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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

CRL.A NO. 842 OF 2024

CRIME NO.251/2024 OF INFOPARK POLICE STATION, ERNAKULAM.

AGAINST THE ORDER DATED 16.05.2024 IN CRL.M.C.NO.1407
OF 2024 ON THE FILE OF THE COURT OF SESSION, ERNAKULAM.

APPELLANT (S) /ACCUSED:

FAKRUDEEN K.V. @ FAKRUDEEN PANTHA VOOR,
AGED 45 YEARS,
S/O. KUNHUMAMMAD,
KALLIKATUVALAPPIL HOUSE, PANTHA VOOR,
ALAMCODE, MALAPPURAM DISTRICT,
PIN - 679 585.

BY ADVS.
K.ABOOBACKER SIDHEEQUE
MUHAMMED IBRAHIM ABDUL SAMAD
SUBIN K SUDHEER

RESPONDENT(S)/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM DISTRICT,
PIN - 682 031.
- 2 XXXX
XXXXXX
PIN - 682 030.



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BY ADVS.
K.NANDINI -R2
SRI.VIPIN NARAYAN, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
17.03.2025, THE COURT ON 25.03.2025 DELIVERED THE FOLLOWING:



“C.R.”

C.S.SUDHA, J.

Criminal Appeal No.842 of 2024

Dated this the 25th day of March 2025

JUDGMENT

This appeal under Section 14A of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act) has been filed by the petitioner/accused in crime no.251/2024, Infopark police station, Ernakulam, aggrieved by the dismissal of his petition under Section 438 Cr.P.C., namely, CrI.M.C.No.1407/2024, on the file of the Court of Session, Ernakulam, seeking pre-arrest bail.

2. It was submitted by the learned counsel for the appellant/accused that the materials on record do not make out any offence(s) under the Act. The appellant/accused has never referred to or mentioned the caste name of the 2nd respondent/informant in the video uploaded by him. Relying on the dictum in **Hitesh Verma**



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v. State of Uttarakhand, (2020) 10 SCC 710, it was submitted that merely because the 2nd respondent/informant is a member of a scheduled caste or a scheduled tribe, an offence under the Act would not be made out unless there is an intention to humiliate her only for the reason that she belongs to such caste. The materials on record do not make out an offence under Section 3(1)(r) of the Act and hence the bar under Section 18 or 18A is not attracted, goes the argument.

2.1. *Per contra*, it was submitted by the learned Public Prosecutor that the edited video uploaded by the appellant/accused contains several derogatory statements against the 2nd respondent/informant. The offences alleged are clearly made out. Moreover, custodial interrogation of the appellant/accused is required as seizure of the equipment used for editing and uploading the video is necessary and hence no pre-arrest bail can be granted.

3. The learned Public Prosecutor submits that though notice was issued to the victim through the SHO concerned, she did not accept the notice. However, she has been informed of the



pendency of the appeal. Heard both sides.

4. The prosecution case is that the appellant/accused on account of his previous enmity towards the 2nd respondent/informant as she had filed complaints against online platforms like Crime online, True T.V., Bharat Live T.V. etc., with the knowledge that she belongs to a scheduled caste community and with the intention to defame and outrage her modesty, uploaded a video in his YouTube channel. Initially the appellant/accused downloaded the videos and pictures uploaded by one Sooraj Palakkaran, editor of True T.V., in which the 2nd respondent/informant has been picturized as a person who had been arrested for immoral traffic. The appellant/accused downloaded the said videos and photographs, edited it by including an interview with the husband of the 2nd respondent/informant; his views on the topic etc., created a video using his mobile phone and other electronic devices and on 22/06/2022 uploaded the same through his YouTube channel, namely, Visal Media. Thus, the appellant/accused as per the FIR is alleged to have committed the



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offences punishable under Section 354A(i)(iii), 354A(1)(iv), 509 IPC; Section 66E, 67A of the Information Technology Act, 2000 (IT Act) and Section 3(1)(r),(s),(w),(ii) and Section 3(2)(va) of the Act.

5. Section 66E of the IT Act deals with punishment for violation of privacy. As per the Section, whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, is liable to be punished with imprisonment or with fine or with both. Clause (c) to the Explanation to the Section defines "private area" as the naked or undergarment clad genitals, pubic area, buttocks or female breast. Apparently, the materials on record now available before the court do not attract the ingredients of the offence under Section 66E of the IT Act.

6. Reference was made to Section 67A of the IT Act which says that whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which



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contains sexually explicit act or conduct is liable to be punished with imprisonment and fine. Sexually explicit conduct has not been defined in the IT Act. Here, it would be apposite to refer to the dictum in **Majeesh K.Mathew v. State of Kerala, 2018 (4) KHC 253**, wherein a Single Bench of this Court, noticing the absence of a definition of the said term in the IT Act, referred to the United Nations Model Law on Electronic Commerce, 1996 (UNCITRAL Model) on which the IT Act is based. Reference was made to the United States Code in which 'sexually explicit conduct' has been defined thus -

“Sexually explicit conduct” means actual or simulated-

- (i) sexual intercourse including genital-genital, oral genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;*
- (ii) bestiality;*
- (iii) masturbation;*
- (iv) sadistic or masochistic abuse; or*
- (v) lascivious exhibition of the anus, genitals or pubic area of any person.”*

7. Now the question is whether the edited video uploaded by the appellant/accused attracts the offence under Section



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67A of the IT Act. With the materials available on record, the same is doubtful. The fact that an edited video was uploaded by the appellant/accused is not denied by him. The video was made available by the learned Public Prosecutor which was played in the open Court. On watching the same, there can be no doubt that the content is offensive and derogatory. The 2nd respondent/informant, described as the wife of a farmer with three children, is stated to have deserted her husband and is purportedly engaged in immoral activities with multiple men. She is described as a drug addict and belonging to a sex racket. The video contains an interview with the husband of the 2nd respondent/informant who says that he had once forgiven/pardoned her and brought her back after she had eloped with another man. But she did not mend her ways and is still leading a wayward life. The video also shows the 2nd respondent/informant in a room with another man. From what can be made out from the video, some persons appear to be questioning her presence in the room with the said man. In the video, the appellant/accused states that the 2nd respondent/informant had given



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false complaints against one Nandakumar, editor of Crime online and that the only fault of the said Nandakumar was that he had given her a job in his office. The 2nd respondent/informant instead of being grateful, turned against Nandakumar and made a false complaint against him resulting in his arrest and remand. The appellant/accused goes on to proffer advice as to how men and women need to treat their spouses and how and in what manner marital relationships can be fostered.

8. The content of the video in question is indisputably derogatory and constitutes a clear instance of online harassment and abuse directed at the 2nd respondent/informant. In the era of social media, individuals often operate under the misconception that the right to freedom of speech and expression allows them to produce any form of content, make unfounded criticisms, issue abusive remarks, or engage in derogatory conduct towards others, all while evading accountability. This raises serious concerns, particularly in the light of the growing prevalence of cyberbullying, a phenomenon that remains inadequately addressed



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by current legal frameworks. It is of grave concern that, in this digital age, there is a lack of comprehensive and effective legislation to combat such misconduct, which, in my view, necessitates the urgent attention of the authorities concerned. It is important to note that bullying need not be solely defined by sexual overtones, but may manifest in various forms, many of which remain insufficiently addressed by existing legal standards. Notably, while the IT Act does not explicitly define or address cyberbullying, it is worth highlighting that amendments made to the Indian Penal Code in 2013 introduced provisions relating to stalking and voyeurism. However, there remains a conspicuous absence of legal provisions that directly address the issue of cyberbullying or online harassment, particularly those incidents devoid of any sexual context. Further exacerbating this concern is the fact that, despite the enactment of the Bharatiya Nyaya Sanhita, 2023, in 2024, no legal provisions have been introduced to specifically address this form of online harassment. This gap in the legal framework, in my opinion, requires immediate rectification by the authorities



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concerned to ensure that cyberbullying, in all its forms, is adequately regulated. To date, no other relevant provisions have been brought to my attention by either party.

9. The question whether the offence under Section 67A of the IT Act is made out from the evidence available on record is doubtful. I refrain from further going into the merits of the said allegation at this stage as the investigation is only at its preliminary stage. It is for the investigating officer to bring in necessary materials to establish the charge.

10. Now I shall address the question whether an offence under Section 3(1)(r) of the Act is made out. It is true that the appellant/accused does not specifically refer to the caste name of the 2nd respondent/informant. But the content of the video is certainly abusive, derogatory and picturizing or depicting the 2nd respondent/informant as a woman of loose morals/character or sexually promiscuous. The content of the video is no doubt an insult to the victim. The FIS of the victim also states that the video has been viewed by more than one lakh persons. Therefore an offence



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under Section 3(1)(r) of the Act is certainly made out from the materials on record. Hence, the trial court was right in finding that bar under Section 18 and 18A of the Act is attracted. I find no grounds for interference into the impugned order.

In the result, the appeal *sans* merit is dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

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APPENDIX OF CRL.A 842/2024

APPELLANT'S ANNEXURES:-

ANNEXURE-A1

A CERTIFIED COPY OF THE ORDER DATED
16.05.2024 IN CRIMINAL MISCELLANEOUS CASE
NO. 1407/2024 OF THE COURT OF SESSIONS
(VACATION COURT), ERNAKULAM DIVISION.