

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 21ST DAY OF JULY 2022 / 30TH ASHADHA, 1944

CRL.A NO. 703 OF 2022

CRIME NO.712/2022 OF ERNAKULAM TOWN NORTH POLICE STATION
AGAINST THE ORDER DATED 28.6.2022 IN CRL.MC NO.1392/2022 OF THE
SESSIONS COURT, ERNAKULAM DIVISION

APPELLANT:

T.P. NANDAKUMAR
AGED 62 YEARS
S/O DAMODHARAN,
THURUTHIL HOUSE,
NADAMA,
TRIPUNITHURA,
ERNAKULAM, PIN - 682301

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH

RESPONDENTS:

1 STATE OF KERALA
REP BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM
(CRIME NO 712/2022 OF ERNAKULAM
TOWN NORTH POLICE STATION), PIN - 682031

2 (VICTIM)

XXXXX XXXXX XXXXX

R1 BY SRI.S.U.NAZAR, SPL.G.P. (CRIMINAL)/PP

R2 BY ADV K.NANDINI

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
18.07.2022, THE COURT ON 21.07.2022 DELIVERED THE FOLLOWING:

JUDGMENT

The appellant is the accused in Crime No.712/2022 of Ernakulam Town North Police Station. This Crl.Appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act') against the rejection of the application for bail submitted by the appellant before the Special Court for the trial of cases relating to SC/ST Act (Court of Session, Ernakulam Division) (hereinafter referred to as 'Special Court').

2. The appellant is implicated in the aforesaid crime as the 1st accused. The Crime was initially registered for the offences punishable under Sections 294B, 506, 509 r/w. Section 34 of the Indian Penal Code (IPC) and Section 3 of the SC/ST Act. Subsequently, a

further report was submitted by the Police by which the offences under Sections 354A(i)(iii)(iv) of IPC, Section 3(1)(r), 3(w)(ii) and 3(2)(va) of SC/ST Act and Sections 66E and 67A and 84C of Information Technology Act, 2000 (hereinafter referred to as I.T.Act) were also incorporated.

3. The aforesaid Crime was registered based on a complaint submitted by the 2nd respondent herein on 27.5.2022. The F.I.R. was registered on 15.6.2022. The contents of the complaint submitted by the 2nd respondent are as follows:

The 2nd respondent was working as an employee under the appellant in his online channel, '*Crime Online*'. While working in the establishment of the appellant, the appellant allegedly compelled her to make a video programme by creating nude pictures of a lady Minister of the State. As she expressed her

unwillingness to do the same, the appellant herein allegedly communicated sexually coloured remarks and lasciviously described her body in the presence of others, thereby mentally torturing her. Annexure-II is the F.I.R. and the complaint submitted by the 2nd respondent against the appellant.

4. In connection with the investigation of the said crime, the appellant was arrested on 17.6.2022, and since then, he has been under judicial custody. An application viz. Crl.M.C.No.1392/2022 was filed by the appellant before the Special Court seeking bail, but as per the order dated 28.6.2022, the aforesaid application was rejected. This appeal is submitted in such circumstances.

5. When this Crl.Appeal came up for consideration, notice of the appeal was directed to be furnished to the 2nd respondent

through Station House Officer. Accordingly, notice was given to her. The 2nd respondent appeared through counsel and also submitted a written objection along with certain records strongly opposing the prayer sought by the appellant. The learned Public Prosecutor also opposes the appeal.

6. I have heard Sri. S.Rajeev, the learned counsel appearing for the appellant, Sri. S.U.Nazar, the learned Special Government Pleader (Criminal)/Public Prosecutor and Smt. K.Nandini, the learned counsel appearing for the 2nd respondent/victim.

7. The contention put forward by the learned counsel for the appellant is that, the complaint submitted by the 2nd respondent and the registration of crime was without any materials. According to the learned counsel for the appellant, even though the 2nd respondent worked as an employee in his establishment for

some time, on account of certain illegal acts committed by her along with some other persons, he was compelled to submit a complaint before the Police, and it resulted in the registration of Annexure-I F.I.R. which is numbered as Crime 436/2022 of Info Park Police Station against the 2nd respondent and three others for the offences punishable under Sections 120B, 294(b), 506 r/w. Section 34 of the IPC and also under Section 120(O) of the Kerala Police Act. The aforesaid F.I.R. was registered on 15.6.2022, and the present proceedings are a counterblast to the said case. It is also alleged that the appellant is a journalist by profession and is conducting an online news channel through which he is interfering in sensitive issues in the society and he has many enemies both in politics and among influential persons. It is pointed out that, on account of the same, the appellant is continuously implicated in various criminal

cases at the instance of such influential persons. The learned counsel also submitted that the appellant has been in custody from 17.6.2022, and about 31 days have already elapsed. In the meantime, the police custody of the appellant was permitted by the court, and a search was conducted in the office of the appellant. According to the learned counsel, no incriminating materials to support the allegations in the F.I.R. could be procured by the Investigating Officer so far. It is the further contention of the learned counsel that the offences alleged against the appellant are punishable with maximum imprisonment of 5 years, and the materials available on record would not be sufficient to attract the aforesaid offences. In such circumstances, the prayer for setting aside the order passed by the Special Court is sought.

8. The learned Public Prosecutor seriously opposes the contentions above. It is pointed out that, in addition to the present case, the appellant is involved in four other cases, and the details of the same were also made available by the learned Special Public Prosecutor. It is pointed out that Crime No.712/2022 was registered for the offences punishable under Sections 294(b), 354A(i) (iii) (iv), 506 and 509 r/w. Section 34 of the IPC and Section 3(1) (r), 3(w) (ii) and 3(2) (va) of SC/ST Act and Section 66E, 67A and 84C of the I.T. Act and the aforesaid crime was registered on the allegation that the appellant had uploaded certain videos on his YouTube channel, which contained certain lascivious remarks on a lady Minister of the State. It is further pointed out that though the appellant was released on bail in some of the cases, his bail was cancelled later because he violated the bail conditions as he committed

similar offences at the subsequent point of time. The learned Public Prosecutor seriously opposes the prayer sought for in the appeal by mainly highlighting the appellant's criminal antecedents. It is pointed out that, if the appellant is released on bail, he is likely to threaten and influence the witnesses.

9. The learned counsel appearing for the 2nd respondent also opposes the aforesaid prayer sought for by the appellant. My attention was also brought to the objection filed by the 2nd respondent, which contains a detailed description of her grievances. It is pointed out that at the time of the commission of the crime, the appellant was aware that the 2nd respondent belonged to SC/ST community. To substantiate the same, the learned counsel places reliance upon Exhibits R2(a) and R2(b), which relate to a video programme created by the appellant in

connection with a litigation in which the victim was a party. Earlier, during the month of March 2022, before her joining in the establishment of the appellant, the appellant contacted the 2nd respondent in connection with the making of a programme in respect of a case involving the property of the 2nd respondent. A news item in connection with the same was prepared by the appellant, as evidenced by Annexures R2(a) and R2(b) and from the contents of the same, it can be clearly seen that, the appellant was aware of the status of the 2nd respondent as a person belonging to Scheduled Caste. Therefore, it is contended that, the appellant committed the aforesaid acts with the specific knowledge of her caste status. Hence, the offences under the provisions of the SC/ST Act are attracted. She also submitted that, on account of the illegal acts committed by the appellant, she was compelled to submit her resignation on 24.5.2022

and immediately thereafter, the complaint was submitted on 27.5.2022. In response to the contention of the appellant that the complaint submitted by her was a retaliation of the crime registered against her, it was pointed out that the complaint is dated 27.5.2022, whereas Annexure-I F.I.R. was registered against her only on 15.6.2022. The learned counsel for the 2nd respondent thus seriously opposes the prayer sought for in the appeal.

10. I have perused the records, including the Case Diary made available by the learned Public Prosecutor. Among the offences alleged against the appellant, the punishment for the offences under Section 3(1)(r) and 3(w)(ii) of the SC/ST Act may extend to 5 years with a fine. Similarly, the offence under Sections 66E of the I.T. Act is punishable with imprisonment for up to three years or with a

fine, and the offence under Section 67A of the said Act is five years with a fine. Section 84C of the I.T. Act deals with the attempt to commit offences under the said Act. The term of imprisonment contained therein is half of the term of the punishment for the offence attempted to be committed. The remaining offences alleged against the appellant are punishable with imprisonment for a term of three years or lesser.

11. When the offences under the provisions of the SC/ST Act are taken into consideration, it can be seen that, on going through the contents of the written complaint submitted by the appellant, based on which FIR is registered, it is not explicitly stated by the 2nd respondent/defacto complainant that she was subject to harassment because of the fact that she belongs to scheduled caste. Apart from the

above, as far as the offence under Sections 66E and 67A of the I.T. Act are concerned, the only material so far collected by the Investigating Officer is the statement of the 2nd respondent/defacto complainant. On going through the contents of F.I. statement which is in the form of a written complaint as mentioned above, it can be seen that the allegation is that the defacto complainant was asked to offer help to the appellant herein for creating certain nude pictures of a lady Minister. It is also alleged that, when she refused to offer such help she was harassed by making certain sexually coloured remarks about her body.

12. The learned Public Prosecutor brought my attention to the further statement of the defacto complainant recorded under 161 of Cr.PC. It is true that the aforesaid statement contains further details of the crime allegedly

committed by the appellant. It includes an allegation that the 2nd respondent/defacto complainant was asked to pose for nude photographs to enable the appellant to use the same for creating new images of a lady Minister. However, even after going through the entire materials so far collected and available in the case diary, apart from the statement of the 2nd respondent/defacto complainant, no other materials could be collected by them to substantiate the offences under Sections 66E and 67A of the I.T. Act. Section 66E of the I.T. Act is attracted only when a person intentionally or knowingly captures, publishes or transmits the image of private area of any person without his or her consent. In this case, despite anxiously going through the entire materials, I could not find any materials indicating any such capture, publication or transmission of the image of a private area of any person.

13. When coming to the allegation regarding Section 67A of the I.T. Act, there also, as of now, no materials could be find out to establish the same. The aforesaid offence would get attracted when a person publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct. In this case, even going by the First Information Statement made by the 2nd respondent, there is no allegation that any such publication /transmission was actually made by the accused. Therefore, if at all the allegations in the F.I.R. is taken into consideration, what would be attracted is only the offence under Section 84C of I.T.Act, which is for attempting to commit the offences under the Act. The maximum punishment that can be imposed for the said offence is half of the term prescribed for the offence which attempted to have been

committed. Among the offences under the I.T.Act, the highest term of imprisonment prescribed is for the offence under Section 67A, which is five years. Therefore, the maximum punishment that can be awarded under Section 84C of I.T.Act can only be, 2½ years, as far as the offences under the IT Act are concerned.

14. When considering the allegations regarding the offences under the SC/ST Act, the main contention of the 2nd respondent is that the appellant committed the acts above with the specific knowledge that the 2nd respondent belongs to the Scheduled Caste community. However, on going through the contents of the F.I. Statement, there is nothing to infer that the acts allegedly committed by the appellant because of the fact that the 2nd respondent belongs to the SC/ST community. While making the aforesaid observations, I am conscious of the

fact that the offence under Sections 3(1)(w) (ii) and 3(2)(va) of the SC/ST Act would get attracted on mere knowledge that the victim belonged to the Scheduled Caste community. However, in this case, even going through the entire materials, it can be seen that, apart from the statement of the victim, so far, no other materials could be collected for establishing the offences alleged against the appellant. When considering the offences under the Indian Penal Code alleged against the appellant are taken into consideration, the maximum punishment that can be imposed is imprisonment for up to a period of three years or with a fine. Here again, other than the statement of the victim, no other materials were collected.

15. It is discernible from the records that the appellant was arrested on 17.6.2022. He was

given in police custody for some time, and the police have already searched the appellant's office premises. The learned Public Prosecutor pointed out that, during such search, several materials could be collected by the investigation team, which indicates that the appellant is in the habit of making false stories by creating documents for the same. Some documents are part of the case diary, and I have gone through the same. There are indeed several documents among the seized documents that may be defamatory to several persons. However, it can be seen that none of the said documents are about the allegations contained in this case. However, the contention of the learned Public Prosecutor based on such materials is that the aforesaid articles coupled with the implication of the appellant in four other cases clearly reveal his guilty mind and criminal antecedents.

16. In response to the same, the learned counsel for the appellant relies on the judgment passed by the Hon'ble Supreme Court in **Prabhakar Tewari v. State of U.P. and Ors. [(2020) 11 SCC 648]**. In the said decision, the Hon'ble Supreme Court observed that criminal antecedents by themselves could not be a reason to reject an application for bail. In my view, criminal antecedents can indeed be one of the relevant aspects, among other aspects, to be taken note of while considering bail. In this case, after going through the gravity of the offences, the nature of the allegations and the materials so far collected, I am of the view that the appellant can be released on bail. This is particularly because even though certain allegations against the appellant are serious in nature, on going through the written complaint submitted by the 2nd respondent, it can be seen that details of many of the allegations are not

mentioned. Of course, in the statement submitted by her under Section 161 of Cr.PC, she provided further details. However, the absence of relevant materials in the F.I.R, which was registered on a written complaint submitted by her after a reasonable time which enabled her to make up her mind, is a crucial aspect to be taken note of for the purpose of bail. In the F.I.R. registered, the alleged incident is reported to have occurred between 20.04.2022 and 24.4.2022, whereas the complaint was submitted after a month of the said incident, which is 27.5.2022. The learned counsel for the 2nd respondent disputed this entry by submitting that the incidents occurred between 20.04.2022 and 24.05.2022, the date on which she resigned from the appellant's establishment. However, the relevant entry in the FIR is otherwise, and no further reports in this regard are seen submitted by the Investigation Officer so far

before the court. The FIR was registered after one month of the same, which was on 15.6.2022. Therefore, considering the nature of allegations contained in Annexure-II F.I.R., the aforementioned aspects are also very much relevant. Now the appellant is under detention for more than 30 days. The Police were granted custody of the appellant for some time, and the search and seizure were already effected. The respondents have no case that any further recovery is to be made from the appellant. The main apprehension voiced by the respondents appears to be the influence/threat that is likely to be caused by the appellant on the victim and other witnesses if he is released. In my view, such apprehension can be addressed by imposing appropriate conditions. Therefore further incarceration of the appellant is not necessary.

In the result, this Crl.Appeal is allowed. The impugned order passed by the Special Court for the trial of cases relating to the SC/ST Act (Court of Session, Ernakulam Division) in Crl.M.C.No.1392/2022 dated 28.6.2022 is hereby set aside. The appellant is directed to be released on bail subject to the following conditions:

1) The appellant shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum to the satisfaction of the Special Court for the trial of cases relating to SC/ST Act, Ernakulam

2) The appellant shall fully co-operate with the investigation.

3) The appellant shall appear before the Investigating Officer between 10.00 a.m and

11.00 a.m on every Wednesday until the filing of the final report.

4) The appellant shall also appear before the Investigating Officer as and when required.

5) The appellant shall not commit any offence of like nature while on bail.

6) The appellant shall not make any attempt to contact the 2nd respondent victim, or any of the prosecution witnesses, directly or through any other person, or in any other way attempt to tamper with the evidence or influence any other persons related to the investigation.

7) The appellant shall not leave the State of Kerala without the permission of the trial Court.

8) In case of violation of any of the above conditions, the Special Court for the trial of cases relating to SC/ST Act, Ernakulam shall be empowered to consider the application for

cancellation of bail, if any, and pass appropriate orders in accordance with the law.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF CRL.A 703/2022

APPELLANT'S ANNEXURES:

- Annexure-I A copy of the FIR in Crime No.436/2022 of Info Park Police Station
- Annexure-II A copy of the FIR in Crime No.712/2022 of Ernakulam Town North Police Station
- Annexure-III An identical complaint filed by the defacto complainant before the Judicial Magistrate of First Class, Adimaly
- Annexure-IV A certified copy of the order dated 28.6.2022 in CrI.MC No.1392 passed by the Special Court
- Annexure-V A copy of the complaint filed by the petitioner in Crime No.436/2022 of Info Park Police Station dated 15.6.2022.
- Annexure-VI A copy of the F.I.R. and FIS in Crime No.747/2022 of Ernakulam Town North Police Station
- Annexure-VII A written copy of the telephone conversation between the defacto complainant and the News Editor of 'Crime Online'

RESPONDENTS ANNEXURES:

- Annexure-R2 (k) True copy of the transcription of Annexure-R2 (j)
- Annexure-R2 (e) Transcription of Annexure-R2 (d)
- Annexure-R2 (a) True copy of the news item is produced in CD in the physical copy before this Honourable Court
- Annexure-R2 (b) True copy of the transcription of Annexure R2(a) in Malayalam

- Annexure-R2 (c) True copy of the Email from the 2nd respondent to Appellant dated 7/5/2022
- Annexure-R2 (f) True copy of the conversation between Appellant and Adv. Ali Khan dated 21/4/2022 as in CD form
- Annexure-R2 (g) True copy of the transcription of Annexure-R2 (f)
- Annexure-R2 (h) True copy of the screenshot of whatsapp from Appellant to 2nd respondent till 30/4/2022.
- Annexure-R2 (i) True copy of the Pattayam and other related documents in the name of 2nd respondent
- Annexure-R2 (j) True copy of Whatsapp audio sent from Sijo at 'KARMA News' dated 23/6/2022 in CD for before the Physical Court
- Annexure-R2 (m) True copy of the Transcription of Annexure-R2 (l)
- Annexure-R2 (o) True copy of the Transcription of Annexure-R2 (n)
- Annexure-R2 (l) True copy of the news item in CD Form uploaded and relayed by 'Bharathlive' dated 25/5/2022
- Annexure-R2 (d) The unedited and true audio copy of the telephonic conversation between the Appellant and the Dy.S.P., Chalakudy in the CD form
- Annexure-R2 (n) True copy of news item in CD Form uploaded and relayed by 'Crime-online' by Nandakumar, dated 15/6/2022

//TRUE COPY//

SD/- P.S. TO JUDGE