

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

Crl.MC.No. 485 of 2015 ()

TO EXPUNGE THE ADVERSE REMARKS MADE AGAINST THE PETITIONER IN
ANNEXURE A-1 ORDER

PETITIONER :

T.P.SENKUMAR,
AGED 57 YEARS OF AGE, S/O.PRABHAKARAN
DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICES
PRISONS HEADQUARTERS, THIRUVANANTHAPURAM - 696 012.

BY ADV. SRI.K.R.RADHAKRISHNAN NAYAR

RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
2. U.G.RAMESAN
S/O.GOPALAKRISHNA MENON, UPPATH, ELANJIPRA DESOM
PARIYARAM, THRISSUR, PIN – 686 021.
3. P.RAVEENDRAN
S/O.PARAMESWARAN ACHARI, THADATHIL KADUVINAL
VALLIKUNNAM, ALAPPUZHA, PIN - 690 501.
4. JAYA GOPINATH
W/O.GOPINATH, MALIYEKKAL HOUSE, RAJAKKAD
IDUKKI DISTRICT, PIN - 685 566.

R1 BY ADDL. DIRECTOR GENERAL OF PROSECUTION SRI. ABDUL RASHEED

R2 BY ADVS. SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Mn

...2/-

Crl.MC.No. 485 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A1: CERTIFIED COPY OF THE ORDER DATED 04/12/2014 IN
CRL.M.C. NO. 4174/2013 OF THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B. KEMAL PASHA, J.

.....
Crl.M.C. No.485 of 2015
.....

Dated this the 5th day of March, 2015

O R D E R

~ ~ ~ ~ ~

The petitioner has come up under Section 482 Cr.P.C. to get expunged all adverse remarks made against him in Annexure-A1 order dated 04.12.2014 in Crl.M.C. No.4174/2013. While disposing of Crl.M.C.No.4174/2013, this Court has made the following remarks quoted by the petitioner in this Crl.M.C.

“The learned counsel for the petitioners has put forwarded a case that Sri.Senkumar, who is one of the higher ups in the Kerala Police, has made a statement in public, which was reported in media that Kalabhavan Mani was unnecessarily

harassed or tortured only because of the fact that he happened to be a member of a Scheduled Caste. If such a statement is made by such a person, who is in the Police higher ups, that has to be viewed seriously. A responsible police officer is not expected to make such statements in public, regarding a pending case. In such a case, the petitioners are justified in seeking an investigation by an independent agency in the matter. This Court cannot go after paper reports to conclude whether he has made such a statement or not. The learned counsel for the petitioners has made a plea that the investigation may be entrusted with an independent agency and otherwise, they won't get justice from the Police department, who is favouring the celebrity. It seems that they have genuine ground to express such an anguish."

2. It has to be noted that this Court has made the said remarks by noting down the submissions made by the learned counsel for the petitioner in that CrI.M.C. and also by noting down the contents of the documents produced along with the CrI.M.C. Even though paper reports have

been produced by the petitioner in that CrI.M.C., this Court has cautioned and has taken sufficient restraint in observing that this Court cannot go after paper reports as to conclude whether the present petitioner had made such a statement or not. What was mentioned by this Court is that *“if such a statement was made by such a person, who is in the police higher ups, that has to be viewed very seriously.”* This Court had never observed that the present petitioner had made any such statement in public. According to the petitioner, the said remarks were made by this court without hearing this petitioner.

3. Presently, in all fairness, the learned counsel for the petitioner has produced the DVD containing the recorded video clipping in respect of the speech made by the present petitioner in the annual meeting of the police association, in the presence of a Union Minister and also some political leaders. The speech was in Malayalam, a portion of its English translation is as follows:

“An issue of Kalabhavan Mani had occurred. I am not mentioning whether the incident is true or not. The S.P. of Thrissur told me that he had deployed police force at the airport for apprehending Kalabhavan Mani. I had asked only one thing to the S.P., 'if instead of Kalabhavan Mani, it were Mammooty, Mohanlal, Dileep or Jayaram, who had done the very same acts committed by Kalabhavan Mani, whether they should have suffered the same plight suffered by Kalabhavan Mani?' If the answer of the S.P. would be that those people would not have been put to the same plight, whether the police would be correct in their action. If those persons also would not have been put to the same plight, was it right to run after Kalabhavan Mani for apprehending him. It is our old tradition in saluting the whites and to stamp on the blacks, and the said attitude has not been changed. I am not mentioning the complexion of the skin when I am saying about whites; whereas, what I am mentioning is that the police is saluting the persons of the

upper strata and are not only saluting the common man; whereas torturing them. In such case, whether we have changed our attitude? From this incident, what I could understand is the same. When I asked the S.P., he had no answer at all. It was not a confrontation with the police; whereas the confrontation was with the forest officers. Kalabhavan Mani has also become very popular and he has sprang up from a very poor family and poor circumstances. We will have to think whether discrimination is not there in cases like this. We should avoid such discrimination”

4. It is true that the media has reported as pointed out by the petitioner in the other CrI.M.C. that Kalabhavan Mani was discriminated because of the fact that he is a member of a Scheduled Caste. What was discernible from the speech made by the petitioner by the common man can be the same as reported by the media. He has spoken about the whites and blacks and he has mentioned that he was expressing that view with regard to the presence of the

higher strata in the society and the presence of the lower strata in the society. He continued to make remarks by making it clear that Kalabhavan Mani is a person, who is hailing from poor circumstances from the lower strata of the society and he has become popular, and thereby he has been discriminated.

5. The criminal justice dispensing system in the country involves four organs namely, (1) the police, (2) the prosecution, (3) the court and (4) correctional institutions. If any of the organs is committing any fault, it may be pointed out that the system is at fault. But, on an appreciation, it cannot be said that our criminal justice dispensing system is having so much defects; whereas the fault lies in the persons working the system. If the police is discriminating one person from other persons, it is the fault of the police and not the system as such. The speech made by the present petitioner clearly expresses his opinion and view that the police is discriminating Kalabhavan Mani with the

rest of the aforesaid actors. If the police is resorting to that course, it is a fault that is being committed by the police for which the present petitioner is also responsible. It is for him as a person in the higher ups in the police to initiate action against the erring police officers. In that particular case, as a responsible police officer, he should not have expressed such an opinion that Kalabhavan Mani is being discriminated and should not have cautioned against the continued so called discrimination as against Kalabhavan Mani. What does it mean? It seems that he has deliberately made specific remarks regarding his attitude in respect of a case pending investigation, and when the case was being investigated by the police under him. He should not have made such comments regarding that case. In our system, all are equals in the administration of justice.

6. It is a pity that still being a police officer in the higher ups of the Kerala Police, the petitioner is entertaining a view that the police is discriminating the persons of the

higher strata and the lower strata in the society in the case of investigation. Either he will have to stop his job or he will have to see such discrimination should not happen in the police force.

7. Still, this Court is of the view that the remarks made by this Court in the earlier order are fully correct and it does not require any interference at all. The matter has become more worse when this Court is again invited to interfere in the matter.

8. The learned counsel for the petitioner has pointed out that the petitioner has not mentioned that Kalabhavan Mani was discriminated only because of the fact that he is a member of the Scheduled Caste. I have earlier pointed out that even though he has not expressed the terms that Kalabhavan Mani is a member of a Scheduled Caste, the whole speech made by him and the extracts which I have reproduced above, clearly denote what is discernible to the common man from the speech. Of course, in black and

white he has not mentioned that Kalabhavan Mani was discriminated because of the fact that he belongs to a Scheduled Caste. At the same time, the tenor of his speech and by mentioning whites and blacks, he has invited the media interpretation to that effect. This Court has never found that the petitioner had made the statement that Kalabhavan Mani was discriminated because he happened to be a member of a Scheduled Caste. What was mentioned by this Court earlier is that if any such remarks were made by such an officer, it should have been viewed very seriously. Apart from that, this Court had never made any remarks casting any stigma on the petitioner for such words.

8. From all the above, I am of the view that the earlier order is not liable to be interfered with in any manner and this CrI.M.C. is devoid of merits and is only to be dismissed, and I do so.

In the result, this CrI.M.C is dismissed.

The Registrar General of this Court is directed to keep the DVD produced by the petitioner in safe custody in a sealed cover for future reference, if required.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/05/03

// True Copy //

PA to Judge