

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

Monday, the 23<sup>rd</sup> day of January 2023 / 3rd Magha, 1944

CRL.M.APPL.NO.4/2022 IN BAIL APPL. NO. 330 OF 2022

CRIME NO. 1308/ 2021 OF RANNY POLICE STATION

PETITIONER/ADDL. 3RD RESPONDENT:

BABU T., S/O CHACKO THOMAS, HARAYILETH HOUSE , PLACHERY,  
PATHANAMTHITTA 686544 IS IMPLEADED AS PER ORDER DATED 01/04/2022 IN  
CRL.M.A.NO.1/2022.

RESPONDENT/PETITIONERS/STATE/COMPLAINANT:

1. BYJU SEBASTIAN, AGED 45 YEARS, S/O.V.T. SEBASTIAN, VELLAPLAMURIYIL,  
MAKKAPUZHA P.O., RANNI, PATHANAMTHITTA 689 676.
2. JIJO VARGHESE GEORGE, AGED 36 YEARS, S/O. GEORGE VARGHESE,  
AYRANATHARA HOUSE, MAKKAPUZHA P.O., RANNI, PATHANAMTHITTA 689 676.
3. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM 682 031.
4. THE STATION HOUSE OFFICER, RANNY POLICE STATION, PATHANAMTHITTA 689  
676.

Petition praying that in the circumstances stated therein the High Court be pleased to Under the circumstances this Court may Recall the Judgment and rehear the case after granting an opportunity to present the case of the defacto complainant

This petition coming on for orders upon perusing the application and this court's Final order dated 29.04.2022 and upon hearing the arguments of SHRI.V.SETHUNATH, Advocate for the petitioner, M/S. SAIBY JOSE KIDANGOOR, BENNY ANTONY PAREL, P.M.MOHAMMED SALIH, ANOOP SEBASTIAN, PRAMITHA AUGUSTINE, IRINE MATHEW, ADITHYA KIRAN V.E & ANJALI NAIR, for R1 & R2 and PUBLIC PROSECUTOR for R3 & R4, the court passed the following:

ZIYAD RAHMAN A.A., J.

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Crl.M.A. No.4 of 2022  
in  
Bail Application No.330 of 2022

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Dated this the 23<sup>rd</sup> day of January, 2023

**ORDER**

This is an application submitted by the defacto complainant, who is impleaded as additional 3<sup>rd</sup> respondent in this bail application. The aforesaid bail application was disposed of by this Court as per order dated 29.04.2022. The bail application was submitted by the petitioners, who are the accused in crime No.1308/2021 of Ranni Police Station, which was registered for the offences punishable under Section 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. In this case, even though initially, the bail application was filed without impleading the defacto complainant, subsequently, an application was filed to that effect and the same was allowed and accordingly, he was impleaded as the 3<sup>rd</sup> respondent. On 19.04.2022, when the matter came up for consideration, this Court

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passed an order directing the Station House Officer, Ranni Police Station to serve notice on the additional 3<sup>rd</sup> respondent and the matter was directed to be posted after service of notice. Even though, no subsequent posting date is seen recorded in the proceeding sheet of this case, but in the history of the case hearing as uploaded in the official website of this Court, the next posting date is shown as 20.05.2022. It is evident from the endorsement made the proceeding sheet of the bail application that, the order dated 19.04.2022 was communicated to the Public Prosecutor on 21.04.2022. It is seen that, the case was again came up on 26.04.2022, and from that date the matter was posted to 29.04.2022. On 29.04.2022, the bail application was disposed of. The specific case of the 3<sup>rd</sup> respondent is that, the application was disposed of without notice to them and therefore the same is a nullity.

3. The application to recall the said order was submitted in such circumstances. The learned counsel for the petitioner places reliance upon the decision rendered by this Court in **Pushpangathan v. State of Kerala** [2015 (3) KLT 105] and **Babu @ Achayan v. Thankachan** [2022 (2) KLT 394] to support the

contention that, this Court is well within its powers to recall the order passed by invoking the power under Section 482 Cr.P.C. when it is found that, the order was passed without giving an opportunity of being heard to a party affected and thus an order passed in violation of principles of natural justice.

4. On the other hand, the learned counsel for the petitioner in the bail application would oppose the said contentions and prayers.

5. After considering all the relevant aspects, I am of the view that, there is some force in the contention put forward by the learned counsel for the 3<sup>rd</sup> respondent. As rightly pointed out by the learned counsel, even though a notice was directed to be served to the 3<sup>rd</sup> respondent through the Station House Officer, apparently the same is not served upon him. It is evident that, the said order was pronounced on 19.04.2022 and the same was communicated to the Public Prosecutor on 21.04.2022 and immediately on 26.04.2022 the matter was again taken up despite the fact that next posting date was shown as 20.05.2022. Later, the matter is seen disposed of on 29.04.2022. Therefore, it is evident that the disposal of the bail application was without notice

to the 3<sup>rd</sup> respondent.

6. It is to be noted that in this regard that, as per Section 15A(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a victim or his dependent shall have the right to reasonable, accurate and timely notice of any court proceedings including any bail proceedings and the said Public Prosecutor or the State Government shall inform the victim about the proceedings under the Act. In this case, as one of the offences were under the provisions of the Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a notice was mandatory as contemplated under the above provision. Therefore, issuance of an order without complying with such statutory mandate makes the order nullity. The Hon'ble Supreme Court in **State of Punjab v. Davinder Pal Singh Bhullar** [2011 (14) SCC 770], it was observed as follows:

“If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of Court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is

different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.....”

7. After referring to the observations made by the Hon'ble Supreme Court in the said decision, this Court in **Pushpangathan's** case as well as **Babu @ Achayan's** case held that, when the order passed by this Court in a criminal proceeding was without jurisdiction and without notice to the affected parties and thereby in violation of the principles of natural justice, the same can be recalled. In this case, despite the fact that there was a mandate as contemplated under Section 15A(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the order is seen passed without giving a proper notice to the victim. Therefore, it is an order issued not only in violation of the statutory provisions and also in violation of principles of natural justice. This Court passed the order without taking note of the fact that, no such notice was served upon the affected parties. In such circumstances, I am of the view that, the order passed by this Court is liable to be recalled in the light of the principles laid down by the Hon'ble Supreme Court in **Davinder Pal Singh Bhullar's** case cited supra.

In the result, this Crl.M.A. is allowed and the bail application

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is restored into the file. Post for hearing.

Sd/-  
ZIYAD RAHMAN A.A.  
JUDGE

ncd

