

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 28TH DAY OF OCTOBER 2020 / 6TH KARTHIKA,
1942

CRL.A.No.693 OF 2020

CMP(T) 108/2020 OF SPECIAL COURT (ATROCITIES AGAINST
SC/ST), MANJERI

CRIME NO.522/2020 OF Kondotty Police Station , Malappuram

APPELLANT/S:

- 1 MOHANDAS C.
AGED 51 YEARS
S/O.KUTTY, VENGANAM PAARACKAL HOUSE, PULIKKAL
P.O., KONDOTTY, MALAPURAM-673637.
- 2 VIJITH A.,
AGED 35 YEARS
S/O.RAJAN, ATHIPARAMBATH HOUSE, PALLIKKAL P.O.,
KONDOTTY, MALAPPURAM-673634.

BY ADV. SRI.C.K.MOHANAN

RESPONDENT/S:

- 1 SUB INSPECTOR OF POLICE
KONDOTTY POLICE STATION, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-
682031.
- 2 ADDL.R2 SUSHEELA
AGED 39 YEARS
D/O NAVUTTY, KANJIRATHADAYI (H) , VALIYAPARAMBU
P.O,
PULLIKKAL, KONDOTTY, MALAPPURAM-673637.

IMPLEADED AS PER ORDER DATED 15/9/2020 IN
CRL.MA 2/2020.

R1 BY SMT.AMBIKA DEVI S, SPL.GP ATROCITIES

Crl.A. No.693 of 2020

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AGAINST WOMEN AND CHILDREN AND WELFARE OF W AND
C
R2 BY ADV. SRI.DENIZEN KOMATH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14-
10-2020, THE COURT ON 28-10-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 28th day of October, 2020

Appellants are the accused in Crime No.522 of 2020 registered at the Kondotty Police Station alleging commission of offences punishable under Sections 341, 294(b) and 506(i) r/w Section 34 of IPC and Section 3(i)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short 'SC/ST (PoA) Act'). The prosecution allegation is that, on 24.07.2020, at about 6.00 p.m, the appellants illegally restrained the de facto complainant; a lady belonging to Scheduled Caste community and abused her by calling her caste name.

2. The anticipatory bail application filed before the Special Court was rejected, finding that from the FIS, FIR and other materials, a

prima facie case was made out against the accused. The learned Special Judge referred to the bar under Section 18A(2) of the SC/ST (PoA) Act to hold the application under Section 438 Cr.P.C to be not maintainable.

3. Heard Sri.C.K.Mohanan, learned Counsel for the appellants. Smt.Ambika Devi, learned Special Public Prosecutor and Sri.Denizen Komath, learned Counsel for the victim.

4. The learned Counsel for the appellants strenuously contended that even if the allegations are accepted in their entirety, no serious offence, so as to deny anticipatory bail to the appellants, is made out. According to the learned Counsel, the allegations in the complaint are false and was made at the instigation of the *de facto* complainant's employer, who is a political leader. It is submitted that a minor wordy

altercation is given the colour of offences under the Act, so as to deny the benefit of pre-arrest bail to the appellants.

5. Learned Special Public Prosecutor opposed the prayer for pre-arrest bail and submitted that a hapless lady was illegally restrained, abused, intimidated and insulted in public by calling her caste name. Such acts can, by no stretch of imagination, be termed as petty offences, is the contention. The rigor of Section 18 and 18A(2) of the Act was highlighted with the aid of the decision of the Apex Court in Prithvi Raj Chauhan v. Union of India [(2020)4 SCC 727]. It was pointed out that the learned Special Judge, after perusing the FIS and other records having been convinced of there being *prima facie* materials to attract the alleged offences, there is no reason for this Court to come to a different conclusion.

6. The learned Counsel for the victim supported the contentions of the learned Public Prosecutor and submitted that the appellants had acted with the deliberate intention of insulting and humiliating the victim in public.

On a careful consideration of the rival contentions and the impugned order, the submission of the learned Counsel for the appellants of the offences committed by the appellants not being serious enough to deny pre-arrest bail, is liable to be rejected. As held by the Honourable Supreme Court, anticipatory bail can be granted for offences under the Act only in the event of no *prima facie* case being made out. The Apex Court has alerted the courts to be cautious while exercising such power. The learned Special Judge had perused the FIS, FIR and other materials and had found them sufficient to attract the alleged

offences. I find no reason to arrive at a different conclusion, so as to grant the benefit of pre-arrest bail to the appellants by whittling down the rigor of Section 18A(2) of the SC/ST (PoA) Act.

In the result, the appeal is dismissed.

Sd/-
V.G.ARUN
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A TRUE COPY OF THE ORDER OF THIS HON'BLE
COURT IN B.A.NO.4757/2020 DATED
06.08.2020.

ANNEXURE B TRUE COPY OF THE COMPLAINT FILED BY THE
1ST APPLICANT BEFORE SUPERINTENDENT OF
POLICE, MALAPURAM DATED 01.08.2020.