

Sarath.K.S Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 14, 2025

Acts Referred: Bharatiya Nagarik Suraksha Samhita, 2023 " Section 482

Bharatiya Nyaya Sanhita, " Section 3(2), 3(5), 115(2), 118(1), 329(3)

Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 " Section 3, 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va), 14A, 18, 18A

Hon'ble Judges: C.S.Sudha, J

Bench: Single Bench

Advocate: Mini.V.A., Ross Ann Babu, Sheeba Thomas

Final Decision: Allowed

Judgement

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that the nearby residents gathered on hearing the cries of the informant and Abiraj. When A1 is alleged to have abused the informant and Abiraj, ",

nobody else seems to have been present there. Therefore, if at all the aforesaid word is taken as a casteist slur, it does not seem to have been done in",

public view. Hence with the available materials on record, it prima facie appears that the offence under Section 3(1)(r) or (s) is not made out.",

However, it is made clear that the above observations have been made only for the purpose of disposing of this bail application. The investigating",

officer is at liberty to produce all material(s) to prove the commission of the offence under Section 3(1)(r) or (s) of the Act. The trial court will decide,

based on the evidence adduced at the trial whether the offence under Section 3(1)(r) or (s) of the Act is made out untrammelled by any observation(s),

made in this order.,

12. The allegations in the FIS prima facie make out the commission of offences of criminal trespass, voluntarily causing hurt/grievous hurt etc. In",

Khuman Singh (Supra), it has been held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belongs to scheduled",

caste would not be enough to inflict enhanced punishment. The offence must have been committed against a person on the ground that such person is,

a member of the scheduled caste or scheduled tribe community. In the said case there was no dispute regarding the fact that the aggrieved therein,

belonged to the scheduled caste, but there was no evidence to show that the offence was committed only on the ground that the victim was a member",

of the scheduled caste and therefore the conviction of the appellant/accused under Section 3(2) of the Act was held to be not sustainable. In the case,

on hand, the attack appears to have been made in the background of the dispute herein above referred to and not only on the ground that the informant",

and Abiraj are members of scheduled caste. Further, the overt act alleged against the appellant/A3 is only voluntarily causing simple hurt to the",

informant. It was A1 who attacked and caused hurt and grievous hurt to Abiraj. It is true that Section 3(5) BNS dealing with common intention has,

also been incorporated. During the course of arguments, it is brought to my notice that A1 and A2 were arrested and remanded. Thereafter they were",

released on bail. Again the question whether the offences under Section 3(2) (va) of the Act have been committed only on the ground that the,

informant and his relative are members of scheduled caste and scheduled tribe is a matter that will have to be brought out in evidence. In the,

circumstances of the case, custodial interrogation of the appellant/A3 does not appear necessary. Hence, I find that he is entitled to be granted pre-",

arrest bail. Therefore, the impugned order is set aside, and it is ordered thus: -",

i) The appellant/third accused in the event of his arrest shall be released on bail on execution of a bond to the satisfaction of the officer concerned.,

ii) The appellant/ third accused shall co-operate with the investigation and appear before the investigating officer as and when required/ directed.,

iii) He shall not leave the country without the prior permission of this Court.,

iv) He shall surrender his passport to the jurisdictional court. If the appellant does not have a passport, he shall file an affidavit to the said effect before the",

jurisdictional court within seven days of his release on bail.,

v) The appellant/third accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to",

dissuade him/her from disclosing such facts to the Court or to any police officer.,

The appeal is allowed.,

Interlocutory applications, if any pending, shall stand closed.",