

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Cr1.MC.No. 1006 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 60/2015 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, KANNUR
CRIME NO. 1566/2014 OF KANNUR TOWN POLICE STATION

PETITIONER/ACCUSED :

DR.M.M.NANDAKUMAR AGED 74 YEARS
S/O. KUNHIRAMAN NAIR, 'DHANYASHREE', THALAP
KANNUR.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN
SRI. V.C.SARATH

RESPONDENTS/DEFACTO COMPLAINANT AND STATE :

1. N.A.NISA, AGED 52 YEARS
W/O. ABDUL RASHEED, VALIYATH BUNGALOW, PANAMANA
CHAVARA, KOLLAM
NOW RESIDING AT BEHIND RUBCO BUILDINGS
KANNUR-670 002.

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

R1 BY ADV. SRI.R.LAKSHMI NARAYANAN
R1 BY ADV. SMT.R.RANJINI
R2 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

ANNEXURE A : COPY OF FIR & FIS IN CRIME NO.1566/2014 OF KANNUR TOWN POLICE STATION.

ANNEXURE B : COPY OF THE FINAL REPORT IN CC NO.60/2015 PENDING ON THE FILES OF THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS-I, KANNUR.

ANNEXURE C : COPY OF THE PRESCRIPTION SLIP (OUT PATIENT TICKET) ISSUED FROM ASHOKA HOSPITAL, KANNUR.

RESPONDENT(S) ' EXHIBITS: NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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CrI.M.C.No.1006 of 2015
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Dated this the 2nd day of November, 2015

ORDER

The accused in C.C.No.60 of 2015 of the Judicial First Class Magistrate-I, Kannur, who is facing prosecution for offence punishable under Section 354(A) of the Indian Penal Code in Crime No.1566 of Kannur Town Police Station, is the petitioner herein.

2. According to the prosecution, the de facto complainant is a Junior Superintendent of Collectorate of Kannur, who had gone to a hospital where accused was working as a doctor, on 25.10.2014 at about 5.30.p.m., for checking her blood pressure. An O.P. ticket was taken on the advise of the hospital authorities and thereafter, she was taken to the accused doctor's consultation room. In the presence of a lady staff, the doctor is stated to have checked her blood pressure and enquired about her details. The grievance of the de facto complainant is that the doctor, in spite of her resistance, lifted her head covering and touched her neck in a purported attempt to check the thyroid. When this was resisted, the doctor is alleged to have pressed her chest using stethoscope

and thereafter pressed her abdomen. She, thereafter left the room, threw the prescription at the reception counter and left without paying the consultation fee. A complaint was lodged before police on 26.10.2014 at 11.40 a.m. Crime was registered and after investigation, final report was filed alleging offence under Section 354A of the IPC.

3. The doctor has approached this Court alleging that even the available records do not disclose the commission of offence alleged against him and seeks quashing of the entire proceedings pursuant to Annexure-B, final report. The contention is that further proceedings pursuant to Annexure-B will only result in miscarriage of justice and a harassment of the 74 year old physician, who, according to the counsel has an unblemished record of service.

4. The prosecution allegation is sought to be established through the version of de facto complainant and her son. The specific allegation of the de facto complainant is that she wanted only the blood pressure to be checked up by the doctor. However, the doctor removed her veil and started examination of her body. In spite of her resistance, doctor pressed her chest as well as abdomen. This is sought to be corroborated through the

statement of 14 year old son studying in the 9th standard. The statement of both the witnesses indicate that the doctor had checked her neck, chest and abdomen. Even though, she has not specifically mentioned that her chest was examined, the son has given a version that by placing the stethoscope inside her blouse, the doctor had examined her. This is not the version spoken to by the de facto complainant.

5. Apart from these narration of facts, there is no specific allegation that any of the acts allegedly done by the doctor were with any specific explicit sexual overtures. Evidently, whatever procedures the doctor had done were being objected to by the de facto complainant. The question is whether the available materials disclose ingredients of an offence under Section 354(A) of the IPC and with the admitted materials and facts, whether the offence under Section 354(A) of the IPC is established. It has to be noted that physical examination was conducted in the consultation room in the presence of the nurse and the son. Even though the de facto complainant has a case that the son was removed to a corner of the room, son has given the purported narration of the entire sequence of evidence which clearly indicate that whatever physical examination that the doctor has done was within the

visibility of the son. The nurse has also given a statement regarding the physical examination. Evidently, the doctor had checked the blood pressure using the apparatus. The doctor using the stethoscope had also examined her body. After conclusion of the examination, the doctor had recorded his findings, conclusion and the medicine to be administered, as evident from Annexure-C general prescription. This clearly shows that none of the acts alleged to have been done by the doctor had an explicit indication of sexual overtures.

6. Adv.Sri.R. Lakshmi Narayanan learned counsel for the de facto complainant who vehemently opposed the application to quash the proceedings contended that the version spoken by the de facto complainant and her son are sufficient to indicate that there was stiff resistance from the de facto complainant and whatever acts done by the doctor had a content of sexual overtures. Per contra, Adv.Sri. M. Revikrishnan, learned counsel for the accused, relying on Hutchison's Clinical Methods, 16th Edition at page 19, on physical examination contended that the doctor who has to examine the general state of a patient is expected to attempt the method of inspection, palpation, percussion, auscultation as may be appropriate to the different

parts of the body. Learned counsel relying on the decision reported in **Desai Vs. State of Kerala (2013(4) KLT SN 31 (C.No.30) SC)** contended that whenever a patient proposes to have a medical examination and offers himself or herself for a medical examination, impliedly creates a contract which casts an obligation on the doctor to conduct the necessary examination which are essential, having regard to the facts and circumstances of each case. According to the learned counsel, the doctor has not done anything more than what was prescribed in a physical examination as contemplated in the clinical methods referred to above.

7. There are indications that the de facto complainant was objecting to examination by the doctor. It has to be noticed that she went to the clinic with a single request of her blood pressure to be checked up. Doctor had conducted a general examination of the body using the equipments, since she had taken an OP ticket, it was the obligation of the doctor to conduct essential physical examination since she was complaining of blood pressure. She seems to have objected on a belief that it was unnecessary, since she had gone to the doctor for checking the blood pressure alone. It seems that she reacted on the basis of this state of mind, as

evident from the conduct of the patient of having thrown the medical prescription at the counter and leaving the institution without paying the requisite fee. There is nothing to indicate that the doctor by words spoken, gestures or conduct proceeded with any sexual intent.

8. Hence, even on the admitted materials, the offence under Section 354(A) of the IPC is not made out. There is apparently nothing on record to show that petitioner is involved in any other case. Hence, continuance of further proceedings on the basis of Annexure-B may result in miscarriage of justice and hence, all further proceedings pursuant to Annexure-B, final report are liable to be quashed.

In the result, the Crl.M.C. is allowed. All further proceedings pursuant to Annexure-B, final report are quashed.

Sd/-

SUNIL THOMAS
Judge

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