

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

Monday, the 24th day of June 2024 / 3rd Ashadha, 1946

CRL.A NO. 1014 OF 2024(FILING NO.)

CRIME NO.362/2024 OF CHITHARA POLICE STATION, KOLLAM

ORDER DATED 11.06.2024 IN CrI.MP 171/2024 OF SPECIAL COURT- OFFENCES UNDER SC/ST

(POA) ACT,1989,KOTTARAKKARA.

APPELLANT(S)/ACCUSED NOS 1 & 2:

1. SUNNY, AGED 37 YEARS, S/O.SIMON, SUNNY BHAVANAM, THEKKUMBHAGAM, CHAVARA SOUTH. P.O, KARUNAGAPPALLY, KOLLAM, PIN - 691584.
2. PRINCE, AGED 38 YEARS, S/O.SASIDHARAN, VASANTHAM, NADUVATHU CHERY, CHAVARA SOUTH P.O, THEKKUMBHAGAM, KOLLAM, PIN - 691584.

BY ADVS.K.SIJU,S.ABHILASH,ANJANA KANNATH

RESPONDENT(S)/STATE:

1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.
2. THE STATION HOUSE OFFICER, CHAVARA THEKKUMBHAGAM POLICE STATION, KOLLAM DISTRICT, PIN - 691584.

BY PUBLIC PROSECUTOR

This Un.Numbered Criminal Appeal---/2024 (Filing.No.1014/2024) having come up for orders on 24.06.2024, the court on the same day passed the following:

(P.T.O)

K.BABU, J

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Dated this the 24th day of June, 2024

O R D E R

Accused Nos. 1 and 2 in Crime No.362 of 2024 of Chavara Thekkumbhagam Police Station, who are alleged to have committed offences punishable under Sections 143, 144, 146, 147, 148, 323, 326, 506 and 149 of IPC and Section 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short), have preferred this appeal under Section 14-A(2) of the Act.

2. The Registry noted the following defect:-

“Since the de facto complainant has not been made party, the counsel was requested to add de facto complainant as party in view of High Court OM No.A7-49/2019 dated 21/11/19.”

3. The learned counsel appearing for the appellants answered the defect, stating that Section 15A of the Act does not mandate the impleadment of the

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de facto complainant in the proceedings and hence there is no defect.

4. I have heard the learned counsel for the appellants and the learned Public Prosecutor.

5. The learned counsel for the appellants submitted that sub-section (3) of Section 15A of the Act does not mandate the impleadment of the victim in the proceedings and it is the duty of the Public Prosecutor or the State Government to inform the victim about the proceedings under the Act.

6. The learned Public Prosecutor submitted that as the victim has the right to be heard, strict compliance with the provision requires that the victim is impleaded as a party in the proceedings.

7. It is profitable to extract the statutory provision:-

“15A. Rights of victims and witnesses:(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of

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intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--

(a) the complete protection to secure the ends of justice;

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(b) the travelling and maintenance expenses during investigation, inquiry and trial;

(c) the social-economic rehabilitation during investigation, inquiry and trial; and

(d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders...“

[emphasis supplied]

8. Section 15-A, which comes under Chapter IV-A of the Act was introduced through the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The Statement of Objects and Reasons that accompanied the amendment by way of insertion of Chapter IV-A reads thus:-

“(h) to insert a new Chapter IVA relating to “Rights of Victims and Witnesses” to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence”

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9. Section 15-A of the Act contains a vital provision that protects the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15-A make the victims or their dependents stakeholders in the legal proceedings. The intention of this provision is to enable a member of the Scheduled Caste/Tribe to effectively pursue the case and counteract the effects of defective investigations and prosecution. In ***Hariram Bhambhi v. Satyanarayan*** [AIR 2021 SC 5610], the Apex Court held that sub-section (3) of Section 15-A is mandatory.

10. In ***Hariram Bhambhi v. Satyanarayan*** (Supra), the Supreme Court observed thus:-

“12. Investigations in India are the exclusive domain of the police, where victims are often relegated to the role of being a spectator in the criminal justice system. Victims of crime often face significant hurdles during investigation and prosecution. Scheduled Castes and Scheduled Tribes specifically suffer on account of procedural lapses in the criminal justice system. They face insurmountable hurdles in accessing justice from

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the stage of filing the complaint to the conclusion of the trial. Due to the fear of retribution from members of upper caste groups, ignorance or police apathy, many victims do not register complaints in the first place. If victims or their relatives muster up the courage to approach the police, the police officials are reluctant to register complaints or do not record allegations accurately. Eventually, if the case does get registered, the victims and witnesses are vulnerable to intimidation, violence and social and economic boycott. Further, many perpetrators of caste-based atrocities get away scot-free due to shoddy investigations and the negligence of prosecuting advocates. This results in low conviction rates under the SC/ST Act giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused. On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence. This is evident from the low percentage of cases attracting the application of the provisions of the Penal Code relating to false complaints as compared to the rate of acquittals.

13.Section 15A of the SC/ST Act contains important provisions that safeguard the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings. These provisions enable a member of the marginalized caste to effectively pursue

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a case and counteract the effects of defective investigations.

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14.Sub-section (3) of Section 15A confers a statutory right on the victim or their dependents to reasonable, accurate, and timely notice of any court proceeding including a bail proceeding. In addition, sub-section (3) requires a Special Public Prosecutor or the State Government to inform the victim about any proceeding under the Act. Sub-section (3) confers a right to a prior notice, this being evident from the use of the expression “reasonable, accurate, and timely notice of any court proceeding including any bail proceeding”. Sub-section (5) provides for a right to be heard to the victim or to a dependent. The expression “dependent” is defined in Section 2(bb) thus:

“2(bb) “dependent” means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;”

The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard.”

12. This Court had an opportunity to consider the the importance of Section 15-A of the Act in

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Crl.M.C.No.1029 of 2019. As per the interim order dated 05.09.2019, this Court held thus:-

“8. It is seen that in many of the cases involving offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended, the victims are not made a party and going by the mandate of sub-section (3) of Sec.15A, it is the statutory duty of the Special Public Prosecutor concerned and/or the State Government to inform the victim about any legal proceedings under this Act. That apart, in view of the abovesaid amendment, more particularly in view of Sec.15A(5), this Court has no hesitation to hold that it is also the duty of the petitioner, who initiates the legal proceedings to implead the de facto complainant/victim on whose complaint/FI Statement, the crime or the criminal proceedings has been set in motion. That apart, since impleadment of a party is essentially in realm of procedure, the said provision contained in Sec.15A(3)& (5) will apply not only to causes of actions, which have arisen on or after the amendment (26.01.2016) but also in respect of all cases, which are pending as on 26.01.2016. Hence, it is ordered that the office of the Advocate General and the Director General of Prosecution will take immediate steps to ensure that intimation should be duly send to the victims in all pending cases about the pendency of the matters and may instruct them to take immediate steps to seek their impleadment in the legal proceedings concerned, without any delay. The Registry

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will also ensure that it should be insisted that in respect of all proceedings involving offences on the abovesaid Act, the petitioner/appellant should implead the victim/de facto complainant in respect of the abovesaid offence as per the abovesaid Act, as a party to the proceedings. However, if the petitioner concerned is not aware of the address of the victim and wants to move the case for admission, then the Registry may grant two weeks' time to the party to implead the victim and may list the case on the judicial side and directions could be given on the judicial side to ensure that the Prosecutor files memo furnishing the address of the victim, so as to facilitate the petitioner/appellant concerned to file the application to implead the victim and the Prosecutor may be requested to furnish the address of the victim through his memo to enable the petitioner/appellant to implead the victim. Later, if the defect is still subsisting, the matter could be listed on the judicial side for direction for curing those defects of non-impleadment.

9. Registry may also take steps to ascertain about the pending cases in which the victim /de facto complainant in such cases have not been impleaded and defect list may be noted on the administrative side..”

13. It is seen that even after this Court had issued directions in this regard, the Registry has not strictly followed the same while dealing with proceedings

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instituted under the provisions of the Act. Therefore, the Registry is directed to scrupulously follow the directions issued by this Court in its interim order dated 05.09.2019 in Crl.A.No.1029 of 2019.

14. The appellants seek time to implead the victim.

Post on 25.06.2024.



Sd/-
K.BABU JUDGE

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