

**IN THE COURT OF THE SPECIAL JUDGE, SPECIAL COURT FOR SC/ST
(POA) ACT CASES, THRISSUR**

Present:

Sri.Sirajudheen P A, Special Judge

Saturday, 4th day of April, 2026 / 14th Chaithra, 1948

Crl.M.P-1115/2025 in SC 683/2023

(Crime No. 148/2023 of Ollur Police Station)

Petitioners

- 1 Jeckson Jose, aged 39 years, S/o. Jose, Adakkaparambil House, Thushara Road, Near Chetana College, Ollur Village, Thrissur Taluk, Thrissur District.
- 2 Mini Alappat, aged 31 years, W/o. Jeckson Jose, Adakkaparambil House, Thushara Road, Near Chetana College, Ollur Village, Thrissur Taluk, Thrissur District.

By Adv. Seby J Püllely

Respondent

State of Kerala, represented by Assistant Commissioner of Police, Ollur Sub Division.

Represented by Special Public Prosecutor Adv.A.K.Krishnan.

This petition having been heard on 04.04.2026 and on the same day, the court passed the following:-

ORDER

Petition for discharge filed under section 250 of BNSS.

2. Petitioners are the accused in the above case. The offences alleged against the petitioner/ accused are punishable under sections 341, 323 and 294(b) r/w 34 of IPC and sections 3(1)(r), 3(1)(s) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The prosecution case is that on 08.01.2023 at 1.00 pm, the accused who belong to communities other than Scheduled Caste/ Tribe, wrongfully restrained the defacto complainant who belongs to the Scheduled Caste and voluntarily caused hurt

with his hands. They have also uttered obscene words. Hence, it is alleged that the accused have committed the above referred offences.

4. Copy served to the Public Prosecutor and report filed. Notice was issued to the victim. Heard both sides and perused the records.

5. Learned counsel for the petitioner submitted that the allegations against the accused are false and without any basis. They have been falsely implicated in the crime only due to personal vengeance, arising out of previous enmity between them. They are residing on adjacent plots. The petitioners had purchased their property from the husband of the defacto complainant. After a few years, a dispute arose between them regarding the said property, prompting the petitioners to seek legal remedy and thereby approached Munsiff court, Thrissur. They instituted a suit as OS No:2443/2022. An Advocate Commissioner was appointed to inspect the properties. The Advocate Commissioner identified the boundaries and filed a report. Thereafter, the defacto complainant and her husband attempted to encroach upon their properties by dismantling the boundaries. Following this incident, the petitioners lodged a complaint against the defacto complainant. While the said complaint was pending before Ollur Police Station, the defacto complainant filed the present case by fabricating a false narrative. According to the learned counsel for the petitioners, prosecution has failed to make out a prima facie case and there are no sufficient grounds to proceed further. Hence, learned counsel prayed for discharge.

6. On the other hand, learned Special Public Prosecutor argued that the prosecution has made out a prima facie case and there are sufficient grounds to proceed further. He submitted that the accused are liable to convict properly. Hence, he prayed to dismiss the petition.

7. On the basis of rival contentions, I have gone through the materials on records. The prosecution case would start from a written complaint given by the victim. Her complaint is that the accused have restrained them from the peaceful enjoyment of

their property. The first accused has caused hurt and uttered with obscene words. The incident took place on account of the property dispute, since, the first accused is claiming right over a certain extent of said property. On the basis of statement, Ollur Police has registered a crime alleging commission of the offences punishable under sections 341, 323 and 294(b) r/w 34 of IPC. The date of the incident is shown as 01.01.2023 and the crime is registered on 09.02.2023. In the final report, the date of occurrence is shown as 08.01.2023. The complaint is lodged after the expiry of 1 month. Her subsequent statement has been recorded after a week, and therein some abusive words have been incorporated alleged to have been used by the accused. The victim has no case that she was insulted or intimidated on the basis of her caste. Apart from the First Information Statement, during the consideration of this petition, she appeared in court and stated that the accused is not permitting them to construct the house, on account of some boundary disputes. That means, she has no case that the accused has intentionally insulted them with an intent to humiliate them in public view. The prosecution has no case that the incident occurred within public view. The prosecution has cited as two eye witnesses who are the close relatives of the defacto complainant.

8. The offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over some disputes in connection with some enmity. If such a person happens to be a Scheduled Caste, the offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are not made out. (Ref: AIR 2020 SC 5584 Hitesh Sharma Vs State of Uttarakhand and another).

9. Apart from that, as held by the Honourable Supreme Court in 2024 KHC 6451 (Shajan Skaria Vs. State of Kerala), “Not every intentional insult or intimidation of a

member of a Scheduled Caste / Scheduled Tribe community will result into a feeling of caste - based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes / untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989”.

10. It is further submitted that there are no sufficient ingredients to attract the offence punishable under section 323 of IPC. Learned counsel for the petitioner submitted that the defacto complainant has no case that she suffered pain in the incident. According to him, when there is no pain there will be no offence. The contentions of the learned counsel cannot be accepted on that aspect.

11. As per section 323 of IPC, whoever committing an offence of voluntarily causing hurt shall be punished for imprisonment for a period of 1 year or with fine. Section 319 of IPC defines the term “hurt”. It is defined as causing bodily pain, disease or infirmity to any person. Here it is specifically alleged that the accused had slapped with hands on CW1 and pushed CW3. It is true that her statement would not reveal any pain that suffered by herself. But it is categorically stated that She was beat by the accused. The remaining aspects are absolutely a matter of evidence. It is also alleged they were wrongfully restrained and uttered with obscene words. There are sufficient ingredients to frame charge against the accused for the said acts. According to me, a prima facie case made out by the prosecution in respect of the offence punishable under section 341, 323 and 294(b) r/w 34 of IPC.

12. On going through the materials, I am of the opinion that the prosecution has failed to make out a prima facie case in respect of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. I find that there are no sufficient grounds to proceed further with the offence punishable under sections 3(1)

(r), 3(1)(s) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. At the same time, there are sufficient grounds to proceed further with the offence punishable under sections 341, 323 and 294(b) r/w 34 of IPC. When there are no offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, this special court has no jurisdiction to entertain the matter. I find that this is a fit case to transfer to the jurisdictional Magistrate for conducting trial for the remaining offences. The learned Magistrate is at liberty to proceed further, with the remaining offences punishable under sections 341, 323 and 294(b) r/w 34 of IPC and the accused are discharged of the offences punishable under sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

In the result, the petition is partly allowed and the case records shall be transmitted to the Chief Judicial Magistrate, Thrissur under Section 228(1)(a) Cr.P.C. The Chief Judicial Magistrate shall summon the accused to that Court or in any other Court, he/she directs and shall proceed with the case. The accused shall appear before the Court as and when specifically directed by the Court.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open court on this the 4th day of April, 2026).

Sd/-
SPECIAL JUDGE

Appendix : Nil

SIRAJUDHEEN P A,
Special Judge