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Aneesh S J vs Nisha

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Court : Kerala

Decided On : Feb-28-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/253/2024

Appellant : Aneesh S J

Respondent : NISHA

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024 / 9TH PHALGUNA, 1945 CRIME NO.2175/2023 OF NEYYATTINKARA POLICE STATION, THIRUVANANTHAPURAM AGAINST THE ORDER/JUDGMENT IN CRMC 3237/2023 OF SPECIAL COURT- TRIAL OF OFFENCE UNDER SC/ST(POA)ACT 1989, NEDUMANGAD

APPELLANT/PETITIONER/ACCUSED: ANEESH S J AGED 38 YEARS S/O JAYACHANDRAN, CHARUVILA PUTHEN VEEDU, SHEEJA NIVAS, MAMPAZHAKARA, PERUMPAZHUTHOOR P.O, NEYATTINKARA,, PIN - 695126 BY ADV M.H.HANIS RESPONDENTS/RESPONDENTS/DEFACTO COMPLAINANT &

STATE: 1 NISHA AGED 35 YEARS D/O. GEETHA,W/O. ANOOJ S.J., MICHEL GOMEZ HOUSE, HOUSE NO.D44,VAZHUTHACAUD POST OFFICE LINE, VAZHUTHACAUD DESOM,THYCAUD, THIRUVANANTHAPURAM CITY PIN 695 014 [CORRECTED AS PER

ORDER DATED 14/2/2024 IN CRL.MA NO 1/2024], PIN -

2 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 SRI. G. SUDHEER - PP THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

K.BABU, J.

========== Crl.A.No.253 of 2024 ========== Dated this the 28th day of February, 2024

JUDGMENT

This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The challenge in this appeal is to the order dated 17.01.2024 in Crl.M.C No.3237 of 2023 passed by the Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Nedumangad.

2. The appellant is the accused in Crime No.2175

of 2023 of Neyyattinkara Police Station. He is alleged to have committed offences punishable under Sections 324, 294(b), 354 of the IPC and Sections 3(1), (r), (s) and 3(2)

(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment Act 2015) (for short the Act).

3. The prosecution case is that on 02.12.2023 at

..3.. 7.45 a.m., when the appellant pushed the husband of the de facto complainant on the premises of Charuvila Puthen Veedu at Perumbazhathoor, his family house, the de facto complainant intercepted. The appellant abused the de facto complainant by calling her caste name, and he slapped on her cheek. The appellant voluntarily caused hurt to her and used criminal force against her, intending to outrage her modesty. The de facto complainant belongs to the Scheduled Caste community. The appellant is not a member of Scheduled Caste or Scheduled Tribe community.

4. Notice was served on the victim. He did not turn up.

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

6. The learned counsel for the appellant

submitted that the allegations levelled by the prosecution are false. The learned counsel further submitted that the bar under Sections 18 and 18-A of the Act is not applicable to the present facts, as the ..4.. prosecution failed to establish a prima facie case to bring out the offences under the Act.

7. The learned Public Prosecutor opposed the bail plea on the ground that there are materials to attract the offences alleged.

8. The Special Judge dismissed the application essentially on the ground that the application is barred under Sections 18 and 18-A of the Act.

9. The case of the appellant is that he has been

falsely implicated in the crime. The appellant is the brother-in-law of the victim. The appellant and other members of their family are living on inimical terms with the husband of the de facto complainant for the reason that he married the victim against the wishes of the appellant and the other family members.

10. The learned counsel for the appellant

submitted that Neyyattinkara Police registered crime No.2182 of 2023 based on the statement given by the wife of the appellant against the de facto complainant

and her husband, alleging offences punishable under ..5.. Sections 294(b), 354, 354(B), 323, 324B, 452, 506 read with Section 34 of the IPC.

11. In the FIS that the de facto complainant

specifically alleges that the appellant called her caste name in public view. The materials placed before the court and other circumstances definitely show that the parties are living at logger heads. The specific case of the appellant is that the alleged occurrence did not take place in public view. The incident allegedly occurred at the residence of the appellant.

12. In Prathvi Raj Chauhan v. Union of India

[(2020) 4 SCC 727], the Apex Court held that if the complaint does not make out a prima facie case for the applicability of the penal provisions of the Act, the bar created under Sections 18 and 18-A shall not apply.

13. 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 ..6.. prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. This Court in xxxx v. State of Kerala 2022 KHC 1001, while considering the application of the bar under Sections 18 and 18-A of the Act held thus:

> Before analysing the question as to whether, a prima facie case is made out in this matter, it is necessary to address the tendency of false implication of innocent persons, who do not belong to Scheduled Caste or Scheduled Tribe community, by misusing the provisions of the SC/ST (POA) Act. There is no quarrel that stringent provisions are incorporated in the SC/ST

(POA) Act to arrest the menace of atrocities against

members of the Scheduled Caste and Scheduled Tribes community by exploiting their backwardness. Since the Parliament found that the provisions of earlier SC/ST (POA) Act were not sufficient to meet the ends of justice, the Act was amended. After the amendment of the SC/ST (POA) Act, more stringent provisions have been incorporated in SC/ST (POA) Act with mandatory right of hearing to the defacto complainant at every stages of the court proceedings, as provided under Section 15A(3) of the SCT/ST (POA) Act. Thus, atrocities against Scheduled Caste or Scheduled Tribe community, in fact, is intended to be curtailed by the stringent provisions of SC/ST (POA) Act. Therefore, when genuine complaint/complaints at the instance of the Schedule Caste or Scheduled Tribe members, which would attract offence/offences incorporated under the SC/ST (POA) Act, if made, the same shall be viewed seriously and appropriate legal action shall go on, to attend the grievances of the complaint/complaints. At the same time, the courts should have a duty to rule out the possibilities of false implication of innocent persons as accused, with a view to achieve ulterior motives of the complaints, with threat of arrest and detention of the accused in custody, because of the stringent provisions in the SC/ST (POA) Act in the matter of grant of anticipatory ..7..

bail. It is shocking, rather a mind blowing fact that many innocent persons are victims of false implication under the SC/ST (POA) Act. Therefore, it is the need of the hour for the courts to segregate the grain from the chaff by analysing the genesis of the case, the antecedents prior to registration of the crime, with reference to existence of animosity between the complainant and the accused, with particular attention, vis-a-vis previous disputes/cases/ complaints, etc. while considering the question of prima facie case, when considering plea for pre-arrest bail. In cases, where there are materials to show that the accused and the complainant are in inimical terms, and there are previous litigation between them or their men or representatives and in retaliation or as a

sequel to the same, the allegations in the complaint constituting offence/offences under the SC/ST (POA) Act are made, the same may be the reasons to doubt the case prima facie. The instances are not exhaustive. Therefore, evaluation of the above facts would help the court while addressing the question of prima facie case, at the pre-arrest bail stage. On evaluation of the genesis of the case within the ambit of the above pari materia, if the court finds something to see the possibility of false implication, in such cases, the court could very well hold that prima facie, the prosecution allegations could not be believed for the purpose of denying anticipatory bail, after leaving the question as to commission of offence/offences for a detailed and fair investigation by the Investigating Officer. Indubitably, such a course of action is necessary to rule out the possibility of false implication

14. I have gone through the FIS and other

materials relied on by the appellant. I am of the view that there is sufficient material to hold that the de facto complainant was living in inimical terms with the appellant and other family members. The possibility of a ..8.. false implication cannot be ruled out.

15. On analysis of the facts placed before the

Court, the mens rea of the appellant in the commission of the alleged act is doubtful. The resultant conclusion is that the appellant has established a prima facie case for getting anticipatory bail. The learned Public Prosecutor mainly opposed the application on the ground that the appellant has criminal antecedents. The antecedents of the appellant may not always stand in the way of granting anticipatory bail.

16. While considering the scope of jurisdiction under Section 438 Cr.P.C., the Constitution Bench of the Apex Court in Gurbaksh Singh Sibbia & Ors. v. State of Punjab [(1980) 2 SCC 565] held thus:

31. In regard to anticipatory bail, if the proposed accusation appears Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694]to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is ..9..

not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and the larger interests of the public or the State are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216] , which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the

acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

17. In Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694] the Apex Court held thus:-

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the B.A.Nos.5010 of 2021 & Connected cases 40 accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly ..10.. the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record. (In Sushila Aggarwal v. State (NCT of Delhi) [(2020) 5 SCC 1]) the declaration of law in Siddharam Satlingappa Mhetre that no condition can be imposed while granting order of anticipatory bail alone was overruled)

18. In Sushila Aggarwal, the Constitution Bench

of the Apex Court, following the decision in Gurbaksh Singh Sibbia, held that while considering an application (for grant of anticipatory bail) the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

19. Having considered the entire circumstances on the touchstone of the principles discussed above, I am of the view that the appellant is entitled to anticipatory bail. In the result, ..11..

(i) The Criminal Appeal is allowed.

(ii) The order dated 17.01.2024 dismissing Crl.M.C No.3237 of 2023 stands set aside.

(iii) The appellant shall appear before the Investigating Officer on 06.03.2024 between 10.00 AM and 11.00 AM for interrogation.

(iv) The Investigating Officer is directed to release

the appellant on bail, in the event of his arrest, on his executing bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum.

(v) The appellant shall appear before the Investigating Officer on all Mondays between 10.00 AM and 11.00 AM for a period of two months or till the final report is filed, whichever is earlier.

(vi) The appellant shall not influence the witnesses

or tamper with the evidence. Sd/- K. BABU JUDGE LU ..12.. APPENDIX OF CRL.A 253/2024 PETITIONER ANNEXURES : Annexure A THE TRUE COPY OF FIR AND FIS IN CRIME NO.2175/2023 OF NEYYATTINKARA POLICE STATION Annexure B THE CERTIFIED COPY OF THE ORDER DATED 17.01.2024 IN CRL.M.C.3237/2023 ON THE FILE OF SPECIAL JUDGE, SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER SC/ST (POA) ACT, NEDUMANGAD Annexure C THE TRUE COPY OF FIR AND FIS IN CRIME NO. 2182/2023 OF NEYYATTINKARA POLICE STATION // True Copy // PA To Judge

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