

Tomichan Vs. State of Kerala

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Court : Kerala

Decided On : Mar-26-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Tomichan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH WEDNESDAY, THE 26TH DAY OF MARCH 2014 5TH CHAITHRA, 1936 CrI.MC.No. 5940 of 2013 ----- CRIME NO. 1146/2013 OF NEDUMKANDAM POLICE STATION , IDUKKI PETITIONER(S)/ACCUSED: ----- TOMICHAN, AGED 53 YEARS, S/O.P.V.KURIAN, PUTHENPURACKAL HOUSE, CHURCH JUNCTION, NEDUMKANDAM, IDUKKI DISTRICT. BY ADVS.SRI.SHAIJAN C.GEORGE SRI.M.T.AJITH SMT.S.REKHA KUMARI SMT.SAJITHA GEORGE RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. *ADDL.R2 IMPEADED: R2. SMT.T.K. SARASAMMA, ASST.LABOUR OFFICER, NEDUMKANDAM. (*ADDL.R2 IS IMPEADED AS PER

ORDER

DTD. 3/03/2014 IN CRL.M.A.NO.2132/2014 IN CRL.M.C.NO.5940/2013) R1 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 2603-2014 ALONG WITH B.A.NO.1112/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss CrI.MC.No. 5940 of 2013 -----
APPENDIX PETITIONER(S)' ANNEXURE: -----
ANNEXURE-1 CERTIFIED COPY OF THE FIR AND COMPLAINT MADE BY THE DE FACTO COMPLAINANT. RESPONDENT(S)' ANNEXURES: -----
----- N I L /TRUE COPY/ P.A.TO JUDGE Kss THOMAS P. JOSEPH, J ----- CrI.M.C.No.5940 of 2013 & B.A.No.1112 of 2014 ----- Dated this the 26th day of March, 2014

ORDER

These proceedings concern Crime No.1146 of 2013 of the Nedumkandam Police Station for the offences punishable under Sections 294(b), 353, 506(ii) of the Indian Penal Code and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, (for short 'Act') 1989.

2. Case is that on 13.11.2013 the Assistant Labour Officer (Additional second respondent in CrI.M.C.No.5940 of 2013) while inspecting chicken stall of the petitioner, she was insulted in public view calling her caste name, was abused using obscene words, threatened and thereby her official duty was obstructed. By CrI.M.C.No.5940 of 2013 the petitioner seeks to quash the FIR and the complaint in Crime No.1146 of 2013 on the ground that the allegations are not true and at any rate, would not attract any of the offences attributed to the petitioner. According to the petitioner, Annexure-1 FIR in CrI.M.C.No.5940 of 2013 would show that the complaint preferred by the additional second respondent therein was CrI.M.C.No.5940 of 2013 & B.A.No.1112 of 2014 2 initially considered as a petition but later under pressure, a case was registered against the petitioner to victimise him.

3. In B.A.No.1112 of 2014 the petitioner seeks pre- arrest bail notwithstanding that the request was rejected by this Court as per order in B.A.No.8012 of 2013.

4. Learned counsel for the petitioner has contented that no offence is made out against the petitioner and hence the FIR and complaint in Crime No.1146 of 2013 are liable to be quashed. It is also submitted that registration of the crime is an abuse of process of the Court. Alternatively it is contented that the petitioner may be granted pre-arrest bail as prayed for in B.A.No.1112 of 2014.

5. Additional second respondent though served in Crl.M.C.No.5940 of 2013 has not responded. Learned Public Prosecutor has contented that the complaint preferred by additional second respondent in Crl.M.C.No.5940 of 2013 discloses offences attributed to the petitioner and hence request to quash the proceeding cannot be accepted. It is also submitted that in so far as request for pre-arrest bail was rejected in B.A.No.8012 of 2013, except when change of Crl.M.C.No.5940 of 2013 & B.A.No.1112 of 2014 3 circumstance is proved, a further request for the same relief made in B.A.No.1112 of 2014 cannot be entertained.

6. Annexure-6 in Crl.M.C.No.5940 of 2013 is the complaint dated 13.11.2013 preferred by the additional second respondent in Crl.M.C.No.5940 of 2013. There, it is stated that the additional second respondent who was working as Assistant Labour Officer had gone to inspect chicken stall of the petitioner and when she reached there, instead of supplying details asked for by the additional second respondent, the petitioner abused and threatened her with a chopper. On account of that, she was not able to discharge her official duty. Further, the petitioner called the additional second respondent her caste name and insulted her in the view of others.

7. True that, in Annexure-6 complaint what exactly are the 'obscene words' allegedly used by the petitioner are not stated but for that reason alone the FIR in Crime No.1146 of 2013 cannot be quashed. Assuming that the mere allegation that the petitioner used 'obscene words' (without stating what exactly are those words) is not sufficient to attract the offence Crl.M.C.No.5940 of 2013 & B.A.No.1112 of 2014 4 under Section 294(b) of the Indian Penal Code, it is not as if the Police could not investigate the matter, further question the additional second respondent and get information as to what exactly are the words allegedly used by the petitioner.

8. So far as the offence under the Act is concerned, in Annexure-6 complaint there is specific mention that the additional second respondent belongs to the scheduled caste and she was abused by calling her caste name in the view of others. The truth of that allegation is not to be decided in this proceeding. In the above view of the matter, request to quash the FIR and the complaint in Crime No.1146 of 2013 cannot be sustained.

9. I hasten to add that whatever observation I have made above is only regarding quashing of the complaint and FIR in view of the allegations contained in Annexure-6 complaint.

10. Turning to the request made in B.A.No.1112 of 2014, it is seen that request of the petitioner for the same relief was rejected by this Court as per order in B.A.No.8012 of 2013 in view of the bar under Section 18 of the Act. Apart from CrI.M.C.No.5940 of 2013 & B.A.No.1112 of 2014 5 the fact that there is no change of circumstance. Even if there is change of circumstance, so far as the offence under Section 3(1)(x) of the Act remains in the FIR and so far as there is bar under Section 18 of the said Act, request for pre-arrest bail cannot be entertained.

11. But, I notice that while dismissing B.A.No.8012 of 2013 it was observed that it is open to the petitioner to surrender before the Court concerned and seek regular bail. That, the jurisdictional magistrate has power to grant bail for the offence under Section 3(1)(x) of the Act is upheld by the decision in Shanu Vs. State of Kerala (2000 (3) KLT452 and subsequent decisions. For other offences attributed to the petitioner also, the jurisdictional magistrate has the power to grant bail. In view of what this Court observed in the order in B.A.No.8012 of 2013 the petitioner could surrender before the Court concerned and seek regular bail. I assert that the petitioner could do so.

12. However, having regard to the relevant circumstances I am inclined to grant time to the petitioner to surrender before the Court concerned. CrI.M.C.No.5940 of 2013 & B.A.No.1112 of 2014 6 In the result, the proceedings are disposed of as under: (I) CrI.M.C.No.5940 of 2013 is dismissed subject to observation made above. (II) B.A.No.1112 of 2014 is rejected with the following directions: (a) Petitioner can surrender before the jurisdictional magistrate on or before

03.04.2014 and apply for bail with intimation given to the Assistant Public Prosecutor concerned at least two working days in advance. (b) In case the petitioner files application for bail before the learned magistrate, the same shall be disposed of on merit bearing in mind nature of offences attributed to the petitioner and whether in view of the nature of the offences, custodial interrogation of the petitioner is required, as early as possible. THOMAS P. JOSEPH, JUDGE. AS

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