

**Babu Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jan-18-2005

**Reported in :** 2005(1)KLT975

**Judge :** M. Sasidharan Nambiar, J.

**Acts :** Indian Penal Code (IPC) - Sections 323 and 324; Civil Rights Protection Act - Sections 7(1); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3, 3(1) and 7(1); [Constitution of India](#) - Article 17

**Appeal No. :** Crl. R.P. No. 23 of 1996

**Appellant :** Babu

**Respondent :** State of Kerala

**Advocate for Def. :** K.J. George, Public Prosecutor

**Advocate for Pet/Ap. :** V. Ramkumar Nambiar and; S. Santosh, Advs.

**Judgement :**

**M. Sasidharan Nambiar, J.**

1. Accused in C.C. No. 850/90 on the file of Judicial First Class Magistrate-I, Kannur is the revision petitioner. He was convicted and sentenced to simple imprisonment for one year and fine of Rs. 500/- with a default sentence of two

months for the offence under Section 324 of IPC and simple imprisonment for 15 days for the offence under Section 7(1)(d) of Protection of Civil Rights Act (hereinafter referred to as 'the Act'). Petitioner challenged conviction and sentence before Sessions Court, Thalassery in CrI.A.No. 275/94. Learned Additional Sessions Judge after reappraising the evidence modified the conviction for the offence to one under Section 323 of IPC and sentenced him to a fine of Rs. 500/-. Conviction and sentence for the offence under Section 7(1)(d) of the Act was confirmed. It is being challenged in this revision.

2. Charge against petitioner was that on 7.3.1988 at about 7.30 a.m. while PW1 Narayanan a member of Pulaya community was taking tea from the shop of PW2, petitioner came there with a wooden stick and voluntarily caused hurt to PW1 by beating with a wooden stick and before beating petitioner asked question to PW1 as to why he scolded his brother some days back and also asked PW1 why members of Pulaya community are now behaving like members of upper caste and thereby committed the offence under Section 324 of I.P.C. and Section 7(1)(d) of the Act. Petitioner pleaded not guilty. Prosecution examined seven witnesses and marked Exts. P1 to P4. Petitioner did not adduce any evidence. On this evidence learned Magistrate found the petitioner guilty, convicted and sentenced him as stated earlier. Revision petitioner is challenging the conviction and sentence as modified by the Sessions Judge on the ground that Courts below did not properly appreciate the evidence in the light of provisions of the Act. Learned counsel appearing for the petitioner fairly submitted that in the light of appreciation of evidence and finding entered on the question of fact and as petitioner has already deposited fine awarded by the learned Additional Sessions Judge, he is not challenging the conviction and sentence for the offence under Section 323 of I.P.C. and challenge is limited to conviction for the offence under Section 7(1)(d) of the Act.

3. Heard Adv.Mr.V. Ramkumar Nambiar, learned counsel appearing for the petitioner and Public Prosecutor.

4. Counsel for the petitioner argued that Courts below omitted to bear in mind the main ingredient of the offence under Section 7(1)(d) of the Act which is the ground

of untouchability and if the insult or attempt to insult is not on the ground of untouchability, even if it is directed towards members of scheduled castes, a person cannot be convicted for the offence. Learned counsel argued that evidence of PWs. 1 to 3 relied upon by the courts below will not prove that insult or attempt to insult was on the ground of untouchability and was only consequent to an altercation of words between PW1 and brother of petitioner which took place some days prior to the date of incident and it has nothing to do with the untouchability contemplated under Section 7(1)(d) of the Act and therefore conviction is unsustainable. Learned counsel relied on the decision reported in Phulsingh v. State of M.P., 1991 Cr.L.J.2954 and Kumari Misra v. Chander Roshni Dubey and Ors., 1994 Cr.L.J.2157, to support the argument. Learned Public Prosecutor argued that untouchability is only on the ground of caste of PW1 and as the evidence establishes that petitioner caused hurt to PW1 and also insulted his caste, the ingredient of the offence under Section 7(1)(d) of the Act is established and therefore no interference on the conviction and sentence is warranted.

5. Before considering the question whether ingredients of the offence under Section 7(1)(d) of the Act is established or not, the facts of the case is to be borne in mind. Even according to prosecution Madhu, brother of petitioner and PW1 had an altercation of words on 1.3.1988. According to prosecution PW1, a member of Pulaya community was taking tea from the shop of PW2 on the morning of 7.3.1988. Petitioner came there. He asked PW1 whether members of Pulay a community had grown to the level of upper caste. Petitioner then caused hurt to PW1 with a wooden stick. Though learned Magistrate on appreciating the evidence upheld the case, learned Additional Sessions Judge found that PW1 had earlier no case that petitioner was armed with a stick at the time of beating and instead beating was with the hand. Therefore, conviction was modified to one under Section 323 of I.P.C. As rightly submitted by the learned counsel appearing for the petitioner in the light of concurrent finding on appreciation of evidence the finding that incident occurred in the shop of PW2 on the morning of 7.3.1988 and petitioner voluntarily caused hurt to PW1 cannot be disputed. What was alleged in Ext.P1 F.I.Statement recorded by the police as stated by PW1 after five days from the date of incident was that petitioner came to the shop and asking whether members of Pulaya community was grown up to the level of members of upper

caste caused hurt to PW1. When PW1 was cross examined, he had a different version. According to PW1, petitioner called PW1 his caste name and abused him after causing the hurt. According to PW2 when petitioner caused hurt to PW1, petitioner did not utter anything to the accused and name of the caste was mentioned only later. According to PW2 there was another incident in which PW1 caused hurt on the brother of petitioner. According to PW3, the other witness insult was subsequent to the beating. These versions not support the version of PW1. Therefore, from the evidence of PWs. 1 to 3, one thing is clear. There was no attempt to insult petitioner on the ground of untouchability. If at all there was an insult of PW1 naming his caste, question is whether it would attract an offence under Section 7(1)(d) of the Act.

6. Section 7(1)(d) of the Act reads 'whoever insults or attempts to insult, on the ground of 'untouchability', a member of a Scheduled Caste shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees'. Preamble of the Act establishes that it was enacted to prescribe punishment for preaching and practicing untouchability and for enforcement of any disability arising therefrom and for matters connected therewith. Untouchability or untouchable is not defined in the Act. In fact the Bill introduced in the Act contained Clause 24 defining untouchability. It was omitted by the Joint Committee on the following grounds.

The Committee have discussed at length as to whether the expression 'untouchable' used in the Bill should be retained or substituted by any other appropriate word or words. On the one hand the legality and propriety of the use of the expression particularly in view of the abolition of 'Untouchability' under Article 17 of the Constitution and on the other hand the apprehension that deletion of the word might leave loopholes and the purpose of the Bill might be defeated were considered. The Committee are of opinion that the deletion of the expression 'untouchable' would not stand in the way of attaining the object of the Bill' . .

While appreciating the ambit of the offence provided under Section 7(1)(d) of the Act, it is profitable to bear in mind similar provision under Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989.3 of the said Act provides punishment for the offence of atrocities. As distinct from Section 7(1)(d) of the Act, in order to attract the offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act it is sufficient to prove that a person who is not a member of scheduled caste or scheduled tribe intentionally insult or intimidate with an intention to humiliate a member of scheduled caste or scheduled tribe in any place within public view. Therefore, when the scope of Section 3(1)(x) of Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act is far wider than that of an offence under Section 7(1)(d) of the Act, the scope of Section 7(1)(d) is limited. An insult or attempt to insult a member of scheduled caste is insufficient to attract an offence under Section 7(1)(d) of the Act. In addition such insult or attempt to insult should be on 'the ground of untouchability'. When the intentional insult or intimidation with an intention to humiliate a member of scheduled caste and scheduled tribe in any place within public view may attract the offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, an insult or attempt to insult a member of a scheduled caste will not attract the offence provided under Section 7(1)(d) of the Act. In addition, such insult or attempt to insult shall be on the ground of untouchability.

7. The question is whether the insult meted out to PW1 was proved to be on the ground of untouchability. Except the fact that petitioner has mentioned the caste name of PW1, there is no whisper anywhere in the evidence that the said words were uttered on the ground of untouchability. The words uttered by the petitioner and hurt caused to PW1 by the petitioner was not on the ground of untouchability and will not attract the offence under Section 7(1)(d) of the Act. If so, he cannot be convicted for such offence.

8. Learned Single Judge of Madhya Pradesh High Court had considered a similar question in Phulsingh v. State of M.P. Analysing Section 7(1)(d) of the Act learned Judge of the Madhya Pradesh High Court observed that it is necessary that the insult must have been committed on the ground of untouchability and question is what is the test to determine whether the insult was or was not on the ground of untouchability. Following test was suggested by the learned Single Judge:

The test is to ask the question, whether insult would have taken place irrespective of the fact whether the victim was or was not a member of the Scheduled Caste. If yes, the insult was insult simpliciter outside the ambit of Clause (d). On the other hand, if insult had taken place only because the victim was a member of Scheduled Caste and it would not have taken place if he had been of higher caste, then insult was insult on the ground of untouchability. Another rough and ready test, though not very infallible, would be to ask the question whether insult was part of personal quarrel which took place between a person of higher caste and a member of scheduled caste; or was the insult offered in cool and studied manner in the absence of any quarrel. In the first situation, the insult would most likely be insult simpliciter while in the second situation it would be insult on the ground of untouchability. That is not to say that a person would be allowed to get away by merely picking up a quarrel. An instance may be given to make the propositions clear. A, a member of Scheduled Caste, is using a public bathing ghat. B, an obscurantist higher caste Hindu insults A and evicts him from that ghat saying that the ghat is reserved for higher caste people. This will be a case of insult on the ground of untouchability. In the same case, B's clothes lying on the ghat get trampled and soiled by the feet of A. B, getting annoyed because of spoiling of his clothes insults A even calling him a Chammar. No doubts, calling Chammar a Chammar would be insulting a member of Scheduled Caste Chammar. No doubts, calling Chamar a Chamar would be insulting a member of Scheduled caste, but that would be a case of insult simpliciter of a member of scheduled caste but not of insult on the ground of untouchability'.

This decision was followed by a learned Single Judge of Allahabad High Court in *Kumari Misra v. Chander Roshni Dubey and Ors.*, 1994 Cr.L.J. 2157. I am in agreement with the test suggested by learned Single Judge which appears to be a proper test to decide whether the act committed would attract an offence under Section 7(1)(d) of the Act.

9. Even accepting the prosecution case the incident did not occur on the ground of untouchability. It was a sequence to the altercation of words between PW1 and the brother of petitioner previously. The intention of the petitioner was to question PW1 because of the incident. Petitioner also caused hurt to PW1 because of that

previous incident. Question of untouchability was not the reason at all for the incident. If that be so conviction of the petitioner for the offence under Section 7(1)(d) of the Act will not stand. Learned Magistrate and learned Sessions Judge did not properly consider this aspect and therefore wrongly convicted the petitioner under Section 7(1)(d) of the Act. It has resulted in miscarriage of justice.

10. Revision is therefore partly allowed. While maintaining conviction for the offence under Section 323 of I.P.C. conviction and sentence for the offence under Section 7(1)(d) of the Act is set aside. Petitioner is found not guilty and he is acquitted of the offence under Section 7(1)(d) of the Act.

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