

**(1997) 02 KL CK 0043**

**High Court Of Kerala**

**Case No:** Criminal M.C. 2192/96

Krishnan Nayanar

APPELLANT

Vs

Dr. M.A. Kuttappan and Another

RESPONDENT

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**Date of Decision:** Feb. 21, 1997

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 354
- Protection of Civil Rights Act, 1955 - Section 7(1)
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 2, 3

**Citation:** (1997) 1 KLJ 280 : (1997) 3 RCR(Criminal) 622

**Hon'ble Judges:** N. Dhinakar, J

**Bench:** Single Bench

**Advocate:** T.P. Kelu Nambiar and J. Jose and Alan Papali, for the Appellant; K. Ramakumar, for 1st Respondent and M.K. Damodaran, General for 2nd Respondent, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

N. Dhinakar, J.

Petitioner is the sole accused in Crl. M.P. No. 1355 of 1996 pending on the file of the Special Judge for the trial of offences for the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for short, Act 33/1989. The proceedings before the Special Judge came to be initiated on a complaint filed by the 1st Respondent and the learned Special Judge by his order dated 14th October 1996 took cognizance for the offence u/s 3(i)(x) of Act 33/1989 and also for an offence u/s 7(1)(d) of the Protection of Civil Rights Act, 1955. A true copy of the said order is seen filed as Annexure A to this Crl. M.C.

2. The proceedings came to be initiated as stated above against the Petitioner, on an allegation that while the Petitioner was contesting the by-election to the Kerala Legislative Assembly from the Thalassery Assembly Constituency a convention of the Left Democratic Front was convened on 20th September 1996 in the evening at the Town Bank Auditorium, Thalassery, as part of the election programme and that during the course of the speech by the Petitioner he made the following remark:

and a free translation of the said Malayalam statement is: "The other thing, that Harijan, one Kuttappan, he was dancing on the table. This was what Nayanar stated quite contemptuously." According to the 1st Respondent, the Petitioner made this statement deliberately with an intention to insult him in public view and therefore it is an offence punishable u/s 3(i)(x) of Act 33/89. It is further alleged in the said complaint that the conduct of the Petitioner will amount to practicing untouchability or an action arising out of untouchability and hence punishable u/s 7(1)(d) of the Protection of Civil Rights Act, 1955. A true copy of the complaint is seen annexed to this Crl. M.C. as Annexure B.

3. The sworn statement of the 1st Respondent was recorded by the learned Special Judge which is annexed as Annexure C to this petition. The learned Special Judge also recorded the statement of two other witnesses. Witness No. 1 has stated:

and a free translation of the statement is as follows: There is an M.A. Kuttappan, that Harijan M.L.A., he climbed over the table and was dancing. Is this the democratic manners of Antony?" Another witness, who was examined stated as follows:

and a free translation of the said statement is as follows: "The other thing, that Harijan Kuttappan. (He) climbed over the table and was dancing in the Legislative Assembly". The learned Special Judge took cognizance for the offence u/s 3(i)(x) of Act 33/1989 and Section 7(1)(d) of the Protection of Civil Rights Act, 1955 against the Petitioner and directed registration of the complaint as calendar case. Summons were directed to be issued to the Petitioner. Aggrieved by the said order of the learned Special Judge the present Crl. M.C. is filed with a prayer to quash the proceedings initiated against him.

4. Counsel for the Petitioner in support of the prayer, *inter alia*, contended that the proceedings against the Petitioner have to be quashed as the allegations made against the Petitioner even if they are taken to be true do not make out offences either u/s 3(i)(x) of Act 33/1989 or u/s 7(1)(d) of the Protection of Civil Rights Act, 1955. He submitted that the statement alleged to have been made by the Petitioner was not made in the presence of the 1st Respondent and hence it will not attract Sub-section (x) of Section 3 of Act 33 of 1989 in view of the expression "in any public view" used in the said sub-section as contra distinguished with the expression "in a public place". It is his contention that public view means any public sight for which the 1st Respondent must have been present at the time when the Petitioner made

the said statement and admittedly as the 1st Respondent was not present the said statement will not attract Sub-section (x) of Section 3 of Act 33/1989. The second contention of the Petitioner's Counsel is that there was no intentional insult on the part of the Petitioner. According to him, the Petitioner was only making a reference to the 1st Respondent's conduct in the Assembly and not about his caste as he was referring only to an incident which took place within the Assembly. In short, his argument was that the Petitioner did not intentionally insult the 1st Respondent. According to the Petitioner's Counsel no offence u/s 7(1)(d) of the Protection of Civil Rights Act is made out on the statement made by the Petitioner. Per contra Counsel appearing for the 1st Respondent strenuously submitted that to attract the provisions of Sub-section (x) of Section 3 of Act 33/1989 the person insulted need not be present as insult can be in relation to his conduct, reputation or appearance. It was his argument that the fact that the Petitioner used the word "Harijan" shows that he had the intention to insult the 1st Respondent and if he was referring only to the conduct of the 1st Respondent there was no need for the Petitioner to mention the caste. He further contended that on the allegations an offence u/s 7(1)(d) of the Protection of Civil Rights Act is made out against the Petitioner. He relied upon the following judgments and contended that this Court while exercising its inherent powers u/s 482 Code of Criminal Procedure should exercise them sparingly and only in rarest of rare cases:

Malikarjunappa Shivmurthappa since Deceased by his heirs Vs. State of Maharashtra,

Janata Dal Vs. H.S. Chowdhary and Others,

Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another,

State of U.P. Vs. O.P. Sharma,

Abdul Salam v. Muhammadali 1992 (2) KLT SN 7 (Case No. 9)

5. I have considered the rival contentions. I feel that the contention of the Petitioner that no offence u/s 7(1)(d) of the Protection of Civil Rights Act, 1955 is made out on the allegations made in the complaint can be considered first and disposed of.

6. In my view the words uttered by the Petitioner as extracted earlier in this order do not attract the provisions of Section 7(1)(d) of the Protection of Civil Rights Act. To attract the said section the Petitioner should have insulted the 1st Respondent on the ground of "untouchability" which is not the case of the 1st Respondent. The allegation in the complaint that the Petitioner uttered those words with a view to encourage his audience to practice untouchability and hence he is liable to be punished u/s 7(1)(d) cannot be accepted as it is not the case of the 1st Respondent that the Petitioner practiced untouchability. The complaint does not disclose that the complainant was either insulted or attempted to be insulted on the ground of untouchability and I feel there is no justification for initiating criminal proceedings

against the Petitioner under the said section.

7. I will now take up the contention of the Petitioner that to attract Sub-section (x) of Section 3 of Act 33/1989 the person insulted must be present at the time when the words were uttered or otherwise no offence is made out in view of the expression "within public view" found in the said sub-section. To consider the said contention it becomes necessary to have a look at the preamble of the Act as well as the objects and reasons for enacting Act 33/1989.

8. A combined reading of the preamble and the objects and reasons for enacting Act 33/1989 shows that the Act was enacted with a view to prevent atrocities against members of the Scheduled Castes and Scheduled Tribes.

9. Atrocity is defined in Section 2(a) of the Act as an offence punishable u/s 3 of the said Act. Sub-section (i) to Sub-section (xv) of Section 3 catalogues the atrocities and penalty is provided there under for such atrocities.

10. The Petitioner is now sought to be prosecuted for an atrocity, alleged to have been committed by him, attracting Sub-section (x) of Section 3 of Act 33/1989. It is the case of the 1st Respondent that the Petitioner insulted him by calling him "a Harijan", the word that is prohibited by Annexure R-1(b), a circular dated 6th September 1996 of the Scheduled Castes and Scheduled Tribes Development (G) Department.

11. The contention of the Petitioner is, that, for the offence u/s 3(i)(x) to get attracted the 1st Respondent must have been present at the time when the Petitioner uttered those words or otherwise no offence is made out on the allegations as the 1st Respondent admittedly was not present at that time. This submission is made in view of the expression "in any place within public view" as contra distinguished from the words "in any public place." To consider this contention it is also necessary to refer to the other Sub-sections in Section 3 of Act 33/1989. Sub-sections (i) to (xii), (xiv) and (xv) are atrocities committed against an individual member of the Scheduled Castes or Scheduled Tribes and Sub-section (xiii) is an atrocity committed against the property like water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used.

12. A reading of Section 3 shows that two kinds of insults against the member of a Scheduled Caste or Scheduled Tribe are made punishable-One as defined under Sub-section (ii) and the other as defined under Sub-section (x) of the said section. A combined reading of the two Sub-sections shows that under Sub-section (ii) insult can be caused to a member of the Scheduled Caste or Scheduled Tribe by dumping excreta waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc., need not necessarily be done in the presence of the person insulted and whereas under Sub-section (x) insult can be caused to the person insulted only if he is present in

view of the expression "in any place within public view". The words "within public view", in my opinion, are referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in Sub-section (ii) of Section 3 of Act 33/1989. By avoiding to use the expression "within public view" in Sub-section (ii), the Legislature, I feel, has created two different kinds of offences an insult caused to a member of the Scheduled Caste or Scheduled Tribe, even in his absence, by dumping excreta etc., in his premises or neighbourhood and an insult by words caused to a member of the Scheduled Caste or Scheduled Tribe "within public view" which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the Legislature would have avoided the use of the said expression which it avoided in Sub-section (ii) or would have used the expression "in any public place".

13. Insult contemplated under Sub-section (ii) is different from the insult contemplated under Sub-section (x) as in the former a member of the Scheduled Caste or Scheduled Tribe gets insulted by the physical act and whereas in the latter he gets insulted in public view by the words uttered by the wrong doer for which he must be present at the place.

14. The contention of the 1st Respondent that a person can be insulted without his presence by even displaying a board that people belonging to the Scheduled Castes or Scheduled Tribes will not be permitted to enter a place cannot also be accepted as such an act may be an insult on the ground of untouchability attracting Section 7(1)(d) of the Protection of Civil Rights Act and not an insult as contemplated u/s 3(x) of Act 33/1989.

15. The other contention of the 1st Respondent that a person can be prosecuted for an offence of defamation even if the defamatory words were uttered in the absence of the person defamed and the said analogy must be applied while interpreting Sub-section (x) of Section 3 of Act 33/1989 cannot be accepted as the said sub-section cannot be allowed to be expanded by resorting to such an analogy.

16. It is a settled principle that while interpreting a statute the Court should always look into words in the section and the context in which they are used in the said section and not look for words used in another statute and interpret the said section from the context of the words used in the other statute.

17. The object and reasons for enacting Act 33/89 show that it is enacted to check and deter crimes against members of the Scheduled Castes and Scheduled Tribes by the non-Scheduled Castes or non-Scheduled Tribes as the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found inadequate to check atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and Scheduled Tribes. It is clear from the said

objects and reasons and from a reading of the provisions of the Act, and in particular Section 3, this Act creates distinct and different offences from the other penal statutes though some of the offences under this Act are also punishable under the Indian Penal Code as for example the offence under Sub-section (xi) of Section 3 in the Act will also be an offence u/s 354 I.P.C. The distinction is the nature of punishment. The person convicted under Sub-section (xi) of Section 3 of Act 33/1989 shall be punishable with imprisonment for a minimum period of six months which may extend to five years and fine and whereas if he is convicted u/s 354 I.P.C. he may be convicted and let off with fine only. The more the rigour of the Act, the stricter the interpretation will be.

18. As stated by me earlier the words used in Sub-section (x) are not "in public place", but "within public view" which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view the entire allegations contained in the complaint even if taken to be true do not make out any offence against the Petitioner.

19. In view of the findings on the first contention, I feel, there is no necessity for me to go into the second contention that the Petitioner did not intentionally insult the 1st Respondent.

20. The authorities referred to by the Counsel for the 1st Respondent which are found mentioned in the earlier part of this order, in fact, show that where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not make out an offence the proceedings can be quashed and as I have held that no offence is made out on the allegations the proceedings against the Petitioner in Crl. M.P. No. 1355 of 1996 on the file of the Special Judge Court constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are quashed.

The Crl. M.C. is allowed.