

**IN THE COURT OF THE SPECIAL JUDGE UNDER THE SCHEDULED  
CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES)  
ACT (SESSIONS JUDGE), ALAPPUZHA**

**Present: Sri. K.K.Balakrishnan, Sessions Judge  
Friday the 25<sup>th</sup> day of October, 2024**

**Crl. M.P. No.3430/2024 in S.C No.575/2014**

Between:-

- |   |   |  |
|---|---|--|
| 1. Rakesh, Aged 44 years,<br>S/o Late Raveendran Pillai,<br>residing at Mangalathu House,<br>Koipally Karazhma Muri, Peringala,<br>Kayamkulam | } | Petitioners/<br>Accused Nos.2,3 &<br>4 |
| 2. Prabhavathi Amma, Aged 70,<br>W/o Late Raveendran Pillai, residing at<br>Mangalathu House, Koipally Karazhma<br>Muri,Peringala, Kayamkulam |   |  |
| 3. Rekha, Aged 45,<br>D/o Late Raveendran Pillai,<br>residing at Mangalathu House, Koipally<br>Karazhma Muri, Peringala, Kayamkulam           |   |  |
| State of Kerala represented by the Chief<br>Secretary through the Public Prosecutor,<br>Alappuzha   | } | Respondent                             |

Petition filed u/s.227 of the Code of Criminal Procedure to discharge the petitioners in the above case.

Petition was presented on : 08.10.2024

This petition coming on 19.10.2024; the Court on 25.10.2024 passed the following:-

**ORDER**

This petition, submitted under Section 227 of the Criminal Procedure Code, challenges the allegations raised against the accused in the case at hand. The charge sheet asserts that the accused has committed offenses punishable under Sections 447, 323, 324, 354,

294(b), 506(ii), and 427, read with Section 34 of the Indian Penal Code (IPC), as well as under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The prosecution alleges that, driven by a prior boundary dispute with CW1, who belongs to the Hindu-Thandan Community (a Scheduled Caste), and his wife, a member of the Hindu-Ezhava Community, the accused, who is from the Hindu-Nair Community, criminally trespassed into the courtyard of their residence, Mangalathu Kizhakkathil House (House No. 267 of Chettikulangara Panchayat in Koippalli Karazhma Muri, Peringala Village) on 21.11.2011 at 8:45 pm with the intent to cause them bodily harm. The prosecution asserts that A1 directed abusive language at CW1 and repeatedly struck him on the back and leg with a Gliricidia stick. Simultaneously, A2 verbally abused CW1 by using his caste name in a derogatory way and threatened to kill both CW1 and CW2, swinging a chopper toward CW1 and injuring the left side of his head. A2 then struck CW2, kicked her in the back, placed the chopper against her neck, and issued further threats to kill her. A3 and A4 forcibly grabbed CW2 by her hair, dragging her across the ground. Subsequently, all accused departed the scene but took stones from the road, threw them at the windows of CW1 and CW2's residence, shattering the glass and causing them financial loss, thereby committed the aforementioned offenses.

3. The case was registered by CW17 based on the statement provided by CW1 and CW18 concluding the investigation and submitting the Final Report to this Court, designated as the Special Court for trying offenses under the SC/ST (PoA) Act. A1 was initially released on bail at the crime stage, and subsequently, A2 to A4 were also granted bail. Upon receipt of the Final Report, this Court took cognizance of the case against all accused, who then appeared and were represented by their own counsel. A1 later passed away on 01.09.2016, and following the submission of his death certificate by the prosecution, the charge against him was abated on 31.01.2017. Subsequently, A2 to A4 petitioned the Hon'ble High Court of Kerala in CrI.M.C.No.6957/2017 to seek quashing of the proceedings. On 23.08.2024, the Hon'ble High Court disposed of the petition, instructing A2 to A4 to approach this Court with a discharge petition and directing this Court to consider and pass appropriate orders in accordance with the law.

4. The allegations are false, frivolous, and vexatious, lacking elements that constitute any criminal offense. Notably, the First Information Statement contained no claims that the accused insulted the victims using caste names. While CW2's caste name was allegedly mentioned, CW2 does not belong to a Scheduled Caste or Scheduled Tribe. Later, CW1's caste name was added only in a subsequent statement, seemingly to invoke the provisions of the SC/ST (PoA) Act. The

witness statements, including those of the de facto complainant, reveal multiple contradictions and inconsistencies, rendering the allegations in the Final Report improbable and difficult to believe. Furthermore, witness accounts conflict regarding CW1 and CW2's hospitalization, and no injuries on CW1 align with the weapon described in the allegations. The underlying cause of this case appears to be a civil dispute between the parties, intended to distress the accused. On these grounds, the accused have petitioned for discharge from the case.

5. No objections were filed by the respondent opposing the petition. The victim appeared in person following the notice issued by this Court and stated that there is no need to appoint a legal aid counsel to contest the petition filed by the accused. He specifically indicated that the learned Prosecutor would argue the petition on his behalf as well. The victim has not filed any objections against the petition.

6. Heard both sides.

7. The point that arises for consideration is:-

Is the accused entitled to discharge under Section 227 of the Cr.P.C.?

8. **The Point** :- The learned counsel for the petitioners emphasized that CW1's First Information Statement contains no allegations of caste-based abuse by any of the accused. Upon reviewing the FIS in its entirety, the counsel argued that caste-related references

were added later by the investigating officer, likely to render the case triable by the Special Court and to cause undue inconvenience and distress to the accused. The case records further indicate that there are ongoing civil disputes between the parties concerning boundary issues, and that the accused and CW1 and CW2 are neighbors. Additionally, the counsel pointed to the injury detailed in the doctor's wound certificate, which contains no indication that CW1 and CW2 were attacked with any dangerous weapon such as a knife, as alleged. The counsel also noted that the case underwent further investigation following the submission of the Final Report on 10.05.2012 to address inconsistencies in the witnesses' statements and in the evidence produced by the prosecution. Despite this, no additional evidence emerged implicating the accused. Therefore, the counsel respectfully prayed that the Court grant the petition and discharge the accused.

9. The learned Public Prosecutor clarified that the rationale for the further investigation stemmed from the initial Final Report, which only implicated A1 and A2 as accused, despite the involvement of A3 and A4, who are A1's wife and daughter. The learned Public Prosecutor vigorously opposed the contentions raised by the defense, asserting that it is not mandatory for the First Information Statement to detail every event sequentially; its primary purpose is to register the case and initiate an investigation. The Public Prosecutor pointed out that there are clear statements from multiple witnesses, in addition to CW1 and CW2,

indicating that all accused trespassed into the compound of CW1 and CW2 at night, assaulted them with a knife, and inflicted injuries through physical attacks. The evidence presented includes sufficient witness statements and documents to substantiate the allegations in the Final Report. Therefore, the Public Prosecutor argued that a prima facie case has been established based on the prosecution's materials, which are adequate to prove all allegations outlined in the Final Report. As such, there are no grounds to discharge any of the accused at this stage, and the Public Prosecutor respectfully requested the Court to dismiss the petition.

10. In the case of *State of Rajasthan vs. Ashok Kumar Kashyap (2021 SCC OnLine SC 314)*, the Hon'ble Supreme Court outlined key parameters for applying the provisions of Section 227 of the Criminal Procedure Code, which are as follows:

9. While considering the legality of the impugned judgment and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.

9.1 In the case of *P.Vijayan (supra)*, this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in

other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

9.2 In the recent decision of this Court in the case of *M.R. Hiremath* (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under: *State of Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath*, (2019) 7 SCC 515.

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709, advertng to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29) “29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. Hon’ble Supreme Court in **Bhawna Bai V. Ghanshyam and others (AIR 2020 SC 554)** held that

“At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

The above parameters provide a framework for trial courts to assess whether to discharge an accused person at the pre-trial stage, ensuring a fair evaluation of the evidence while safeguarding the rights of the accused.

12. In the present case, the first Final Report dated 10.05.2012 listed only A1 and A2, the father and son, as accused.

However, the First Information Statement explicitly indicates that A3 and A4 also participated in the attack. Although CW1 did not mention any caste-related terms in the FIS, he did assert that the accused called him by his caste name in a derogatory manner, a detail that emerged in a statement recorded on 27.01.2012. This assertion was corroborated by CW2, the wife of CW1, who provided identical information to the investigating officer on the same date. CW3, the daughter-in-law of CW1 and CW2, echoed the statements made by the previous witnesses. The credibility of these witness statements can only be properly assessed during the trial. The scene of the alleged incident is documented in the scene mahazar and the plan prepared by the Village Officer, Peringala, which confirms that the crime occurred in the compound of CW1, CW2, and CW3.

13. The wound certificates for CW1 and CW2 indicate that they sustained injuries from beating. Specifically, CW1's wound certificate notes injuries consistent with being struck by a knife and a stick. While the certificates do not name the accused, the relationship between the injuries and the alleged acts of the accused is a matter that can only be determined during the trial.

14. Given these considerations, and following the principles laid down by the Supreme Court, it is clear that there is sufficient material to establish a prima facie case against the accused. Therefore, A2 to A4 cannot be discharged under Section 227 of the Cr.P.C.

... 10 ...

In the result, the petition is dismissed.

(Dictated to the Confidential Assistant, typed by her directly, corrected by me, and pronounced in open court on this the 25<sup>th</sup> day of October, 2024.)

Sd/

**Special Judge under the Scheduled  
Castes and Scheduled Tribes  
(Prevention of Atrocities)Act.  
(SESSIONS JUDGE)**