

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Crl.MC.No. 3732 of 2015

**CC 2390/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, TRIPUNITHURA
CRIME NO. 1251/2014 OF UDAYAMPEROOR POLICE STATION , ERNAKULAM**

PETITIONER(S)/ACCUSED:

**RAJU V.A, AGED 43 YEARS,
S/O.ACHUTHAN, VADAKKEMADAPPILLIL FROM PULLUMALAYIL
NADAKKAVU P.O., UDAYAMPEROOR, PIN 682307,
ERNAKULAM.**

**BY ADVS.SMT.C.G.BINDU
SMT.C.G.AJITHA**

RESPONDENT(S)/DE-FACTO COMPLAINANT & STATE:

- 1. MANKA THANKAPPAN,
PAPPANIKUNNEL HOUSE, NADAKKAVU P.O.,
UDAYAMPEROOR,
ERNAKULAM.**
- 2. STATE OF KERALA,
REPRESENTEDBY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.**

R2 BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE-A1: CERTIFIED COPY OF THE COMPLAINT GIVEN BY PETITIONER TO THE
DEPUTY COMMISSIONER OF POLICE, KOCHI CITY DATED 17.11.2014.**

**ANNEXURE-A2: CERTIFIED COPY OF THE F.I.R. IN CRIME NO.1251/2014 OF THE
UDAYAMPEROOR POLICE STATION.**

**ANNEXURE-A3: CERTIFIED COPY OF THE LIST OF PROPERTY IN CRIME NO.1251/2014
OF THE UDAYAMPEROOR POLICE STATION.**

ANNEXURE-A4: PHOTOGRAPH.

ANNEXURE-A4(A): PHOTOGRAPH.

ANNEXURE-A4(B): PHOTOGRAPH.

ANNEXURE-4(C): PHOTOGRAPH.

ANNEXURE-A4(D): PHOTOGRAPH.

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Dated this the 22nd day of June, 2015.

ORDER

The petitioner herein is the accused in the impugned Annexure-A2 FIR in Crime No.1251/2014 of Udayamperur Police Station registered for offences under Secs.118 (d) and 120(c) of the Kerala Police Act, 2011. The said impugned crime was registered on the basis of Annexure-A1 petition/complaint given by the 1st respondent-defacto complainant to the Deputy Commissioner of Police, Kochi City. The police after investigation submitted the impugned Final Report/Charge Sheet in the impugned crime which has led to the institution of C.C.No.2390/2015 on the file of the Judicial First Class Magistrate Court, Thripunithura. The 1st respondent (defacto complainant) herein is the neighbour of the petitioner and they are persons known to each other and it is in respect of the said cordial relationship that the petitioner had taken Annexure-A4 series of photographs of the 1st respondent with her consent when she came to the house of the petitioner for taking useless articles since she is a hawker doing the business of such articles. It was with very good intention the petitioner

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has put the photographs in the face book account of the petitioner. The 1st respondent is a lady aged 65 years, who for the last 30 years has been living as a hawker, who purchase articles from nearby houses and doing such business in selected articles and eke out her livelihood. On 16.11.2014 when the 1st respondent came to the house of the petitioner for taking and purchasing such articles and when the petitioner enquired about her pulling the cart, she replied that she is not very healthy to hold the same and so the petitioner had made those observations in the face book account only to appreciate and put the 1st respondent in good life about the hardship undergone in life to eke out her livelihood. Annexure-A4 series of photographs were treated as offensive by the family members of the 1st respondent and it is at their instigation that the impugned complaint was made by the 1st respondent. The petitioner contends that continuation of the impugned criminal proceedings is nothing but an abuse of process of the court by inflicting such vexatious and frivolous proceedings on the petitioner and it is on that basis that the petitioner has sought for quashment of the impugned criminal proceedings by instituting the instant Crl.M.C. The alleged offences are those under Secs.118(d) and 120(c) of the Kerala Police Act which reads as follows:

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“118. Penalty for causing grave violation of public order or danger:- Any person who,-

(a)

(b)

(c)

(d) causes annoyance to any person in an indecent manner by statements or verbal or comments or telephone calls or calls of any type or by chasing or sending messages or mails by any means.

120. Penalty for causing nuisance and violation of public order:-

If any person,

(a)

(b)

(c) defaces or covers a traffic sign or signboard reducing its visibility or readability.”

2. In the celebrated case Shreya Singhal v. Union of India reported in 2015 (5) SCC 1 = AIR 2015 SC 1523 = 2015 (2) KLT 1 (SC) has declared that the impugned provision of Sec.66A of the Information Technology Act and Sec.118(d) of the Kerala Police Act, 2011 are unconstitutional, ultravires and unenforceable and has accordingly struck down those impugned provisions. In this view of the matter the impugned prosecution for offences under Secs.118(d) of the Kerala Police Act, 2011 is unconstitutional, ultravires and unenforceable and it is accordingly so declared.

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3. From a reading of the provisions contained in Sec.120(c) of the Kerala Police Act it can be seen that no offence is made out in the impugned allegations projected in the impugned criminal proceedings. The provisions contained in Sec.120(d) of the Kerala Police Act deals with defacing walls, buildings or other structures without the prior permission of the custodian of the property and no such ingredients as envisaged under Sec.120(c) of the Kerala Police Act, 2011 are even remotely disclosed in the instant case. In this view of the matter, it is ordered in the interest of justice that the impugned Final Report/Charge Sheet filed in Annexure-A2 Crime No.1251/2014 of Udayamperur Police Station which has led to the institution of C.C.No.2390/2015 on the file of the Judicial First Class Magistrate Court, Thripunithura pending against the petitioner and all further proceedings pending against the petitioner are quashed.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-