

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Cr1.MC.No. 2123 of 2015

IN C.C NO. 31/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, KASARAGOD

CRIME NO. 251/2013 OF VIDYANAGAR POLICE STATION, KASARGOD

PETITIONER/ACCUSED:

HABEEB RAHMAN, AGED 45 YEARS,
S/O.MOIDEENKUNHI, R/AT SABNA COTTAGE,
BANDICHAL,
THEKKIL VILLAGE,
KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
THROUGH THE STATION HOUSE OFFICER VIDYANAGER,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 2123 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: COPY OF THE FINAL REPORT IN CRIME NO.251/2013 BEFORE
THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KASARAGOD DATED
27.6.2013.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.2123 of 2015

Dated this the 7th day of April, 2015

O R D E R

The petitioner herein is the sole accused in C.C No.31/2014 of the Judicial First Class Magistrate Court I, Kasaragod. He has been facing prosecution under Section 118 (d) of the Kerala Police Act, on the allegation that he told something offensive to the complainant over telephone. The petitioner now seek orders quashing the prosecution against him on the ground that the allegations in the FIR or in the final report will not in fact constitute such an offence.

2. On a perusal of the FIR and the final report, I find that the allegations made by the police against the petitioner herein will not infact in any manner constitute the essentials and ingredients of the offence punishable under Section 118(d) of the Kerala Police Act. Continuance of this prosecution, I find, will be a sheer abuse of legal process. Even otherwise, the prosecution is liable to be quashed in view of the decision in **Shreya Singhal v. Union of India [2015(2) KLT 1 (SC)]** where the Hon'ble Supreme Court declared that Section

118(d) of the Kerala Police Act is unconstitutional. I find that the present prosecution against the petitioner is legally unsustainable.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioner in C.C No.31/2014 of the Judicial First Class Magistrate Court I, Kasaragod will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

ab