

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

CRL.A.No. 41 of 2011 (A)

AGAINST THE JUDGMENT IN CC 250/2003 of JUDL. MAGISTRATE OF FIRST CLASS,
KOTHAMANGALAM DATED 06.05.2008

AGAINST THE ORDER IN CrI.L.P. 1172/2010 of HIGH COURT OF KERALA DATED
09-12-2010

APPELLANT/COMPLAINANT:

A.P.ELDHO, DEPARTMENT OF ENGLISH
M.A.COLLEGE, KOTHAMANGALAM,
PRESENT ADDRESS: ELDO
AGED 59, S/O.POULOSE, APPACKAL
KEERAMPARA, KOTHAMANGALAM TALUK.

BY ADV. SRI.S.RAJEEV

RESPONDENTS/ACCUSED & STATE:

1. KURIAKOSE
S/o.MATHEW, EDATHY HOUSE, KEERAMPARA KARA
KOTHAMANGALAM TALUK-686 691.

2. POULOSE, S/O.UTHUP, VELIYATHOTTATHIL,
KEERAMPARA KARA, KOTHAMANGALAM TALUK-686 691.

3. BABU, S/O.PAILY, MALIYIL HOUSE,
KEERAMPARA KARA, KOTHAMANGALAM TALUK-686 691.

4. STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 TO 3 BY ADV. SRI.B.RAMAN PILLAI
R1 TO 3 BY ADV. SRI.R.ANIL
R1 TO 3 BY ADV. SRI.ANIL K.MOHAMMED
R1 TO 3 BY ADV. SRI.SUJESH MENON V.B.
R1 TO 3 BY ADV. SRI.SHYAM ARAVIND
R1 TO 3 BY ADV. SRI.T.ANIL KUMAR
R1 TO 3 BY ADV. SRI.MANU TOM
R4 BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.41 of 2011

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Dated this the 27th day of November, 2015

JUDGMENT

The appellant laid a complaint under Section 190 r/w Section 200 of Cr.P.C. against the accused alleging commission of offence punishable under Section 500 r/w Section 34 of the Indian Penal Code. It was claimed in the petition that the appellant was a Lecturer in the English Department in a college at Kothamangalam and that the accused had authored and submitted a complaint dated 28.05.1994 before the Secretary of that College raising false allegations against the complainant. It was stated that thereupon he was issued with a show cause notice by the Secretary of the College Association. Hence, appellant filed the present complaint alleging that lodging of the above complaint had affected and lowered his reputation in the estimation of the reasonably thinking persons.

2. Before the court below, he was examined as PW1 and Ext.P1 series were marked. On the side of the defence, DWs.1 to 4 were examined and Exts.D1 to D6 were marked. On an evaluation of the available materials, court below held that there was no

evidence to conclude that A1 to A3 authored the original letter of Ext.P1 and further that, the evidence did not show that the allegations were false. This is challenged in this appeal.

3. Heard both sides and examined the records.

4. Learned counsel for the appellant, inter alia, contended that there was no fair trial, in so far as the Court did not permit the examination of CW7, who was a crucial witness. It was submitted at the time of hearing that CW7 was the Secretary of the College who had issued show cause notice on the strength of the complaint submitted to him. Since the above witness was the recipient of the letter alleged to have been authored and sent by the accused, examination of the above witness was crucial.

5. The proceedings before the court below indicates that pursuant to the summons issued to the above witness, he appeared through the counsel on 06.03.2003 and applied for time. Thereafter, the case was transferred to the Judicial First Class Magistrate-I, Kothamangalam. On 17.07.2003, the case was taken up and adjourned to 16.08.2003 with a direction that CW7 shall be present. He did not appear on the next posting date and bailable warrant was issued to him on 16.10.2003, posting the case to 29.11.2003. It appears that there was a stay thereafter from the

High Court and the case stood posted on subsequent dates. On 04.02.2004, it is reported that stay was vacated and the counsel for CW7 applied for time. On the next posting date, on 05.05.2004 complainant and accused were absent, CW7 applied for time. On 13.07.2004, CW7 was absent and the case was adjourned to 04.09.2004. On that day also, he was absent and his application to condone the absence was rejected and bailable warrant was issued. The proceedings indicate that there were several proceedings thereafter. The records further reveal that he had approached the Supreme Court in S.L.P.No.1907 of 2004, which was dismissed ultimately by order dated 30.04.2004. This was reported to the Court on 31.08.2007 and the case was thereafter posted for questioning under Section 313 Cr.P.C. Evidently, after the stay was vacated and was reported to the court below, summons to CW7 was not pursued thereafter. The case was thereafter posted for defence evidence and the witnesses were examined on the side of the accused.

6. The judgment of the court below indicates that initially the court below considered the question whether the allegations in the complaint were true. After holding in paragraph 11 of the judgment that the allegations in Ext.P1 complaint was true, the

Court proceeded to consider whether the accused had authored Ext.P1. The Court after referring to evidence concluded that there was no evidence to show that accused had authored the above complaint, on the basis that Ext.P1 produced was only a photocopy.

7. In the nature of allegations, the first point that the Court should have considered was whether the accused had authored the disputed complaint. In this regard, examination of the person who was the recipient or the custodian of the original letter was most crucial. As mentioned earlier, without examining that witness or atleast offering a reasonable opportunity to the complainant to prosecute his matter by enforcing the attendance of the witness, Court could not have closed the evidence. No reason is also seen mentioned in the order as to why the Court did not pursue the examination of CW7. Court below by a reverse process of reasoning held that the allegations mentioned in Ext.P1 was substantiated and thereafter holding that the complaint itself was not proved, that too, by appreciating the defence evidence alone, without considering the evidence tendered by PW1. This does not appear to be sustainable. In the light of the above, the impugned judgment is not legally sustainable and is liable to be set

aside. The matter is liable to be remanded to the court below to enable the complainant to prosecute his case by taking necessary steps to summon CW7. In the light of the submission made by the learned counsel for the respondent that CW7 is no longer the Secretary, it will be at the option of the complainant to summon such person whom he deem fit, including the successor-in-office of that person.

In the result, the appeal is allowed. Impugned judgment is set aside. The matter is remanded to the court below for a fresh consideration after giving a fair opportunity to the complainant to summon his witnesses limited for the purpose of proving Ext.P1 and for the accused to summon their witnesses limited to rebuttal of that proof. It is made clear that no comment is made regarding the merits of the case and the quality of evidence tendered by both sides. Both sides shall appear before the court below on 08.01.2016. Considering the long pendency of the matter, Court shall try to expedite the trial of the proceedings.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge