

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 27TH DAY OF JULY 2020 / 5TH SRAVANA, 1942

CRL.A.No.378 OF 2020

AGAINST THE ORDER DATED 7/3/2020 IN CRL.M.C.No.323/2020 OF
THE LEARNED SESSION'S COURT, KOZHIKODE

CRIME NO.62/2020 OF Vellayil Police Station, Kozhikode

APPELLANTS/PETITIONERS/ACCUSED 1 & 2:

- 1 VISHAK.A.K
AGED 28 YEARS
S/O.VALSALAN.A.K., RESIDING AT AKKARAKKARAN,
KOPPANTAKATH, PUTHIYAPPA, PUTHIYANGADI POST,
KOZHIKODE DISTRICT.
- 2 VAISAKH
AGED 28 YEARS
S/O.SHIBU, RESIDING AT MADAPARAMBATH THAZHATH,
PUTHIYAPPA, PUTHIYANGADI POST,
KOZHIKODE DISTRICT.

BY ADVS.
SRI.T.MADHU
SMT.C.R.SARADAMANI
SMT.N.P.SHIGA

RESPONDENTS/STATE&DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
- 2 THE STATION HOUSE OFFICER,
VELLAYIL POLICE STATION,
KOZHIKODE DISTRICT-673011.

3 SRUTHI,
W/O.ATHUL, AGED 23 YEARS,
RESIDING AT CHERIYAPURAYIL HOUSE, PUTHIYAPPA,
PUTHIYANGADI POST,
KOZHIKODE DISTRICT - 673021.

R3 BY ADV. SRI.SANTHARAM.P
R3 BY ADV. SMT.REKHA ARAVIND
R3 BY ADV. SRI.PAUL P. ABRAHAM
R3 BY ADV. SRI.P.G.GOKULNATH

SHRI. B.JAYASURYA - PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27.07.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.B.SURESH KUMAR, J.

Criminal Appeal No.378 of 2020

Dated this the 27th day of July, 2020

J U D G M E N T

This criminal appeal is preferred challenging the order in Crl.M.C No.323 of 2020 on the files of the Sessions Court, Kozhikode, in terms of which the application preferred by the appellants, who are the accused in Crime No.62 of 2020 of Vellayil Police Station has been rejected.

2. The crime referred to above is one registered under Sections 448, 323, 341, 354, 308 and 427 read with Section 34 of the Indian Penal Code (the IPC) and Section 3(1)(w)(i) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act). The accusation in the case is that on 21.02.2020 at about 11.20 a.m, the accused barged into the courtyard of the house of the defacto complainant who belongs to a scheduled caste, assaulted her

and also abused her by her caste name.

3. The court below dismissed the application for anticipatory bail in terms of the impugned order, on the ground that it is not maintainable in the light of Section 18 of the Act.

4. Heard the learned counsel for the appellants and the learned Public Prosecutor.

5. The learned counsel for the appellants submitted that the allegations against the accused in the case do not make out the offences under the Act at all and therefore the application for anticipatory bail preferred by the appellants ought not have been rejected by the court below as not maintainable. The learned counsel elaborated the said submission pointing out that the offence under Section 3(1)(w) (i) is not made out since the materials do not indicate that the accused have touched the body of the defacto complainant with sexual intent. It was also pointed out by the learned counsel that the alleged abuse by caste name would not make out the offence under Section 3(1)(s) of the Act as the alleged place of occurrence cannot be said to be a place within public view. The learned counsel placed reliance on the decision of

the Apex Court in **Swaran Singh and others v. State** [2008 KHC 4926], in support of the said contention.

6. I have considered the contentions advanced by the learned counsel for the appellants. The relevant allegation contained in the First Information Statement given by the defacto complainant reads thus:

"അയൽവാസിയായ കുഞ്ഞാപ്പുവിന്റെ ഭാര്യയെ നോക്കി എന്ന് പറഞ്ഞ് ഭർത്താവിനെ കുഞ്ഞാപ്പുവും വൈശാഖും പിടിച്ച് വെച്ച് കൈകൊണ്ട് രണ്ട് പേരും അടിച്ചതാണെന്ന് പറഞ്ഞു. കുഞ്ഞാപ്പുവിന്റെ സുഹൃത്താണ് വൈശാഖ് . അവന്റെ വീട് ഹാർബറിന്റെ ഭാഗത്താണ് . അപ്പോൾതന്നെ ഞാൻ കുഞ്ഞാപ്പുവിന്റെ വീട്ടിൽ പോയി . അവന്റെ ഭാര്യ റിയയോട് കാര്യത്തെ പറ്റി അന്വേഷിച്ചു. എന്നിക്ക് അതിനെക്കുറിച്ചൊന്നും അറിയില്ലെന്ന് റിയ പറഞ്ഞു . അപ്പോൾ തന്നെ ഞാൻ വീട്ടിലേക്ക് തിരിച്ചുവന്നു . എന്റെ പിന്നാലെ തന്നെ കുഞ്ഞാപ്പുവും വൈശാഖും കൂടി എന്റെ വീട്ടിലേക്ക് അതിക്രമിച്ചു കയറി വന്ന് വാതിലിനടുത്ത് നിൽക്കുകയായിരുന്ന എന്നോട് "ഇതൊക്കെ ചോദിക്കാൻ നീ ആരാടി" "xxxxx " എന്ന് പറഞ്ഞ് കുഞ്ഞാപ്പു എന്റെ മാക്സി വലിച്ചുകീറുകയും ഇടതു ഷോൾഡറിന് ആഞ്ഞു ചവിട്ടുകയും ചെയ്തു . അതിനുശേഷം എന്റെ കൈ പിടിച്ച് വീടിന്റെ മുറ്റത്തേക്ക് വലിച്ചിട്ടു ."

The extracted portion of the First Information Statement indicates that the place of occurrence is the courtyard of the house of the defacto complainant. Paragraph 28 of the judgment of the Apex Court in **Swaran Singh** relied on by the appellants, reads thus:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a

'Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

True, the Apex court took the view in the said case that the court has to see the place of occurrence to ascertain whether the place is within public view. The question as to whether the offence is attracted is to be decided ultimately by the court dealing with the case. What is required to be seen at this point of time is as to whether a prima facie case has been made out. In so far as the place of occurrence is the courtyard of the house of the defacto complainant, according to me, it cannot

be contended prima facie that it is not a place within public view. As such, even if it is found that a case under Section 3(1)(w)(i) is not made out, in so far as the case under Section 3(1)(s) is made out prima facie, I do not find any infirmity in the impugned order. The appeal, in the circumstances, is without merits and the same is, accordingly, dismissed. It is, however, made clear that the dismissal of this appeal will not preclude the court below from considering the application of the appellants for regular bail in accordance with law.

Sd/-

P.B.SURESH KUMAR, JUDGE

PV