

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

Crl.MC.No. 807 of 2015 ()

CC 480/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT -I, KOTTARAKKARA

PETITIONER/ACCUSED:-:

**R.BALAKRISHNA PILLA, AGED 78 YEARS
S/O.RAMAN PILLA, KIZHOOTTU VEETIL
KIZHAKKEKARA MURI, KOTTARAKKARA.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY**

RESPONDENTS/STATE/COMPLAINANT:-:

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

**2. GEETHA, D/O.LATE CHELLAPPAN PILLAI
VRINDAVANAM, VALAKAM MURI
ARAKKAL VILLAGE, PATHANAPURAM TALUK.**

**R2 BY ADV. SRI.SHABU SREEDHARAN
R2 BY ADV. SRI.S.VIJAYAN
R2 BY ADV. SRI.N.MUHAMMAD SAJU
R2 BY ADV. SRI.C.PAULOSE
R2 BY ADV. SRI.SREEDHARAN KARATTA
R2 BY ADV. SMT.RESHMA ABDUL RASHEED
R1 BY PUBLIC PROSECUTOR SMT. REMA R.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE I. CERTIFIED COPY OF THE COMPLAINT IN CC NO.480/2013 ON THE FILE
OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA.**

RESPONDENTS' EXHIBITS

ANNEXURE R2(1) TRUE COPY OF THE STATEMENTS OF CWs 2 TO 6

ANNEXURE R2(2) TRUE COPY OF THE REPLY NOTICE DATED 15.04.2012

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

C R

Crl.M.C.No.807 of 2015

Dated this the 10th day of September, 2015

O R D E R

A public speech made by the petitioner herein is the subject matter of a prosecution against him under Section 500 IPC. A long standing dispute between him and the complainant is still live. The complainant is the Headmistress of a school run by the petitioner herein. When disputes regarding service cropped up, and the relationship between the parties strained, there occurred an unfortunate incident. The complainant's husband, who is also a teacher in the said school, was involved in a major motor accident in which he sustained very severe injuries. Allegations and counter allegations came in connection with the said motor accident, and it was even alleged that the petitioner herein and his men were behind the said motor accident, or that they designed such an accident. When the dispute was live, the petitioner herein made a public speech against the complainant and her husband. It is alleged that the said speech contained defamatory materials against the complainant. She, accordingly, made a complaint before the learned Judicial First Class Magistrate-I, Kottarakkara. After conducting due enquiry under Sections 200 and 202 Cr.P.C., the learned Magistrate took cognizance as C.C.No.480/2013. The petitioner now seeks orders quashing the

said prosecution on various grounds. The main grounds on which he seeks relief are:

- a) The speech made by him does not refer to the complainant.
- b) The speech does not contain anything defamatory.
- c) The complainant and the witnesses examined on her side in the court below under Section 202 Cr.P.C. are not consistent regarding the date of speech.
- d) The petitioner made such speech in good faith.

2. Now, let me examine whether the prosecution can be quashed on any of the grounds urged by the petitioner.

3. Section 499 IPC defines defamation. Explanation 4 to Section 499 IPC will show that any imputation which lowers the moral or intellectual character of the victim, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, will come under the defamation. Thus, the definition of defamation under Section 499 IPC is very wide. Any act done or speech made or words spoken or even some gesture or sign or visible representation made against a person with the object of lowering the person's credit or character or dignity will attract a prosecution under Section 500 IPC. In this case, it is alleged that the speech made by the petitioner has very much affected the character, dignity and credibility of the complainant morally and otherwise. It requires to be

examined whether the said speech will have the effect of defaming the complainant in any manner, or lowering her down in the estimation of others, or lowering her moral character or credit or dignity. I find that this is a matter to be looked into by the trial court.

4. Prosecution under Section 500 IPC is an area where some burden of proof is put on accused also. This is an area where the accused can plead the benefit of some exceptions enumerated under Section 499 IPC. Pleading the benefit of any of the exceptions cannot be simply a defence to the prosecution. Plea of such benefit must be adjudicated as part of the trial process. The court trying the offence under Section 500 IPC can come to a finding in favour of the complainant only after excluding any possible benefit of any of the exceptions enumerated under Section 499 IPC. In this case, the petitioner pleads the benefit of good faith. It is a matter which will have to be examined by the trial court.

5. Let me now answer the different grounds urged by the complainant. One is that the speech made by him does not refer to the complainant. The reply notice sent by him to the notice caused by the complainant is produced in court. This shows that the petitioner would practically admit the speech made in public. He made such a speech when the dispute between him and the complainant was very much live even on printed and visual media. The specific portion of the

speech allegedly containing defamatory matter is extracted in the complaint. A reading of this material will show that it contains some imputation concerning the moral character of the complainant, or her dignity as a Headmistress. Whether it is actually defamatory, is in fact a matter to be looked into by the trial court. In the situation of dispute between the parties, the complainant has every reason to believe that she was in fact referred to in the objectionable speech. When she believes so, and when she has some reason to believe so, it is for the trial court to enquire into this aspect and decide whether the speech actually refers to the complainant. Only during trial the complainant can convince the trial court that the person who is actually meant, and referred to in the speech is she, and not somebody else. In short, this is a matter to be considered and decided by the trial court. So also, whether the extracted portions are defamatory, will have to be examined by the trial court.

6. One important aspect argued by the petitioner is the inconsistency regarding the date of the alleged speech. It is submitted that there is confusion as to whether it is 08.01.2012 or 07.01.2012. All throughout the proceedings the complainant maintained a stand that it is 08.01.2012, whereas, the witnesses stated the date as 07.01.2012 when examined under Section 202 Cr.P.C. When the speech is practically admitted and when the objectionable portions

extracted are also not disputed, change in date may not assume much importance. Any way, if at all there is inconsistency regarding the date, it is a matter to be explained during the trial process. Such an inconsistency regarding the date cannot be decided or adjudicated by the High Court in a proceeding under Section 482 Cr.P.C.

7. The other ground pleaded is the benefit of good faith. If at all the petitioner pleads such a benefit, he will have to convince the trial court that he made the objectionable speech in good faith. He will also have to explain what is the good faith meant by him. This is also not something to be decided by the High Court under Section 482 Cr.P.C.

8. The learned counsel for the petitioner cited a decision of this Court in **Rekha and others v. Vinodan T.S. and Another [2009(3) KHC 477]**, the equivalent citation of which is **2009(3) KLT SN 68** that intention to defame must be proved as an essential ingredient of the offence punishable under Section 500 IPC. Of course, intention will have to be proved in such a prosecution. I would like to add that knowledge of consequence is also important in such a prosecution.

9. Section 499 IPC contains the definition of defamation.

“Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or

knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter exempted, to defame that person.”

10. On an analysis of this definition, I find that the intention meant under the first part of the Section is in fact intention that the words written, or speech made by the person, shall be read by somebody, and the other essential element to constitute defamation is the knowledge that the alleged sign, or visible representation, or words, or speech, will defame the victim. So, I find that knowledge of consequence is also prominent in the case of words spoken or written. Knowledge of consequence of the imputation or allegation will also make the accused liable if such words or libel, spoken or written, were intended to be heard or read.

11. In this case, it is for the trial court to examine whether the petitioner had the required intention that the objectionable speech made by him shall be heard or listened by the audience, and also whether he had the knowledge that the speech made by him affecting the character or dignity of the victim will have the effect of defaming her, or lowering her in the estimation of others. It is alleged that the objectionable speech was made by the petitioner with the intention of it being heard by the audience. If such intention is proved, knowledge of consequence can be imputed, that his speech will affect the dignity

or moral character of the victim.

12. As discussed in the forgoing paragraphs, I find that the prosecution against the petitioner herein cannot be quashed under Section 482 Cr.P.C., on any of the grounds urged by him in this proceeding. I find that the matter requires to be looked into and examined by the trial court, and a decision, including decision on the benefit of any of the exceptions enumerated under Section 499 IPC , will have to be taken by the trial court. This Crl.M.C. to quash the prosecution is liable to be dismissed.

In the result, this Crl.M.C. is dismissed in limine, without being admitted to files. The learned counsel for the petitioner lastly made a request for exemption from personal appearance. He can very well make such request before the learned Magistrate, and on a consideration of the facts and circumstances including the circumstances of the petitioner, appropriate judicious decision can be taken by the learned Magistrate. I do not think that the learned Magistrate will insist on the physical presence of the petitioner on all posting dates.

Sd/-

P. UBAID, JUDGE

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