

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.MC.No. 88 of 2015 ()

CRIME NO. 81/2011 OF KURUPPAMPADY POLICE STATION, ERNAKULAM DISTRICT

PETITIONER/ACCUSED :

**M.V.ALIAS
S/O. VARKEY, AGED 37 YEARS
MANIYELI HOUSE, THURUTHI P.O.
KURUPPAMPADY, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.GEORGE SEBASTIAN
SRI.BYJU KURIAKOSE**

RESPONDENTS/LEGAL HEIR OF THE DEFACTO COMPLAINANT & STATE :

**1. ANNAMMA
W/O. LATE M.V. PAULOSE, MULEKKUDY HOUSE
KRARIYELI KARA, KOMBANADU VILLAGE
ERNAKULAM - 683 555.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R2 BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19-08-2015,
ALONG WITH CRL.MC. 3530/2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

Mn

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APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A : A TRUE COPY OF THE COMPLAINT DATED 19.12.2010 FILED BY THE HUSBAND OF THE 1ST RESPONDENT BEFORE THE C.I. OF POLICE, KURUPPAMPADY.

ANNEXURE B A TRUE COPY OF THE FIR AND FI STATEMENT ALONG WITH THE STATEMENTS OF WITNESSES IN CRIME 81/2011 OF KURUPPAMPADY POLICE STATION.

ANNEXURE C A TRUE COPY OF THE NOTICE DATED 20.3.2014 ISSUED BY THE S.I. OF POLICE, KURUPPAMPADY TO THE PETITIONER.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

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Dated this the 19th day of August, 2015.

ORDER

These Crl.M.Cs basically emanate from the impugned proceedings in Crime No.81/2011 of Kuruppampady Police Station registered for offences under Secs.294(b) & 506(i) of the IPC. There appears to be some complex development in the investigation of this crime inasmuch as there appear to be two final reports have been seen filed by the police. Anx-E in Crl.M.C.No.3530/2015 is the final report submitted on 21.2.2015 on which cognizance has been taken which has led to the institution of C.C.No.No.297/2015 on the file of the Judicial First Class Magistrate Court, Perumbavoor, which has now been transferred to the Judicial First Class Magistrate Court, Kuruppampady, where it is pending as C.C.No.262/2015. It appears that due to reason which are not very discernible, another final report was also submitted by the police in Judicial First Class Magistrate Court, Kuruppampady, on 9.4.2015 and based on the interim stay passed by this Court on 26.3.2015 in Crl.M.C.No.88/2015, the said subsequent final report has been returned by the court below concerned to the police. The illegality

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or otherwise of the aspects in this regard need not detain the attention of this Court in the light of the view this Court proposes to taken in the disposal of these cases.

2. The allegations in the impugned criminal proceedings is that the petitioner has used and figured abusive words and accordingly committed the offence under Secs.294(b) of the IPC. The matter in issue is no longer res integra and is covered by the decision of the Apex Court in cases more than one and one such latest decision is the one rendered in Latheef v. State of Kerala reported in 2014 (2) KLT 987 wherein this Court has held that abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law, but to make it obscene, punishable under S.294(b) I.P.C., it must satisfy the definition of obscenity. Paragraph 5 of the ruling of this Court in Latheef's case (supra) made an exposition of law which reads as follows:

"5. Abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under S.294(b) I.P.C., it must satisfy the definition of obscenity. S.294 I.P.C. does not define obscenity. Being a continuation of the subject dealt with under S.292 I.P.C. the definition of obscenity under 292(1) I.P.C. can be applied in a prosecution under S.294 I.P.C. also. To make punishable, the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and

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corrupt persons. In P.T Chacko v. Nainan Chacko reported in (1967 KLT 799) this Court held that, "the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." In Sangeetha Lakshmana v. State of Kerala reported in (2008 (2) KLT 745) this Court held thus, "in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers." Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code. I find that the conviction against the revision petitioner under S.294 (b) I.P.C. in this case, on the basis of the above words alleged to have been used by him, is liable to be set aside, and the revision petitioner is entitled to be acquitted.

Therefore, in the light of the settled legal position in the matter, the offence under Secs.294(b) dealing with obscenity will not lie in the facts of this case. The only other subsisting offence is the one under Sec.506 (i) of the IPC which indisputably is a non-cognizable offence. No one has a case that the prior permission of the jurisdictional Magistrate has been obtained before the registration of the crime and the investigation thereof in respect of the non-cognizable offence under Sec.506(i) of the IPC. Therefore, the impugned criminal proceedings which involve these offences is illegal and untenable.

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3. It is pointed out that the defacto complainant in this case is no more and his wife has been impleaded as contesting 1st respondent in both these case. Though notice has been duly served on the 1st respondent in these case, she has not chosen to enter appearance.

4. In this view of the matter the impugned final report/charge sheet filed in Crime No.81/2011 of kuruppampady Police Station which has led to the institution of C.C.No.262/2015 on the file of the Judicial First Class Magistrate Court, Kuruppampady and all further proceedings arising therefrom pending against the petitioner are quashed. In this view of the mater it is not necessary to advert to all other aspects of the matter.

With these observations and directions, both Crl.M.Cs stand finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-