2025:KER:30632

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

CRL.REV.PET NO. 15 OF 2018

AGAINST THE ORDER DATED 11.08.2017 IN SC NO.321 OF 2016 OF HON'BLE PRINCIPAL SESSIONS COURT, KOTTAYAM

PETITIONERS/ACCUSED:

1 V.T.JINU
HEAD CLERK ETTUMANOOR BLOCK PANCHAYATH ETTUMANOOR, KOTTAYAM DISTRICT

2 MS VIJAYAN
GENERAL EXTENSION OFFICER, ETTUMANNOR BLOCK PANCHAYATH ETTUMANOOR, KOTTAYAM DISTRICT

BY ADVS.
SMT.K.G.MARY
SRI.ARUN P. ANTONY

RESPONDENTS/PETITIONERS:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA
PIN-682031

2 DEPUTY SUPERINTENDANT OF POLICE
DISTRICT CRIME BRANCH KOTTAYAM PIN-686001

3 SUB INSPECTOR OF POLICE
ETTUMANOOR POLICE STATION KOTTAYAM

OTHER PRESENT:

PP JIBU T S

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25.03.2025, THE COURT ON 07.04.2025, DELIVERED THE FOLLOWING:

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***C R***

**A. BADHARUDEEN, J**

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**Crl.Rev. Petition No. 15 of 2018**

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**Dated 7th day of April 2025**

**ORDER**

This Crl. Rev. Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash Annexure - VII charge dated 11.08.2017 framed by the Special Court (Principal Sessions Court, Kottayam) under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC/ST PO Act') in S.C. No. 321 of 2016, pending therein.

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2. Heard the learned counsel for the 2nd petitioner/2nd accused, since the 1st petitioner/1st accused is no more. Also heard the learned Public Prosecutor. Perused the records produced along with the petition and also the Case Diary as such placed by the learned Public Prosecutor in detail.

3. In this matter, the prosecution alleges the commission of offences punishable under Sections 294(b), 465, 466, 474 r/w 34 of IPC as well as under Section 3(1)(x) of the SC/ST PO Act by the accused. The specific allegation is that, the accused herein who are aware of the caste identity of the de facto complainant as a member of the Scheduled Caste community, at about 05.00 p.m on 07.10.2013, used abusive words by calling her caste name with intention to humiliate her within public view. Further allegation

is that they forged documents to hold that the de facto complainant misappropriated some amount under 9 CB Bills, and the same resulted in suspension of the de facto complainant.

4. The first point argued by the learned counsel for the 2nd petitioner is that, in this matter, in order to prosecute the 2nd petitioner/2nd accused sanction under Section 197 of Cr.P.C. is necessary, since he is a public servant at the alleged time of occurrence. Even though the prosecution applied for sanction, no sanction so far obtained and therefore, the entire proceedings is vitiated. In this connection, the learned counsel for the 2nd petitioner placed decision of the Apex Court reported in ***2023 KHC 6628 Amod Kumar Kanth v. Association of Victim of Uphaar Tragedy,*** where in the facts are as under:-

*"An unfortunate and tragic incident led to a criminal prosecution accused against 16 accused; in which 59 persons lost their lives and over 100 persons received serious injuries, while viewing a film sitting in the balcony of Uphaar Theater. High Court has dismissed the petition filed by the appellant under S.482 of the Code of Criminal Procedure, 1973. Said petition was filed against the order passed by the Additional Sessions Judge; wherein Sessions Judge confirmed the decision of Metropolitan Magistrate rejecting the closure report filed by the Central Bureau of Investigation. Closure report filed by the CBI was not accepted by the Magistrate, who instead took cognizance on the protest petition filed by the first respondent and cognizance has been taken for offences under S.304A, S.337, S.338 of the Indian Penal Code, 1860 and the provisions under S.14 of the Cinematograph Act, 1952 read with the Rules. Present appeal is filed against the order of High Court dismissing*

*the petition filed under S.482 of the Code of Criminal Procedure, 1973. Main issue for consideration was; whether said order upholding the order of the Magistrate taking cognizance and issuing summons was illegal."*

5. In the said case, the apex Court held as under:-

*" The most important question which must be posed and answered by the Court when dealing with the argument that sanction is not forthcoming is whether the officer was acting in the exercise of his official duties. It goes further. Even an officer who acts in the purported exercise of his official power is given the protection under. S.197 of the Cr.P.C. This is for good reason that the officer when he exercises the power can go about exercising the same fearlessly no doubt with bona fides as public functionaries can act only bona fide. In fact, the requirement of the action being bona fide is not expressly stated in S.197 of the Cr.P.C., though it is found in many*

*other statutes protecting public servants from action, civil and criminal against them. Once we bear this cardinal principle in mind and judge the action or omission on the part of the appellant, we would think that it cannot be found that, having regard to the admitted facts, the appellant was not acting in the discharge of his official functions. All that happened, under his oversight starting with his notice which he issued on 28/07/1979, to the counter affidavit which he filed in the writ petitions, the subsequent show cause notice which he issued, and thereafter, finally on 24/12/1979, wherein he directed the removal of a total of 62 additional seats, all these acts were done in the exercise of his official duties. As we have already noted, even if it were to be treated as done in the purported exercise of his official duties, he would still stand protected from prosecution without sanction. This must not be confused with the question as to whether the appellant had committed any offence with which*

*he appears to have been indicted by the Magistrate issuing summons and the High Court upholding it. The fact that the appellant had taken a certain stand in the counter affidavit would not make his subsequent act of acting upon the recommendations of a committee, an act which is not in the discharge of his official functions. The findings of this Court which we have referred to in the decision (supra) would not mean that, if they are offences committed by the persons including the appellant, they would not require sanction within the meaning of S.197 of the Cr.P.C. The subtle and nuanced distinction between the question as to whether the offence has been committed and if an offence has been committed, whether a sanction is required for prosecuting a public servant who is alleged to have committed the same, must not be lost sight of. The learned Magistrate and the High Court would appear to have overlooked this distinction.*

6. According to the learned counsel for the 2nd petitioner, even in cases involving offences under the unamended SC/ST PO Act, prosecution sanction under Section 197 of Cr.P.C. is necessary to prosecute a public servant. In this regard, the learned counsel for the 2nd petitioner placed the decision of the Apex Court reported in ***2021 KHC Online 6319 Indira Devi v. State of Rajasthan and Another***, where in paragraph No.9, the Apex Court considered the necessity of sanction under Section 197 of Cr.P.C., where offences under Sections 3(1)(4), 3(15), and 3(5) of the SC/ST PO Act were alleged. In paragraph No.9, the Apex Court observed that:

> *"9. We have given our thought to the submissions of learned counsel for the parties. S.197 of the CrPC seeks to*

*protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the Court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. [See Subramanian Swamy v. Manmohan Singh (2012 KHC 4072: (2012) 3 SCC 64 : 2012 (1) KHC SN 29: 2012 (1) KLD 327: 2012 (2) SCALE 12 : 2012 (1) KLT SN 90 : AIR 2012 SC 1185 : 2012 CriLJ 1519)]. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty.*

*However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See State of Maharashtra v. Dr. Budhikota Subbarao (supra)]. The real question, therefore, is whether the act committed is directly concerned with the official duty.*

7. In this matter, as per Annexure - VII order, the learned Special Judge framed charge for the offences punishable under Sections 294(b), 465, 466 and 474 r/w Section 34 of IPC against

accused Nos. 1 and 2 and also framed charge for the offence under Section 3(1)(x) of the SC/ST PO Act against them.

8. Since the 1st accused/1st petitioner is no more, his contention that he is not a member of either Scheduled Caste or Scheduled Tribe Community is of no significance at present. It is not disputed that the 2nd petitioner is not a member of Scheduled Caste or Scheduled Tribe community. However, the question to be considered is whether, prima facie the offences for which the trial court framed charge are made out from the prosecution records. While framing charge, the essentials to be considered are well settled. In the decision reported in ***2024 KHC OnLine 586 Sandeep G v. State of Kerala,*** this Court epitomized the parameters that would govern, when plea of discharge under S.227

of CrPC and framing of charge under S.228 of CrPC are to be addressed, referring the Apex Court verdicts on the point and the same are as under:

> *(i) The trial Judge shall look into the materials collected by the investigating agency produced before the Court, to see, prima facie, whether those materials would induce suspicious circumstances against the accused, so as to frame a charge and such material would be taken into account for the purposes of framing the charge.*
>
> *(ii) The trial Judge has to apply his judicial mind to the facts of the case, with reference to the materials produced by the prosecution, as may be necessary, to determine whether a case has been made out by the prosecution for trial on the basis of charge/final report.*

*(iii) Once the accused is able to demonstrate from the materials form part of the charge/final report at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at this stage.*

*(iv) At the stage of considering an application for discharge the court must proceed on an assumption that the materials which have been brought on record by the prosecution are true and evaluate said materials, in order to determine whether the facts emerging from the materials taken on its face value, disclose the existence of the ingredients necessary of the offence/s alleged.*

*(v) The defence of the accused not to be looked into at the stage when the accused seeks discharge. The expression "the record of the case" used in S.227 CrPC is to be understood*

*as the documents and objects, if any, produced by the prosecution.*

*(vi) The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record shall not be evaluated.*

*(vii) At the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.*

*(viii) In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities,*

*which are really the function of the trial Judge, after the trial.*

*(ix) At the time of framing charge, if there is suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. In such case also charge needs to be framed to permit the prosecution to adduce evidence.*

*(x) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*

9. It is pointed out by the the learned counsel for the 2nd petitioner that, the allegation as to use of abusive words and calling of caste name of the de facto complainant by the 2nd petitioner along with the 1st accused was raised as on 07.10.2013, but as per Annexure - II dated 05.10.2013, the 2nd petitioner lodged a complaint before the President, Ettumanur Block Panchayath regarding malpractices done between the Block Development Officer (hereinafter referred as the BDO) and the de facto complainant in the matter of payment without quotation purchase. Thereafter, this case was foisted. The learned counsel also pointed out that apart from the version of de facto complainant, CW3 also given statement supporting the prosecution. But no others in the office supported the prosecution

case. He also pointed out that CW3 is a temporary employee later terminated from service and therefore her version also could not be believed. According to the learned counsel for the 2nd petitioner, in fact, the de facto complainant was suspended from service, and charge memo also issued against her as brought out from Annexure A3 series, Annexure - IV charge memo and recommendation to transfer her also was made, though the finality of the disciplinary action not known to the 2nd petitioner. The learned counsel for the 2nd petitioner also argued that in order to prove forgery, no scientific examination was conducted by sending the documents alleged to be forged and used as genuine, but merely statements of witnesses alone are given emphasis in this regard. According to the learned counsel for the 2nd petitioner,

the prosecution materials available are quite insufficient to frame charge against the 2nd petitioner and therefore, challenge against Annexure - VII is liable to succeed.

10. The learned Public Prosecutor vehemently opposed quashement of Annexure VII order. According to the learned Public Prosecutor, in the instant case, the allegations are not in connection with the discharge of the official duties of the 2nd petitioner and therefore, sanction under Section 197 of Cr.P.C. is not necessary. Even though the prosecution applied for getting sanction under Section 197 of Cr.P.C., the result of the same is yet to be known. The learned Public Prosecutor has given heavy reliance on the statements of CWs 1, 2, and 3 to substantiate that the allegations in the charge are specifically made out, prima facie,

against the 2nd petitioner. Apart from that, the learned Public Prosecutor has given much emphasis on the statements of CWs 15 to 25 to substantiate that there was fabrication of documents on the premise of a meeting on 07.10.2013, and the matter would require trial to prove the same.

11. As regards to sanction to prosecute a Government servant, as per the unamended penal provisions of the SC/ST PO Act and for the IPC offences, sanction under Section 197 of Cr.P.C is necessary when the offences alleged against the public servant are committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, the yardstick to be followed is

to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. In cases where the act or omission for which the accused was charged had a reasonable connection with the discharge of his duties, necessitating such an act or omission, then sanction is not necessary.

12. On perusal of the FI Statement given by the de facto complainant, it is stated that while she was working in the Educational Department (Government High School, Ayyankavu Kothamangalam), she was deployed as Lower Division Clerk in the Block Panchayath, Ettumanur. She dealt with the "General purchase fund seat" between 10.05.2012 to 22.10.2013, and later, she started to deal with Census and BPL Sections. According to

her, at about 5.00 p.m., on 07.10.2013, while she was engaged in her official duties, Head Clerk V T Jinu of Ettumanoor Block Panchayath and Sri. M S Vijayan, General Extention Officer reached her room, and ashamed her by telling that she was the keep of the BDO, and the specific allegation against the 2nd petitioner is that he ashamed the de facto complainant by calling her caste name, and on uttering that, nobody would question if something done against her, since she was member of Scheduled Caste community. The further allegation is that they uttered that they would teach a lesson to the de facto complainant. When her additional statement was recorded thereafter by the Deputy Superintendent of Police, she reiterated the allegations, and it was

stated that the accused are not members of the Scheduled Caste or Scheduled Tribe community.

13. Supporting the statements of the de facto complainant, she also gave 164 statement before the Magistrate. The prosecution cited CW3 Mrs. Geetha Rajendran to support the statements of the de facto complainant. The statement of CW3 is that she worked as data entry operator on daily wages in between July 2013 to 22.11.2013, and she witnessed the occurrence as stated by the de facto complainant. Apart from that, prosecution recorded the statement of CW2 Sri. Renjit, who worked as the temporary driver of the President of the Panchayath. In his statement how he came to know about lodging of the complaint by the de facto complainant alleging the overt acts has been averred. But he didn't

know what exactly said or done by the accused. Insofar as the allegations under Sections 294(b) as well as under Section 3(1)(x) of the SC/ST PO Act, these are the statements relied on by the prosecution. Coming to offences under Sections 465, 466, and 474 of IPC, heavy reliance has been given by the learned Public Prosecutor witness statements of CWs 15 to 25, but the prosecution records in no way would suggest that the alleged forgery and use of the same as genuine documents, etc proved by getting expert opinion in any manner. CW15 is cited by the prosecution to prove that CW15 worked as the driver in block Panchayath to prove creation of false document to show the evaluation meeting of 'gramavikasanavaragosham'. CW16 is cited to prove that he conducted departmental enquiry against the 1st

and the 5th witnesses and filed report in this regard, and also to prove that while encashing 9 CB Bills, Lower Division clerk, Head Clerk and BDO failed to follow the procedure for money transfer, and also to prove that the 1st witness misbehaved to the President. CW17 was cited to prove that there was no meeting on 07.10.2013, and his signature was obtained in a blank paper. CWs 23 to 25 were also cited to prove that there was no meeting on 07.10.2013. Since the prosecution records would throw light prima facie regarding the commission of the above offences, the trial court framed Annexure -VII charge and proceeded with the trial, and in fact, the said order is under challenge before this Court.

14. On scrutiny of the prosecution records, it could not be held that the trial court went wrong in framing charge for the offences stated in Annexure - VII order.

15. It is relevant to note that though this is a revision petition filed challenging Annexure - VII order framing charge, the learned counsel for the 2nd petitioner argued the necessity of sanction under Section 197 of Cr.P.C. In ***Indira Devi's case*** (supra) itself, the Apex Court clarified that the alleged indulgence of the officers in cheating, fabrication of records, or misappropriation could not be said as acts in discharge of their official duties. If so, the allegations of insulting and intimidating a member of the Scheduled Caste community and fabricating records to show conduct of a meeting are not matters would come

within the official duties of a public servant and therefore in order to prosecute the offender though he is a public servant, no sanction under Section 197 of Cr.P.C is necessary.

16. Holding so, no interference in the order impugned is necessary and thus the revision fails. Accordingly, the same stands dismissed.

The interim stay stands vacated.

Sd/-

A. BADHARUDEEN, JUDGE

*RMV*