

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937**

**Crl.MC.No. 3976 of 2015**  
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**CC 1522/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOLLAM  
DATED 04-01-2013  
CRIME NO. 446/2012 OF ANCHALUMMOODU POLICE STATION , KOLLAM**  
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**PETITIONERS/ACCUSED:-:**  
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1. VASANTHA KUMARI AMMA,  
W/O.LATE SURENDRAN PILLAI,  
VADAKOTTU PADINJATTIL INCHAVILA CHERY,  
THRIKARUVA VILLAGE, KOLLAM.
2. VINOD,  
S/O.LATE SURENDRAN PILLAI,  
VADAKOTTU PADINJATTIL INCHAVILA CHERY,  
THRIKARUVA VILLAGE, KOLLAM.

**BY ADVS.SRI.K.SUBASH CHANDRA BOSE  
SRI.V.RAJASEKHARAN PILLAI**

**RESPONDENTS/STATE:-:**  
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1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.
2. VARGHESE MATHEW, AGED 63 YEARS,  
S/O.LATE VARGHESE, THAZHATHU VEEDU, INCHAVILA CHERY,  
THRIKARUVA VILLAGE, KOLLAM.

**BY PUBLIC PROSECUTOR SRI.GITHESH**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 21-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**PJ**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**ANNEXURE I. TRUE COPY OF THE COMMON JUDGMENT AS NOS.41/2003 AND  
42/2003 BEFORE THE IIND ADDITIONAL DISTRICT JUDGE, KOLLAM.**

**ANNEXURE II. TWO PHOTOGRAPHS SHOWING THE WAY.**

**ANNEXURE III. TWO PHOTOGRAPHS SHOWING THE DESTRUCTION AND REMOVAL  
OF STONE FROM THE RETAINING WALL.**

**ANNEXURE IV. A PHOTOGRAPH SHOWING THE ENTRANCE OF PETITIONERS AND  
GATE, WHERE THE 1ST PETITIONER IS HOLDING THE GATE AND WAY  
TURNS TO EAST.**

**ANNEXURE V. CERTIFIED COPY OF THE FIR IN CRIME NO.443/2012 OF THE  
ANCHALUMMODU POLICE STATION.**

**ANNEXURE VI. CERTIFIED COPY OF THE FINAL REPORT FILED BEFORE THE JFMC-I,  
KOLLAM ON 04.01.2013.**

**RESPONDENT(S)' EXHIBITS**  
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**NIL.**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3976 of 2015

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Dated this the 21<sup>st</sup> day of July, 2015

O R D E R

The prayer in this Crl.M.C. is to quash the entire impugned criminal proceedings in the impugned Anx.VI final report/charge sheet filed in the impugned Anx.V FIR in Crime No.446/2012 of Anchalummoodu Police Station, Kollam district, registered for offences under Secs.294(b), 506(i) and 34 of the I.P.C.

2. Heard Sri.K.Subashachandra Bose, learned counsel appearing for the petitioners and the learned Public Prosecutor appearing for the 1<sup>st</sup> respondent State of Kerala.

3. According to the petitioners, the unfortunate incidents occurred in relation to the impugned criminal proceedings arose out of civil disputes between the petitioners/accused and the defacto complainant on account of a pathway claimed by the petitioners, but disputed by the defacto complainant. It is pointed out by the petitioners that Anx.I is the common judgment in Appeal Suit Nos. 41/2003 and 42/2003 rendered on 31.7.2010 by the II<sup>nd</sup> Additional

District Judge, Kollam and the matter is now pending in respect of the above said civil disputes between the parties and it is pointed out that presently FAOs (First Appeal Orders) are pending before this Court on account of such civil proceedings. One of the grounds urged by the learned counsel for the petitioners is that it is clearly discernible from the impugned Anx.VI final report/charge sheet that in the same is prepared on 1.4.2012 and it has been filed on 4.1.2013, whereas the impugned Anx.V FIR is seen instituted only on 3.5.2012 even though Anx.VI final report/charge sheet is said to have been prepared as early as on 1.4.2012 and that this is a grave illegality, which warrants interdiction of this Court in the impugned criminal proceedings. From an reading of Anxs.VI and A-V it appears that the abovesaid factual averments made by the petitioners are correct. But this Court is not detaining itself on that issue in the view that is proposed to be taken by this Court for the disposal of this matter.

4. The offences alleged in this impugned criminal proceedings at Anx.V are those under Secs.294(b) , 506(i) read with Sec.34 of the I.P.C. From a reading of the contents in column No.12 of the impugned Anx.V FIR and column No.16 of the impugned

Anx.VI final report/charge sheet it can be seen that the only allegation raised therein to make an attempt to justify the invocation of the offence under Sec. 294(b) of the I.P.C. is that the petitioners have used vulgar and abusive language against the defacto complainant. It has been held by this Court in the case *Latheef v. State of Kerala* reported 2014(2) KLT 987, based on the earlier rulings of this Court as in *P.T Chacko v. Nainan Chacko* reported in 1967 KLT 799 and *Sangeetha Lakshmana v. State of Kerala* reported in 2008 (2) KLT 745 that abusive words or humiliating words or defamatory words will not as such amount to obscenity as envisaged in Secs.292 and 294(b) of the I.P.C. To make the words obscene, as punishable under Section 294(b) IPC, it must satisfy the definition of obscenity and that being a continuation of the subject dealt with under Sec.292 I.P.C., the definition of obscenity under Sec.292(1) IPC can be applied in a prosecution under Sec.294(b) of the I.P.C., as there is no separate definition for obscenity in Sec.294. That to make it punishable the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. That the alleged words uttered must be capable of arousing sexually impure thoughts in

the minds of its hearers and thus to make the alleged words of obscene it must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons and defiling morals by sex appeal or lustful desires. That merely because the words are abusive, defamatory or humiliating will not make by obscene so as to attract offence under Sec. 294(b) of the I.P.C. The legal position in this regard was laid down by this Court in paragraph 5 of Latheef's case supra, which reads as follows:

'5. Abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under Section 294(b) IPC, it must satisfy the definition of obscenity. Section 294 IPC does not define obscenity. Being a continuation of the subject dealt with under Section 292 IPC the definition of obscenity under 292(1) IPC can be applied in a prosecution under Section 294 IPC also. To make punishable, the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. In P.T Chacko V. Nainan Chacko reported in (1967 KLT 799) this Court held that, " the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." In Sangeetha Lakshmana V. State of Kerala reported in (2008(2) KLT 745) this Court held thus, "in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers." Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal

Code. I find that the conviction against the revision petitioner under Section 294 (b)IPC in this case, on the basis of the above words alleged to have been used by him, is liable to be set aside, and the revision petitioner is entitled to be acquitted.'

5. In the instant case also, from a mere perusal of the materials available on record, it can be seen that the only allegation raised by the defacto complainant is that the petitioners accused have used humiliating, abusive, vulgar or defamatory words and not even of remote whisper is anywhere therein that the words used contained lascivious elements or prurient elements or using sexual thoughts or feelings or that the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires, etc. Therefore, offence under Sec.294(b) is not made out in the facts of this case.

6. The only other surviving offence is the one under Sec.506(i) of the I.P.C., which is indisputably a non-cognizable offence and there is case for the prosecution that prior permission of the Magistrate was secured as envisaged in Sec.155(2) of the Cr.P.C. The impugned Anx.V FIR does not have any other offence. But the impugned Anx. VI final report/charge sheet has added the offence under Sec.34 of the I.P.C. (which is not an independently prosecutable offence).

7. In these circumstances, this Court has no hesitation to hold that the impugned criminal proceedings are ultra vires and unenforceable as no offence has been made out in the aforestated reasons. Accordingly, Anx.VI final report/charge sheet filed in the impugned Anx.V FIR in Crime No.446/2012 of Anchalummodu Police Station, Kollam district, pending against the petitioners and all further proceedings airing therefrom pending against the petitioners are quashed. It is made clear that the findings and observations made in this order are only in the limited context on the issue to decide as to whether or not the impugned criminal proceedings are to be quashed and the said findings and observations in this order shall not trammel or influence any other proceedings that may be pending between the parties including the civil proceedings.

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

sd/-  
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge