

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.MC.No. 1639 of 2014

CC 2384/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - III, PUNALUR
.....

PETITIONER(S)/ACCUSED:

**PRIYANKA PRABHAKAR, AGED 30 YEARS,
'VAISAKH', PERUMKULAM VILLAGE, POOVACHAL P.O.,
THIRUVANANTHAPURAM, PIN-695 575.**

**BY ADVS.SRI.BIJU BALAKRISHNAN
SMT.V.S.RAKHEE**

RESPONDENT(S)/STATE & COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. ANOOP SADASIVAN,
'THEJAS', VALACODE P.O., PUNALUR
KOTTARAKKARA, KOLLAM, PIN-691 331.**

R1 BY PUBLIC PROSECUTOR SMT.MAYA

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

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE 1- COPY OF THE COMPLAINT DT. 15-11-2013 FILED BY THE
2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-III, PUNALUR.**

ANNEXURE 2- COPY OF THE SWORN STATEMENT OF THE 2ND RESPONDENT.

**ANNEXURE 3- COPY OF THE ORDER DATED 7-12-2013 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-III, PUNALUR.**

**ANNEXURE 4- PHOTOSTAT COPY OF THE F.I.R. DT. 23-08-2012 IN CRIME NO. 1238 OF
2012 CHERTHALA POLICE STATION.**

**ANNEXURE 5- PHOTOSTAT COPY OF THE JUDGMENT DT. 07-09-2012 IN WPC
NO. 20377 OF 2012.**

**ANNEXURE 6- PHOTOSTAT COPY OF THE ORDER DT. 09-11-2012 IN B.A.NO. 5982 OF
2012.**

**ANNEXURE 7- PHOTOSTAT COPY OF OP(GW) NO. 206/2013 PENDING BEFORE FAMILY
COURT, THIRUVANANTHAPURAM.**

**ANNEXURE 8- PHOTOSTAT COPY OF OP 181/2013 PENDING BEFORE FAMILY COURT,
NEDUMANGAD.**

**ANNEXURE 9- PHOTOSTAT COPY OF OP 894/2013 PENDING BEFORE FAMILY COURT,
NEDUMANGAD.**

**ANNEXURE 10- COPY OF JUDGMENT DATED 17-8-2013 IN C.C.NO. 137/2013 BY THE
JUDICIAL FIRST CLASS MAGISTRATE III, PUNALUR.**

**ANNEXURE 11- PHOTOSTAT COPY OF CRIMINAL APPEAL NO. 274/2013 PENDING
BEFORE SESSIONS COURT, KOLLAM.**

ANNEXURE 12- PHOTOSTAT COPY OF LAWYER NOTICE DT. 7-10-2013.

ANNEXURE 13- PHOTOSTAT COPY OF LAWYER NOTICE DT. 7-10-2013.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
CRL.M.C. No. 1639 of 2014
.....

Dated this the 8th day of December, 2015

ORDER

Petitioner herein is the wife of the 2nd respondent. Alleging specific instances of sexual harassments and cruelty from the part of the 2nd respondent, she was forced to file Annexure-7 as OP No.206/2013 before the Family Court, Thiruvananthapuram seeking the declaration of guardianship and permanent custody of Diya Anoop, her daughter. Over and above it, she has filed, by detailing the very same allegations, Annexure-8 as OP No.181/2013 seeking a decree for the recovery of gold ornaments, money, past and future maintenance, etc. from the 2nd respondent. She has filed Annexure-9 as OP No.894/2013 before the Family Court, Nedumangad for dissolution of marriage, by detailing the very same allegations.

2. In all the aforesaid cases, she has narrated the cruel treatment and sexual harassments meted out to her from the part of the 2nd respondent. The 2nd respondent has challenged the contents of Annexure-8 through a private complaint before the court below by alleging that the contents in paragraphs 13, 14, 23 and 24 of Annexure-8 are defamatory and the said imputations were deliberately made by the petitioner to defame him and his family among the right thinking members of the public. The court below has taken cognizance of the offence under Section 500 IPC, took the case to file as CC No.2384/2013, and issued summons to the petitioner. Annexure-1 private complaint, Annexure-3 order and all the proceedings in CC No.2384/2013 of the court below are sought to be quashed.

3. Heard the learned counsel for the petitioner, the learned counsel for the 2nd respondent, and the learned Public Prosecutor.

4. The learned counsel for the petitioner has

pointed out that the petitioner was compelled to explain in Annexure-7, Annexure-8 and Annexure-9 the actual instances of cruelty and sexual harassments meted out towards her from the part of the 2nd respondent. Even though the petitioner has levelled the very same allegations against the 2nd respondent in Annexures-7, and 9 also, the 2nd respondent has not chosen to complain anything about it in the private complaint. Unless and until the allegations levelled against the 2nd respondent in Annexures-7, 8 and 9 are disproved, and it is proved that those imputations were falsely made by the petitioner without any *bonafides*, it cannot be said that such contents of the said Annexures are defamatory. In case those allegations are true, the 2nd respondent will be nowhere. The stage selected by the 2nd respondent to file Annexure-1 private complaint is too premature to allege an offence of defamation.

5. In fact, Annexure-1 is hit by the Ninth exception to Section 499 IPC. It says that it is not defamation to make

an imputation on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. Here, the said imputations were made by the petitioner for the protection of her own interest in the matter. It seems that she wants to escape from the clutches of the 2nd respondent. The said attitude of the petitioner is discernible from Annexures-7, 8 and 9. In case the said imputations are true, she is entitled to make such imputations within the meaning of the Ninth exception to Section 499 IPC. Whatever it is, unless and until those allegations in Annexures-7, 8 and 9 are disproved, or it is proved that those allegations were falsely made with a view to defaming the 2nd respondent and his family members, an offence under Section 500 IPC will not lie. The litigation through Annexures-7, 8 and 9 are still pending. Matters being so, presently, Annexure-1 complaint and all further proceedings based on it in CC No.2384/2013 of the Judicial

First Class Magistrate's Court-III, Punalur are premature and, therefore, the same are liable to be quashed.

In the result, this Crl.M.C. is allowed and Annexure-1 complaint and all further proceedings based on it in CC No.2384/2013 of the Judicial First Class Magistrate's Court-III, Punalur are quashed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge