

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Crl.MC.No. 2208 of 2015 ()

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CC 1265/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT- I, CHALAKUDY
CRIME NO. 64/2014 OF KORATY POLICE STATION, TRISSUR DISTRICT
=====**

PETITIONER/ACCUSED:

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SIVAN, AGED 50 YEARS, S/O. CHATHAN
KARINGAM HOUSE, VALUNGAMURI
KORATTI, KIZHAKKEMURI VILLAGE
THRISSUR DISTRICT**

BY ADV. SRI.SAIGI JACOB PALATTY

RESPONDENTS/COMPLAINANTS & STATE:

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- 1. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM, KOCHI - 31**
 - 2. PADMINI, W/O. THANKAPPAN, MANAMPILLY HOUSE
VALUNGAMURI, KORATTI, KIZHAKKEMURI VILLAGE
THRISSUR DISTRICT**

**R2 BY ADV. SRI.P.K.VARGHESE
R1 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.M.C.No.2208/2015

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE-1 COPY OF THE FIR IN CRIME NO. 64/2014 OF KORATTY POLICE
STATION**

ANNEXURE-2 COPY OF THE CHARGE SHEET

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

PA. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.2208 of 2015

Dated this the 23rd day of September, 2015

O R D E R

A prosecution involving the offence under Sections 118(i) of the Kerala Police Act and under Section 294(b) IPC, is sought to be quashed under Section 482 Cr.P.C., by the accused therein. The police registered the crime under Section 294(b) IPC and under Section 119(a) of the Kerala Police Act, on the complaint of the 2nd respondent herein, that on 9.1.2014, the petitioner herein trespassed into her property, and abused her in filthy language. However, after investigation the police submitted final report under Section 118(i) of the Kerala Police Act and under Section 294(b) IPC. The petitioner's case is that there is absolutely no material to attract any of such offences.

2. Section 119(a) of the Kerala Police Act will apply only when the police has an allegation that the accused made any sexual gestures or acts degrading the dignity of women in public place. Here, the alleged incident happened in the private property of the complainant. It is not known what act or gesture was

made by the petitioner, degrading the dignity of women. Any way, the police found out the mistake, and submitted final report under Section 118(i) of the Kerala Police Act, which in fact punishes the act of giving or selling articles or substances, which are harmful for the physical or mental health of children below 18 years. Here is no such situation. The complainant herein is not aged below 18 years, and the police does not have any allegation under Section 118(i) of the Kerala Police Act. Thus, I find that the prosecution brought under the provisions of the Kerala Police Act is legally unsustainable.

3. As regards prosecution under Section 294(b) IPC, this Court has settled the position in **Latheef v. State of Kerala [2014(2) KHC 604]**, the equivalent citation of which is **2014 (2)KLT 987**. The facts therein are identical to the facts of this case. This Court settled that abusive words or humiliating words or defamatory words, will not as such amount to obscenity as defined under the law. Even if such elements are there, the alleged offence must have been committed in a public place. Here is no such situation. It is not known what obscene word

was used by the petitioner herein. The allegation against the complainant is that the petitioner used some abusive words or filthy words. Those words will not come under the definition of obscenity under the law. Thus, I find that the prosecution under Section 294(b)IPC is also unsustainable. The whole prosecution is thus liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.1265/2014 of the Judicial First Class Magistrate Court, Chalakkudy will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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