

Crl.M.C.No.340/23

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 26TH DAY OF MAY 2025 / 5TH JYAISHTA, 1947

CRL.MC NO.340 OF 2023

CRIME NO.125/2022 OF Velloor Police Station, Kottayam

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.695 OF 2022
OF DISTRICT COURT & SESSIONS COURT/RENT CONTROL APPELLATE
AUTHORITY, KOTTAYAM

PETITIONER:

DR. C. M. KUSUMAN,
AGED 59 YEARS
S/O MADHAVAN,PULIKIYIL HOUSE, MIDAYIKUNNU P. O.,
THALAYOLAPARAMBU,KOTTAYAM DISTRICT - 686605.
(PRINCIPAL, DB COLLEGE, KEEZHOOOR, KOTTAYAM

BY ADVS.
SRI.PAUL ABRAHAM VAKKANAL
SMT.VINEETHA SUSAN THOMAS
SHRI.ROY P.KURIAKOSE
SRI.ABRAHAM VAKKANAL (SR.)

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RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 THE DEPUTY SUPERINTENDANT OF POLICE,
VAIKOM, VAIKOM P.O, KOTTAYAM DISTRICT - 686141
- 3 HIRAN M PRAKASH
AGED 37 YEARS
S/O. JAYAPRAKASH, MUDAPPURAYIL HOUSE,
KUTTANTHARA, THALAYOLAPARAMBU P.O. VADAYAR,
KOTTAYAM DISTRICT - 686605.

BY ADVS.
SRI. THOMAS J. ANAKKALLUNKAL
SHRI. JAYARAMAN S.
SMT. ANUPA ANNA JOSE KANDOTH
SHRI. NIRMAL CHERIYAN VARGHESE
SMT. LITTY PETER

OTHER PRESENT:

SR. ADV. ABRAHAM, VAKKANAL FOR THE PETITIONER.
SMT. PUSHPALATHA. M.K. SR.PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
27.01.2025, THE COURT ON 26.05.2025 PASSED THE FOLLOWING:

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V.G.ARUN, J

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Crl.M.C.No.340 of 2023

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Dated this the 26th day of May, 2025

ORDER

Petitioner is the accused in Crime No.125 of 2022 registered at the Velloor Police Station for the offence under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short) now pending as S.C.No.695 of 2022 on the files of the Sessions Court Kottayam. The case originated from a complaint filed against the petitioner by the 3rd respondent. The petitioner is the Principal of the D.B College, Keezhoor, whereas the 3rd respondent is an Assistant Professor in the Department of Journalism at that college. Briefly put, the allegations in the complaint are as follows ;

On 07.02.2022 at 01:30 pm, the petitioner convened a meeting of the staff members of the college to explain the



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reason for terminating an employee. While addressing the meeting, the petitioner noticed the 3rd respondent typing on his mobile phone and questioned the 3rd respondent about his action. Thereupon the 3rd respondent answered that he was typing down what the petitioner was saying on his mobile phone. Infuriated by the reply, the petitioner shouted that the 3rd respondent was indulging in such acts because of his manufacturing defect. When the petitioner finished addressing the gathering, the 3rd respondent stood up and said that he did not have any manufacturing defect as his father was a Panchayat Secretary and mother, an educated woman and both of them had no bad reputation. Thereupon, the petitioner replied that the 3rd respondent need not narrate his family history, as the petitioner knew the history of the 3rd respondent as well as his family and if he reveals that, the 3rd respondent will cut a sorry figure.

2. Heard, Senior Advocate Abraham Vakkanal for the petitioner, Adv.Thomas J Anakkallunkal for the 3rd respondent



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and Senior Public Prosecutor M.K.Pushpalatha for the State.

3. Learned Senior Counsel contended that in order to attract the offence under Section 3(1)(r) of the Act, the victim should have been humiliated with reference to his Scheduled Caste status. In the absence of such intention the offence under Section 3(1)(r) will not be attracted even if the victim belongs to the Scheduled Caste or the Scheduled Tribe and felt insulted by the derogatory comment. To buttress the argument, reliance is placed on the decisions in **Hitesh Verma v State of Uttarakhand and Another** [(2020) 10 SCC 710], **Ramesh Chandra Vaishya v State of Uttar Pradesh and Another** [2023 SCC OnLine SC 668] and **Shajan Skaria v State of Kerala and Another** [2024 SCC OnLine SC 2249]. According to the Senior Counsel, the comment that the 3rd respondent had manufacturing defect has nothing to do with his caste. Further, for attracting the offence under Section 3(1)(r), the remark should have been made in a public place and within public view. Here, the remark was made inside a hall within the college



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campus where only a closed group of staff members were present. To bolster the argument, reference is made to the decision of the High Court of Karnataka in **Rithesh Pais v State of Karnataka, by Puttur Town P.S. and Another** [2022 SCC OnLine Kar 1676] and that of the Delhi High Court in **Daya Bhatnagar and Others v State** [(2004) 109 DLT 915].

4. Learned Counsel for the 3rd respondent submitted that the comments were made with the deliberate intention of insulting the 3rd respondent by reason of his parentage. It is pointed out that the petitioner knows the 3rd respondent and his family very well and the subsequent remark about his family history was a clear jibe at his caste status. The other issue as to whether the group in which the remarks were made can be termed as members of the public and within public view, are matters of evidence which cannot be decided in a proceeding under Section 482 of the Cr.P.C. Support for the contention is sought to be drawn from this Court's decision in **Aji Raj C. A. v. State of Kerala and Another** [2020 KHC 54].



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5. Being contextually relevant, Section 3(1)(r) of the Act is extracted hereunder;

“(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

6. Before proceeding to decide the case, it will also be profitable to read the following excerpts with reference to Section 3(1)(r) in **Hitesh Verma, Ramesh Chandra Vaishya** and **Shajan Skaria** (supra) ;

Hitesh Verma

“**11.** It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26-1- 2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

“**3(1)(r)** intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view”.



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13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste."

Ramesh Chandra Vaishya;

"17. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of Section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The



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legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks.

18. Since Section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438 Cr. P.C. and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the FIR. (which is not required to be an encyclopaedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge-sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence.

19. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21.01.2016 does not



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make out any case of an offence having been committed by the appellant under Section 3(1)(x) warranting him to stand a trial.”

Shajan Skaria

58. We say so for the reason that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe. There is nothing in the transcript of the uploaded video to indicate even prime facie that those allegations were made by the appellant only on account of the fact that the complainant belongs to a Scheduled Caste. From the nature of the allegations made by the appellant, it appears that he is at inimical terms with the complainant. His intention may be to malign or defame him but not on the ground or for the reason that the complainant belongs to a Scheduled Caste.

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60. Thus, the dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract



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Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. We say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.”

7. The above precedents explicitly lay down that, for the offence under Section 3(1)(r) to be attracted, the insult or intimidation should be on account of the victim being a member of a Scheduled Caste community or a Scheduled Tribe. In the case under consideration, the specific complaint is that the petitioner had insulted and humiliated the 3rd respondent by commenting that the reason for the 3rd respondent’s odd behaviour is by reason of his ‘manufacturing defect’. The moot question therefore is whether the remark ‘manufacturing defect’ was made with intent to insult and intimidate the 3rd respondent with reference to his caste status. While deciding



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this question, one should bear in mind the undeniable fact that the Scheduled Castes in India have faced systemic ignominy like exclusion, untouchability and violence rooted in centuries old caste hierarchy. They had restricted access to resources, land and quality education. Even with the protective provisions in the Constitution and enactments like the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the discrimination and ostracization has not been fully eradicated. One cannot also be oblivious of the fact that the tolerance level of persons belonging to the vulnerable sections will not be the same as persons who have not suffered any such ignominy. To put it pithily, only the wearer knows where the shoe pinches. Therefore, while deciding whether an insult or intimidation is on account of the victim belonging to the Scheduled Caste or the Scheduled Tribe, the context and the scenario is of utmost importance.

8. In the case at hand, the prosecution allegation is that the 3rd respondent was insulted in a meeting consisting of his



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colleagues. Of course, in **Rithesh Pais** and **Daya Bhatnagar** (supra), the High Courts of Karnataka and Delhi have held that the remark made inside a building cannot be termed as one made in public view and a group of people comprising of persons linked with the complainant through any close relationship or business will not fall within the meaning of public. In this context, it is apposite to understand the meaning of the word 'public' and the expression 'within public view'. Black's Law Dictionary defines the word 'public' as the inhabitants of a particular place; the people of the neighbourhood. Public view generally means something that is visible and accessible to the general public. It implies that the object or activity in question can be seen and/or experienced by a significant number of people, rather than being hidden or private. Therefore the expression 'within public view' would be taken as any activity or event which is visible or audible to persons other than the direct participants. Therefore the question whether the insulting remark made inside the hall can



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be perceived as something done within public view can only be decided based on evidence. This Court in **Aji Raj C. A.** (supra) has already held that such a question can only be decided based on evidence. It is also the settled law that for the purpose of exercising the inherent power under Section 482 of Cr.P.C, the High Court cannot conduct a mini trial or microscopic scrutiny of documents.

For the aforementioned reasons, the Crl.M.C is dismissed.

sd/-

V.G.ARUN, JUDGE

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APPENDIX OF CRL.MC 340/2023

PETITIONER ANNEXURES

Annexure A1 CERTIFIED COPY OF THE FINAL REPORT NO. 1002/2022 DT: 28-09-2022 SUBMITTED IN THE PRINCIPAL SESSIONS COURT (SC/ ST ACT), KOTTAYAM.

Annexure A2 TRUE COPY OF THE ORDER DT. 7-11-2022 IN CRL.M.C.NO. 4860/2022.

RESPONDENT ANNEXURES

Annexure R1 True copy of the FIR dated 17.11.2016

PETITIONER ANNEXURES

Annexure A3 TRUE COPY OF THE CERTIFIED COPY OF THE FINAL REPORT (MISTAKE OF FACT) DT. 9-3-2017 FILED IN FIR NO. 1583 OF 2016 BY THE S.I. OF POLICE BEFORE THE JFCM COURT, VAIKOM.