

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 16<sup>TH</sup> DAY OF MARCH 2023 / 25TH PHALGUNA, 1944

CRL.A NO. 1214 OF 2022

AGAINST THE ORDER/JUDGMENT CRMC 2283/2022 OF DISTRICT COURT &  
SESSIONS COURT, ERNAKULAM

APPELLANTS/ ACCUSED 1 AND 2:

1 SUMESH G.S @ SUMESH MARCOPOLO  
AGED 45 YEARS  
S/O GOPI, REPORTER, BHARATH LIVE YOUTUBE CHANNEL, PLOT  
NO. 91, PTP NAGAR P.O, THIRUVANANTHAPURAM, PIN - 695038

2 SUDERSH KUMAR.K @ SUERSH NAMBOOTHIRI  
AGED 43 YEARS  
S/O. K.N. PARAMESWARA NAMBOOTHIRI, PLOT NO. 91, PTP  
NAGAR P.O, THIRUVANANTHAPURAM-695038, PIN - 695038

BY ADVS.  
I.V.PRAMOD  
SAIRA SOURAJ P.

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031

2 XXXXXXXXXXXX  
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.  
PUBLIC PROSECUTOR  
K.NANDINI

OTHER PRESENT:

SR.PP. RENJITH GEORGE

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
22.02.2023, THE COURT ON 16.03.2023 DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 16<sup>th</sup> day of March, 2023

The appellants are accused Nos. 1 and 2 in Crime No. 574 of 2022, registered at the Infopark Police Station for offences punishable under Sections 354A (1)(iii), 354A (iv) of Indian Penal Code, Sections 66E and 67A of Information Technology Act and Sections 3(1)(r), 3(1)(s), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('PoA' Act for short). The FIR is registered based on the 2<sup>nd</sup> respondent's complaint. The gist of 2<sup>nd</sup> respondent's allegations are as under;

The 2<sup>nd</sup> respondent had filed a complaint against her former employer T.P. Nandakumar, who was running an online news channel by name 'Crime Online', alleging that Nandakumar had compelled her to videograph her nudity for creating a morphed video of a lady Minister of the State. Based on the complaint, Crime No. 712 of 2022 was registered at the Ernakulam Town Police Station and T.P. Nandakumar was arrested. Provoked by the arrest of T.P.

Nandakumar, the appellants, who are also media persons working in an online channel by name 'Bharath Live', published news items containing disparaging remarks against the 2<sup>nd</sup> respondent and picturing her as a lady of loose morals. In the news items, videos from the private moments of the 2<sup>nd</sup> respondent's personal life was also included. The news items were published with the knowledge that the 2<sup>nd</sup> respondent belongs to a Scheduled Tribe community.

2. The appellants moved the Sessions Court, Ernakulam for anticipatory bail and having failed in their attempt, this CrI.Appeal is filed.

3. Heard Adv. I.V. Pramod for the appellants, Adv. K. Nandini for the 2<sup>nd</sup> respondent and Sr. Public Prosecutor Renjith George for the State.

4. Learned counsel for the appellants assertively submitted that none of the offences alleged against the appellants are attracted. If the news item is viewed, it will be evident that no abusive comments were made against the 2<sup>nd</sup> respondent and no obscene or inappropriate scenes from the private life of the 2<sup>nd</sup> respondent was included. The news

items published on 18.06.2022 and subsequent days are more an expression of protest against the false implication of T.P. Nandakumar and a revelation of the atrocities committed against him by the 2<sup>nd</sup> respondent. According to the counsel, protest by the press/media against the atrocious acts of the 2<sup>nd</sup> respondent will not attract offences under the PoA Act. At any rate, custodial interrogation of the appellants is not necessary and hence, pre-arrest bail ought to be granted. Finally, it is submitted that the petitioners are prepared to abide by condition imposed by this Court.

5. Learned counsel for the 2<sup>nd</sup> respondent submitted that her client is being hounded by the appellants from the moment she lodged the complaint against T.P. Nandakumar. The video uploaded and published by the appellants on 18.06.2022 through their news channel contains private moments from the 2<sup>nd</sup> respondent's life, wherein the 2<sup>nd</sup> respondent is inappropriately dressed. The idea behind the news stories was to depict the 2<sup>nd</sup> respondent as an immoral lady, who is in the habit of filing false complaints. The conversation between T.P. Nandakumar and a Dy.S.P., which is included in the news item,

is sufficient proof that the appellants knew that the 2<sup>nd</sup> respondent belongs to a Scheduled Tribe. It is therefore beyond cavil that the abusive news and videos were published with intent to denigrate the 2<sup>nd</sup> respondent and thus, the appellants have committed the alleged offences.

6. Learned Public Prosecutor submitted that the plea for anticipatory bail is liable to be rejected, since the available materials are sufficient to attract the offences under the PoA Act.

7. It is not in dispute that a news item containing video footage of private moments from the 2<sup>nd</sup> respondent's personal life was published through the online news channel. Therefore, the short question is whether publication of such video content would attract offences under the PoA Act. In my opinion, publication of another person's private moments for public viewing is, by itself, an offensive act, even if there is no law preventing such action. No person, whether it be the media or Governmental agencies, have the right to peep into the private lives of the citizens of this country, without there being a valid reason. The personnel vendetta of certain media

personalities or their so-called crusade for truth and justice, are no excuse for impinging the privacy of citizens. Every individual is entitled to perform his actions in private. He or she has the right to carry out his/her activities in life without being spied upon. As observed by the Apex Court in **K.S. Puttaswamy and Another v. Union of India and Others** [(2010) 10 SCC 1], the impact of the digital age results in information on the internet being permanent. Humans forget, but the internet does not forget and does not let humans forget. Therefore, any defamatory or abusive statement uploaded online will remain as a permanent scar on the affected person. Therefore, the online news channels have a duty to ascertain the veracity of the news before making disparaging remarks against individuals and publishing videos of their personal lives. In this context, the following erudite discussion in **Sooraj V Kumar v. State of Kerala** (2022 (4) KLT 905) assumes relevance.

"27. The digital world has transformed the concept of viewership. Unlike a speech made within an enclosed space in front of an audience, the content, when uploaded, has its impact felt the world over. The influence of the internet is in its universal accessibility. Prior

to the advent of the internet, a speech made within an enclosed area could be heard or viewed only by those present inside the enclosed space. However, after the emergence of the internet, the uploaded content can be viewed or heard by any member of the public at any time, as if they are present either viewing or hearing it, not only at the time it was telecasted but even when the programme is accessed. Each time a person accesses the content of the uploaded programme, he or she becomes present, directly or constructively, in the broadcast or telecast of the content."

8. It is disheartening to note that, atleast some online news channels are in the habit of publishing sleaze more than news. A section of the public also devours such sensational and salacious news. In the absence of any mechanism to curb the menace, it is for those channels to introspect and decide whether, by the action of a few, faith in the fourth estate, a powerful pillar of our democracy, is getting eroded. To quote the Father of Our Nation;

*"The press is called the Fourth Estate. It is definitely a power, but, to misuse the power is criminal."*

9. As far as the case at hand is concerned, the specific allegation is that the appellants had knowledge that the 2<sup>nd</sup> respondent belongs to Scheduled Tribe. If so, publication of news and videos containing scenes intended to insult or abuse

the 2<sup>nd</sup> respondent is sufficient to attract the offences under the PoA Act. Hence, the contention that there is no material or circumstance to attract the offences under the PoA Act can only be rejected. Consequently, the bar under Section 18 of the Act, against grant of pre-arrest bail, will come into play. Hence, the finding of the Special Court, in that regard, does not warrant interference.

For the aforementioned reasons, the CrI.Appeal is dismissed.

Sd/-

**V.G.ARUN**  
**JUDGE**

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**APPENDIX OF CRL.A 1214/2022**

RESPONDENT ANNEXURES

- Annexure-R2 (e) True copy of the video dated 19/6/2022 in the form of CD.
- Annexure-R2 (a) True copy of the video dated 15/6/2022 uploaded by the Appellants in Bharath live in the CD form.
- Annexure-R2 (b) True copy of the transcription of R2(a), dtd. 15/6/2022.
- Annexure-R2 (c) True copy of the video uploaded and published by the Appellants dated 18/6/2022, in CD form.
- Annexure-R(d) The copy of transcription of Annexure-R2(c), dtd. 18/6/2022.
- Annexure-R2 (f) True copy of the video in the CD form dated 25/6/2022 uploaded and published by the Appellants.
- Annexure-R2 (g) True copy of the video in the CD form dated 29/7/2022 uploaded and relayed by the Appellants.
- Annexure-R2 (h) The copy of the transcription of Annexure-R2(g) dtd. 29/7/2022.
- Annexure-R2 (i) True copy of video in the CD form dated 2/8/2022 uploaded and published in Crime Online.
- Annexure-R2 (j) True copy of the transcription of video footage of Annexure - R2(i), dated August-2-2022 published in Crime online.
- Annexure-R2 (k) True copy of the screen shot from Bharath live dated 15/6/2022.
- Annexure-R2 (k) (a) True copy of the screen shot from Bharath line dated 17/6/2022.

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- Annexure-R2 (k) (b) True copy of the screen shot from Bharath line dated 18/6/2022.
- Annexure-R2 (k) (c) True copy of the screen shot from Bharath line dated 19/6/2022.
- Annexure-R2 (k) (d) True copy of the screen shot from Bharath line dated 25/6/2022.
- Annexure-R2 (k) (e) True copy of the screen shots from Bharath line dated 29/7/2022.