024:KER:70000 enactment to provisions of the repealed former enactment must be read and construed as references to the re-enacted new provisions, unless a different intention appears.

17. The repeal and re-enactment of a provision has the effect set out in that section, and the reference to the repealed provision is required to be construed as reference to the provision as re-enacted. If a provision of one statute was incorporated in another statute, then any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute. [vide:- Collector of Customs v. Nathella Sampathu Chetty [Collector of Customs v. Nathella Sampathu Chetty, 1962 SCC OnLine SC 30 :

(1962) 3 SCR 786 : AIR 1962 SC 316], New Central Jute Mills Co. Ltd. v. Collector of Central Excise [New .12.

2024:KER:70000 Central Jute Mills Co. Ltd. v. Collector of Central Excise, (1970) 2 SCC 820] and Mahindra & Mahindra [Mahindra & Mahindra Ltd.v. Union of India, (1979) 2 SCC 529].

18. In similar situations the Supreme Court had placed reliance upon Section 8 of the General Clauses Act. In New Central Jute Mills Co. Ltd. v. The Assistant Collector of Central Excise, Allahabad and Ors. [MANU/SC/0339/1970 : 1978(2)ELT393(SC)], the Supreme Court held it to be possible to read the provisions of the Customs Act, 1962 in the place of Sea Customs Act, 1878 found mentioned in Section 12 of the Central Excise and Salt Act, 1944. In State of Bihar v. S.K. Roy [MANU/SC/0184/1966 : 1966CriLJ1538], the Supreme Court held that by virtue of Section 8 of the General Clauses Act, references to the definition of the .13.

2024:KER:70000 word 'employer' in Clause (e) of Section 2 of the Indian Mines Act, 1923, made in Coal Mines Provident Fund and Bonus Schemes Act, 1948 should be construed as references to the definition of 'owner' in Clause (1) of Section 2 of the Mines Act, 1952, which repealed and re-enacted 1923 Act.

19. The resultant conclusion is that the penal provisions of the Indian Penal Code referred to in the schedule to the Act are to be construed as reference to the corresponding penal provisions in the Bharatiya Nyaya Sanhita, 2023.

20. Moreover, the Ministry of Law and Justice on 16.07.2024 issued the following notification.

S.O.2970(E).--In pursuance of section 8 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby notifies that where any reference of the Indian Penal Code (45 of 1860), or the Code of Criminal .14.

2024:KER:70000 Procedure, 1973 (2 of 1974) or the Indian Evidence Act, 1872 (1 of 1872) or any provisions thereof is made in any

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(a)Act made by Parliament; or

(b)Act made by the Legislature of any State;

(c)Ordinance;

(d)Regulations made under Article 240 of the Constitution;

(e)President's order;

(f) rules, regulations, order or notification made under any Act, Ordinance or Regulation. For the time being in force, such reference shall respectively be read as the reference of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) (BNSS) or the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) (BSA), and the corresponding provisions of such law shall be construed accordingly.

21. In the schedule to the Act, reference is made to the offences under the Indian Penal Code. The Indian Penal Code was repealed by the Act 45 of 2023. The .15.

2024:KER:70000 penal provisions in the IPC were re-enacted in the BNS. In the present case, the petitioner faces allegations under Sections 115(2), 296(b), 333, 351(2), 74 and 3(5) of the BNS. The corresponding provisions in the IPC are Sections 323, 294, 452, 503, 354 and 341, respectively, out of which Section 354 IPC is a scheduled offence. The corresponding penal provision in the BNS is Section 74. Section 74 BNS is in pari materia with Section 354 IPC. Therefore, in view of Section 8 of the General Clauses Act, 1897, and the notification S.O.2970(E) dated 16.07.2024 of the Ministry of Law and Justice, reference to Section 354 of Indian Penal Code in the schedule of the Act shall be read as reference to Section 74 of the BNS, 2023. Therefore, the contention of the learned counsel for the appellant that Section 3(2)(va) of the Act is not attracted falls to ground.

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22. The learned counsel for the appellant submitted that there are no specific allegations against the appellant to attract Section 3(1)(r) or 3(1)(s) of the Act. I have gone through the FIS. It does not contain any specific allegations to attract the offences under Sections 3(1)(r) and 3(1)(s) of the Act. There is only a general allegation that the appellant and the other accused abused the victim by calling his caste name. Therefore, the contention of the learned counsel for the appellant has force.

23. The motive behind the alleged attack, as mentioned in the FIS, is that the victim's son Sri. Dileep sent a message to the lover of accused No.1. Such an incident, even if happened will not destroy the prosecution allegations.

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24. There is specific allegation against the appellant that he assaulted the victim's wife, knowing it to be likely that he would thereby outrage her modesty. The prosecution could establish the ingredients of Section 74 of the BNS. Therefore, the offence under Section 3(2) (va) of the Act is also attracted.

25. In Prathvi Raj Chauhan v. Union of India [(2020) 4 SCC 727], the Supreme Court held that the bar created under Sections 18 and 18-A shall not apply if the complaint does not establish a prima facie case for the applicability of the provisions of the Act.

26. In Subhash Kashinath Mahajan (Dr.) v. State of Maharashtra and Another 2018 (2) KHC 207, while dealing with the pre-amended Act, the Supreme Court held that there is no absolute bar against grant of anticipatory bail in cases under the Act if no prima facie .18.

2024:KER:70000 case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

27. I have gone through the FIS and the relevant materials placed by the Prosecution. The ingredients of the offence under Section 3(2)(va) have been prima facie made out. The bail plea of the appellant is hence barred under Section 18 of the Act. Therefore, the prayer for anticipatory bail insofar as the offence under Section 3(2) (va) of the Act stands rejected.

28. As I have mentioned above, the prosecution could prima facie establish the offence under Section 74 of the BNS. The victim has a specific contention that even after the incident, the appellant and the other accused are making attempts to pressurise him. His specific case is that he has threats to his life and property.

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29. The learned counsel for the appellant has a contention that since the victim is a political leader, there is every probability that he influenced the Police. This contention of the learned counsel for the appellant is unacceptable.

30. On consideration of the entire circumstances, I am of the view that the appellant is not entitled to anticipatory bail. Therefore, the order dated 14.08.2024 in CrI.M.P.No. 482 of 2024 passed by the Special Court for the trial of Offences under SC/ST(POA) Act, Nedumangad, requires no interference and it stands confirmed.

31. It is legally permissible for this Court to direct the accused to surrender before the Jurisdictional Court while rejecting prayer for anticipatory bail {See: Nathu Singh v. State of Uttar Pradesh (MANU/SC/0360/2021) .20.

2024:KER:70000 : [2021 (3) KLT Online 1113 (SC)] and Rahul v. State of Kerala [ILR 2021 (4) Kerala 64]]}.

32. The appellant is directed to surrender before the jurisdictional Court within two weeks from this date. On his surrender before the jurisdictional Court, if the appellant prefers an application seeking regular bail, the Court shall dispose of the application on the same day itself in the light of the principles enunciated by the Supreme Court in the judgment in Satender Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51] and paragraph 53 of the judgment in Manish Sisodia v. Enforcement Directorate (2024 SCC OnLine SC 1920).

The appellant is at liberty to serve a copy of the application seeking bail in advance to the Public Prosecutor and the counsel who appeared for the defacto .21.

2024:KER:70000 complainant. On receipt of the advance copy of the bail application, the Public Prosecutor shall see that notice is served on the victim/defacto complainant before the bail application is heard.

Sd/-

K.BABU, JUDGE kkj .22.

2024:KER:70000 PETITIONER ANNEXURES Annexure-I TRUE COPY OF FIR ALONG WITH FIS IN CRIME NO.586/2024 OF NARUVAMOODU POLICE STATION