



2023/KER/36007

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

TUESDAY, THE 27TH DAY OF JUNE 2023 / 6TH ASHADHA, 1945

CRL.A NO. 817 OF 2023

CRMC 456/2023 OF SESSIONS COURT, THODUPUZHA

APPELLANT/S:

- 1 V. ANILKUMAR
AGED 51 YEARS
(SECTION FOREST OFFICER, IDUKKI WILDLIFE
SANCTUARY), S/O VELUKKUTTYPANIKKAR, SHIVAM,
POOVATHOOR P.O, NEDUMANGAD, THIRUVANANTHAPURAM,,
PIN - 695161
- 2 V C LENIN
AGED 39 YEARS
(BEAT FOREST OFFICER, IDUKKI WILDLIFE SANCTUARY)
, S/O VIJAYAKUMARANNAYAR, L V BHAVAN, KALLARA
P.O, THIRUVANATHAPURAM ,, PIN - 695608
- 3 JIMMY JOSEPH
AGED 52 YEARS
, (SENIOR GRADE DRIVER, IDUKKI WILDLIFE
SANCTUARY) , S/O JOSEPH CHAKKO, VADAKKAN (H) ,
KAANJIYAAR P.O,, PIN - 685511
- 4 K.N. MOHANAN,
AGED 46 YEARS
(FOREST WATCHER (SPECIAL RECRUITMENT), IDUKKI
WILDLIFE SANCTUARY) , S/O KUTTAPPAN,
NEELARAPPARAYIL, IDUKKI COLONY P.O,, PIN -
685602
- 5 K.T. JAYAKUMAR,
AGED 41 YEARS
(FOREST WATCHER (SPECIAL RECRUITMENT), IDUKKI,
KERALA) , S/O THANKAPPAN, KAVALAYIL,
MATHAYIPPARA, KAZHUKANAM, IDUKKI,, PIN - 685602
- 6 SANTHOSH K.N,
AGED 45 YEARS
(NMR FOREST WATCHER TEMPORARY, IDUKKI WILDLIFE
SANCTUARY) , S/O NARAYANAN, KAKKANATTPARAMBIL, K
CHAPPATH P.O, IDAPPOOKKALAM, IDUKKI,, PIN -
685505
- 7 K.S. GOPALAKRISHNAN
AGED 58 YEARS
, (NMR FOREST WATCHER, IDUKKI WILDLIFE
SANCTUARY) , S/O KARUNAKARAN NAIR, SREENILAYAM,
NAYARUPPARA P.O, IDUKKI ,, PIN - 685602



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8 T.K. LEELAMANI
AGED 42 YEARS
(FOREST WATCHER (SPECIAL RECRUITMENT), IDUKKI
WILDLIFE SANCTUARY) , D/O MANIKYAN, MAKKANIKKAL
(H), MATHAYIPPARA, KOLLATHIKKAVU, IDUKKI,, PIN -
685505
BY ADVS.
V.V.NANDAGOPAL NAMBIAR
PREEJA. P.VIJAYAN
SMITHA (EZHUPUNNA)
CHITRA JOHNSON

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
2 SARUNSAJI
S/O SAJIMON, PUTHENPURAKKAL, MULLA,
MATHAYIPPARA, IDUKKI, PIN - 685505
BY ADVS.
PUBLIC PROSECUTOR
ADV ARUNDAS K S
ABHISHEK KURIAN(K/296/2010)

OTHER PRESENT:

PP M.C.ASHI

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21.06.2023, THE COURT ON 27.06.2023 DELIVERED THE FOLLOWING:**

**JUDGMENT**

Dated this the 27th day of June , 2023

Appellants are accused Nos.1 to 4, 6 to 8 and 10 in Crime No.703 of 2022 of Upputhara Police Station registered for offences punishable under Sections 341, 323, 294(b), 506, 330, 201 r/w 34 of IPC and Section 3(1)(p), 3(1)(e), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015). The essential facts, leading to the registration of the crime, are as under;

The appellants, in their capacity as Forest officials, had inspected the autorickshaw of the second respondent at the Vanmavu Checkpost in Kizhukkanam Section of Idukki Wildlife Sanctuary at about 9.00 am on 20.09.2022. On inspection, the second respondent was found to be carrying wild animal meat in his autorickshaw. Thereupon,



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OR No.1 of 2022 was registered as per Form 1 and report submitted to the Judicial First Class Magistrate Court, Kattappana, alleging commission of offences under Sections 9, 2(16), 2(20), 51(1), 57, 39(1)(6) and 39(3) and Section 429 IPC r/w 34 IPC r/w Sec.56 of the Wild Life Protection Act and Section 61(A) of the Kerala Forest Act. Based on the remand report, the second respondent was remanded to judicial custody till 03.10.2022. Thereafter, as per Annexure A8 order dated 26.09.2022, the custody of the second respondent was given to the Forest Officer for one day. The second respondent was later granted bail on 01.10.2022. The second respondent being a member of the Scheduled Tribe, the tribal leaders and political parties started agitations, alleging that the second respondent was falsely implicated and tortured by the forest officials. Much after the second respondent's release, Annexure A1



crime was registered against the appellants and five others. Even though appellants moved an application for anticipatory bail before the Special Court, that was dismissed as per Annexure A13 order, on finding that the investigating agency is proceeding with the investigation of a crime having a *prima facie* case for offences punishable under the SC/ST (PoA) Act. Aggrieved, this appeal is filed.

2. Adv.V.V.Nandagopal Nambiar, learned Counsel for the appellants, contended that the crime against the appellants was registered due to the pressure from tribal and political leaders. The intention behind registration of the crime is to absolve the second respondent from the crime registered against him. In support of the contention that the appellants have been falsely implicated in the crime, the following submissions were made;



(i) The incident in which wild meat was recovered from the second respondent's autorickshaw had occurred on 20.09.2022, whereas the complaint leading to registration of crime against the appellants was made only on 05.12.2022. The falsity of the allegation that the second respondent was assaulted by the appellants and others is evident from the fact that no injury on the body of the second respondent was noticed in Annexure A4 medical certificate issued on 20.09.2022, the same day of the second respondent's arrest. The second respondent did not raise any complaint of having been assaulted, when he was produced before the jurisdictional Magistrate. In Annexure A7 proforma for health screening of prisoners issued by the Medical Officer dated 21.09.2022, as also Annexures A9 and A10 medical certificates also categorically state that no injury was noticed on



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the second respondent's body. Moreover, in Annexure A8 order, by which custody of the second respondent was given to the Forest Officials, the learned Magistrate noted of having seen the accused and being satisfied that he is sound in body and mind.

(ii) Insofar as the allegation of assault is proved to be false, the other complaint regarding abuse by calling caste name and institution of false criminal proceedings are liable to be discarded. In support of this contention, reliance is placed on the Apex Court's decision in Prathvi Raj Chauhan v. Union of India [(2020) 4 SCC 727] and the judgment of this Court in X v. State of Kerala [2022 (6) KLT OnLine 1063].

(iii) The crime is registered by the police in a mechanical manner, as evident from the fact that, out of the 13 accused, A4, A6 and A10



(appellants 4, 5 and 8) belongs to the Scheduled Caste Urali community. It is pointed out that the tribal agitation and political pressure had resulted in appellants 1 to 5 being suspended from service for 6 months. Even after reinstatement, the appellants were transferred to remote areas. In any event, no purpose will be served by subjecting the appellants to custodial interrogation or keeping them in custody at this point in time.

3. Adv.Abhishek Kurian, learned Counsel for the second respondent, submitted that the instant case is a classic example of the inhuman treatment meted out to members of Scheduled Tribe communities. According to the learned Counsel, the true facts are as under;

The second respondent is a member of the Scheduled Tribe Ullada community. On 20.09.2022, by 5.30 a.m, the second respondent went to



Valakode in Idukki District from his residence at Kannampady in his autorickshaw bearing registration No.KL-37-B-4817 for dropping his friend named Drishya at Erattupetta. When the second respondent reached near "Member kavala bhagam", the first appellant and his subordinate officers stopped the autorickshaw and conducted a detailed search in his autorickshaw and nothing was found. Then the second respondent continued his journey through the forest and passed Vanmavu Forest Check Post, where his autorickshaw was again checked by the 7th appellant and one Bhaskaran, the Forest Watcher and the details of the said autorickshaw was entered in the vehicle register maintained in the said check post. After crossing the check post, the second respondent parked his autorickshaw in a place known as Valakode Junction and went to Erattupetta in a KSRTC bus along with his friend Drishya who was



coming from Kattappana side in the said bus. When the bus reached near Wagamon by 7.30 AM, the first appellant called the second appellant from the mobile phone of the father of the second respondent and directed him to appear before him immediately to solve a complaint received against the second respondent. So the second respondent returned to the place where the autorickshaw was parked and proceeded to the Forest Office area. On reaching the Vanmavu Forest Check post by 8.30 a.m, the vehicle was stopped by the first appellant and his team. Appellants 2 and 3 caught hold of the second respondent by his collar and took him to the nearby forest office area after taking his valet, mobile phone and other things forcefully. Then the first appellant came and abused him by calling his caste name and brutally manhandled him. All these illegal acts were done in the presence of the father of the



second respondent and two other persons named Missionkunnel Joy and Sanu.

4. In answer to the contention that the second respondent had approached the police only on 05.12.2022, it is submitted that immediately after his release on 01.10.2022, the second respondent approached the Station House Officer, Upputhara Police Station on 03.10.2022 and voiced his grievance. The SHO assured that the grievance will be considered by the officials in the Forest Department. As no action was forthcoming, the second respondent again lodged a complaint on 18.10.2022 for which Annexure R2(d) receipt was issued. In the meanwhile, an investigation was conducted by a Divisional Forest Officer, Flying Squad, Idukki and Annexure R2(e) report filed finding that Annexure A3 OR No.1/2002 registered and the second respondent arrested without following the mandatory procedure. That there is



discrepancy with respect to the place, time and manner in which the second respondent was apprehended, the meat recovered and the crime registered. Based on Annexure R2(d) report, appellants 1 to 5 were placed under suspension as per Annexure R2(g) order. Thereafter, vide Annexure R2(h) order, the Wild Life Warden concerned was also suspended. The allegation regarding false implication stands proved by filing of Annexure R2(j) refer report stating that the crime was registered due to a mistake of fact, since the meat seized from the second respondent's possession turned out to be meat of the species *Bos Taurus* [common name 'cattle']. The jurisdictional court accepted the refer report and closed the file as per Annexure R2(k) order.

5. Finally, it is contended that the accused had conspired together and destroyed the



valuable proof in the form of the bus ticket taken by the second respondent for travelling to Wagamon in the early hours of 20.09.2022.

6. Learned Public Prosecutor opposed the prayer for pre-arrest bail by pointing out the dubious manner in which the second respondent was trapped and the heinous manner in which he was abused and assaulted after arrest. It is submitted that the appellants having tampered with the evidence, their custodial interrogation is essential for the purpose of effecting recovery.

7. In reply, learned Counsel for the appellants submitted that, Sri.P.K.Mujeeb Rahman, the Assistant Wild Life Warden, who was in charge and responsible for the registration and investigation of the crime alone was excluded in Annexure A1 FIR. The reason for such exclusion is the stand taken by that officer in favour of



the second respondent. While some of the appellants were placed under suspension on the allegation of having registered the occurrence report, without following the prescribed procedure, the officer responsible for such registration and investigation was not proceeded against. It is contended that the appellants had registered Occurrence Report as part of their official duty and are hence entitled for protection under Section 197 of Cr.P.C and the Forest and Wild Life Protection Acts.

8. The allegation that the second respondent was assaulted after arrest is difficult to believe in the light of Annexure A4 medical certificate issued within few hours of his arrest. Therein, no mention is made regarding any external injuries on his body. Further, when the second respondent was produced before the Magistrate, he made no complaint about any



physical torture or abuse. In the medical examination conducted thereafter also, no injury was noted. Having found the complaint regarding physical assault to be without substance, the allegation that the second respondent was abused by caste name, cannot be accepted as such. The other major allegation is regarding the institution of false criminal proceedings, which is an offence punishable under Section 3(p) of the SC/ST (PoA) Act. Here, apart from registration of the crime by the police, there is proof in the form of reports of the Senior Officers in the Forest Department itself. For example, in Annexure R2(d) report dated 19.10.2022, submitted much prior to the registration of the crime, the Divisional Forest Officer had reported that there are discrepancies with respect to the place, time of recovery and arrest of the second respondent. It was also



reported that the articles recovered from the second respondent were not included in the property list filed in the Magistrate Court. As such, there are *prima facie* materials to attract the offence under Section 3(p) against appellants 1 to 4, since they were directly involved in the seizure, arrest and registration of crime. In my opinion, the role of Sri. Mujeeb Rahman, the then Assistant Wild Life Warden, who apparently has a role in registration of the crime and the initial formalities, is also liable to be investigated. The materials on record indicate that the other accused were roped in for carrying out their formal duties, pursuant to registration of the crime. The materials now available do not make out the offence under Section 3(p) against them. There are no materials for attracting the offence under Section 3(1)(e) also. As far as the offence under Section 3(va) is concerned, it is



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pertinent to note that, except Section 330, the other IPC offences areailable. Even though Section 330 is incorporated, in the absence of proof regarding hurt or assault, that offence will not be attracted. Indisputably, appellants 4, 5 and 8 belong to the Scheduled Caste community and cannot therefore be prosecuted for offences under the SC/ST (PoA) Act.

For the aforementioned reasons, the Crl.Appeal, insofar as appellants 1 to 3 are concerned, is dismissed.

The appeal of appellants 4 to 8 are disposed of as under;

(i) Appellants 4 to 8 shall surrender before the investigating officer within two weeks.

(ii) On surrender, appellants 4 to 8 shall be interrogated and in the event of their arrest, released on bail on executing bonds for Rs.50,000/- (Rupees fifty thousand only) each



with two solvent sureties for the like amount.

(iii) Appellants 4 to 8 shall co-operate with the investigation and appear before the investigating officer as and when directed.

(iv) Appellants 4 to 8 shall not attempt to influence or intimidate the second respondent and other witnesses in any manner whatsoever.

In the event of the above conditions being violated, the investigating officer can seek cancellation of their bail.

Sd/-

V . G . ARUN
JUDGE

Scl/

**APPENDIX OF CRL.A 817/2023**

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF FIR IN CRIME NO. 703/2022 OF UPPUTHARA POLICE STATION
- Annexure A2 (A) THE COMMUNITY CERTIFICATE ISSUED BY THE TAHASILDHAR, IDUKKI CERTIFYING THAT THE 4TH APPELLANT BELONGS TO HINDU URALI, WHICH IS RECOGNIZED AS SCHEDULED TRIBE UNDER THE CONSTITUTION (SCHEDULE TRIBES ORDER 1950 AS AMENDED BY SCHEDULE CASTE & SCHEDULE TRIBES ORDERS (AMENDMENT ACT) 1976, DATED 8.7.2014
- Annexure A2 (B) THE COMMUNITY CERTIFICATE ISSUED BY THE TAHASILDHAR, PEERUMEDU CERTIFYING THAT THE 5TH APPELLANT BELONGS TO HINDU URALI, WHICH IS RECOGNIZED AS SCHEDULED TRIBE UNDER THE CONSTITUTION (SCHEDULE TRIBES ORDER 1950 AS AMENDED BY SCHEDULE CASTE & SCHEDULE TRIBES ORDERS (AMENDMENT ACT) 1976, DATED 23.11.2013
- Annexure A2 (C) THE COMMUNITY CERTIFICATE ISSUED BY THE TAHASILDHAR, PEERUMEDU CERTIFYING THAT THE 8TH APPELLANT BELONGS TO HINDU URALI, WHICH IS RECOGNIZED AS SCHEDULED TRIBE UNDER THE CONSTITUTION (SCHEDULE TRIBES ORDER 1950 AS AMENDED BY SCHEDULE CASTE & SCHEDULE TRIBES ORDERS (AMENDMENT ACT) 1976, DATED 13.3.2012
- Annexure A3 TRUE COPY OF FORM NO.1 UNDER SECTION 52 OF KERALA FOREST ACT 1961 IN OR NO. 1/2002, FILED BEFORE JFCM COURT, KATTAPANA
- Annexure A4 TRUE COPY OF THE CERTIFICATE OF EXAMINATION ISSUED BY THE MEDICAL OFFICER DATED 20.9.2022
- Annexure A5 TRUE COPY OF THE REMAND REPORT ALONG WITH THE ENDORSEMENT OF MAGISTRATE



- DATED 3.9.2022
- Annexure A6 TRUE COPY OF THE MEDICAL CERTIFICATE
ISSUED BY MEDICAL OFFICER DATED
20.09.2022
- Annexure A7 TRUE COPY OF THE PROFORMA FOR HEALTH
SCREENING OF PRISONERS ON ADMISSION TO
JAIL
- Annexure A8 TRUE COPY OF THE ORDER IN CMP NO.
4240/2022 IN OR NO.1/2022 OF WILDLIFE
DIVISION IDUKKI
- Annexure A9 TRUE COPY OF THE CERTIFICATE NO.
965/2022 DATED 26.9.2022 ISSUED FROM
TALUK HOSPITAL, KATTAPANA
- Annexure A10 TRUE COPY OF CERTIFICATE NO. 974/2022
DATED 27.9.2022 ISSUED FROM TALUK
HOSPITAL, KATTAPANA
- Annexure A11 TRUE COPY OF THE ORDER DATED
23.12.2022 IN CRL MC 9591 OF 22
- Annexure A12 TRUE COPY OF ORDER DATED 22.05.2023 IN
CRL.MC NO: 9591/2022
- Annexure A13 TRUE COPY OF THE ORDER DATED
31.05.2023 IN CRL.MC NO: 456/2023

RESPONDENT ANNEXURES

- Annexure R2 (j). A true copy of the report filed by the
Wild Life Warden, Idukki dated
19.04.2023

PETITIONER ANNEXURES

- Annexure A14 TRUE COPY OF NEWS REPORT DATED
26.5.2023 PUBLISHED IN MALAYALA
MANORAMA DAILY

RESPONDENT ANNEXURES

- Annexure R2 (k). A true copy of the order dated
19.04.2023 of the Honourable Judicial
First Class Magistrate Court
Kattappana in RC 30/2023
- Annexure R2(a). A true copy of OR No 1/2022 of
Kizhukanam Section Forest Office,
which was submitted before the
Judicial First Class Magistrate Court
Kattappana, Idukki



- Annexure R2 (b) . A true copy of the mahazar prepared by the 1st petitioner herein which was submitted before the Judicial First Class Magistrate Court Kattappana, Idukki
- Annexure R2 (c) A true copy of the remand report dated 20.09.2022 in OR No 1/2022 of Kizhukanam Section Forest Office, which was submitted before the Honourable Judicial First Class Magistrate Court Kattappana, Idukki
- Annexure R2 (d) . A receipt issued by the SHO Upputhara Police station dated 18.10.2022 receiving the complaint of the 2nd respondent
- Annexure R2 (e) . A true copy of the report dated 19.10.2022 of the Divisional Forest Officer, Flying Squad, Idukki
- Annexure R2 (f) . A complaint filed by the father of the 2nd respondent before the wild life warden divisional office Vellappara with supporting documents and photographs
- Annexure R2 (g) . A True copy of the order dated 29.10.2022 bearing No KFDHRC/348/2022-CCFHRC/E3 of Circle Chief Forest Conservator, High Range Circle, Kottayam
- Annexure R2 (h) . A true copy of the order dated 01.11.2022 bearing No GO (MS) No 467/2022 F WLD issued by Joint Secretary to the Government
- Annexure-R2 (i) . A true copy of the report dated 10/11/2022 of the Additional Principal Chief Forest Conservator (Administration) submitted before the Kerala Human Rights Commission

PETITIONER ANNEXURES

- Annexure A15 True copy of the report dated 26.11.2022 addressed to the Registrar, Kerala State SC/ST Commission



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- Annexure A16 True copy of the extract of weekly diary maintained in the office of Wildlife Warden, Idukki obtained under RTI Act
- Annexure A17 True copy of the reply to memo given by the Investigating Officer to the Wildlife Warden dated 29.9.2022