

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Crl.MC.No. 4302 of 2015 ()

CC. NO.1485/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG.
CRIME NO. 162/2015 OF CHEEMENI POLICE STATION.

PETITIONER/ACCUSED:

PRAMOD KUMAR A.K., AGED 43 YEARS,
S/O.P. KUNHAMBU, RESIDING AT VADAKKEVALAPPU,
CHERUVATHUR, CHERUVATHUR VILLAGE,
HOSDURG TALUK.

BY ADV. SRI.A.ARUNKUMAR.

RESPONDENTS/COMPLAINANT/STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. BIJU. K., AGED 39 YEARS,
S/O.PUSHPA, RESIDING AT VADAKKEVALAPPU,
CHERUVATHUR, CHERUVATHUR VILLAGE,
HOSDURG TALUK-671 121.

R1 BY PUBLIC PROSECUTOR SRI.GITHESH. R.
R2 BY ADV. SRI.P.K.SUBHASH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE AI A CERTIFIED COPY OF THE FIR IN CRIME NO.162/2015
OF CHEEMENI POLICE STATION.**
- ANNEXURE AII A CERTIFIED COPY OF THE FINAL REPORT IN
CRIME NO.162/2015 OF CHEEMENI POLICE STATION.**
- ANNEXURE AIII COPY OF THE AFFIDAVIT SWORN TO BY THE
2ND RESPONDENT ENDOPRSING THE FACTUM OF
SETTLEMENT.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No.4302 of 2015

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Dated this the 13th day of July, 2015

O R D E R

The petitioner is the sole accused in Annexure A-I Crime No. 162/2015 of Cheemeni Police Station of Kasaragode District for offences alleged under Sections 294(b), 323 and 324 of the IPC. The police after investigation submitted the impugned Annexure A-II Final Report /Charge Sheet in the above said crime whereby the offences under Sections 323 and 324 of IPC deleted and the sole offence involved is one under Section 294 (b) of the IPC. The impugned Annexure A- II Final Report/Charge sheet has now given rise to Calendar Case C.C.No. 1485/2015 of Judicial First Class Magistrate Court-I, Hosdurg, Kasaragode District. This impugned Criminal proceedings are sought to be quashed in this instant Crl.M.C.

2. Heard, Sri. Arunkumar A. learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent

State of Kerala.

3. On a consideration of the impugned Annexure A-I FIR and Annexure A-II Final Report it can be seen that the only words alleged to have been against the petitioner for charging the offence under Section 294(b) is as follows: “son of bitch” (see page 9 of the paper book).

4. This Court in many ruling including the latest one in Latheef v. State of Kerala reported in 2014 (2) KLT 987 has held that mere abusive or humiliating or defamatory words will not as such amount to obscenity as envisaged in the provisions contained under Sections 292(1) & 294(b) of the IPC. Paragraph 5 of the said decision 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 S.294(b) I.P.C., it must satisfy the definition of obscenity. S.294 I.P.C. does not define obscenity. Being a continuation of the subject dealt with under S.292 I.P.C. the definition of obscenity under 292(1) I.P.C. can be applied in a prosecution under S.294 I.P.C. 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 S.294 (b) I.P.C. 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. The aforementioned view was taken by this Court in Latheef's case (supra) on the basis of earlier rulings as in P.T.Chacko v. Nainan Chacko reported in 1967 KLT 799, Sangeetha Lakshmana v. State of Kerala reported in 2008 (2) KLT 745 etc. In this view of the matter this Court has no hesitation to hold that the words said to have been by the petitioner as referred to in the impugned Annexure –A1 papers would clearly show that it will not fall within the scope of obscenity as envisaged in Sections 292(1) and 294(b) of the IPC.

6. Still further it is to be seen that the entire dispute between the petitioner and the 2nd respondent/ de facto complainant has been settled as borne out by Annexure A–III affidavit sworn to by the 2nd respondent .

7. In a catena of decisions, the Apex Court has held that in appropriate cases involving even non-compoundable offences, the High Court can quash prosecution by exercise of the powers under Sec.482 of the Cr.P.C., if the parties have really settled the whole dispute or if continuance of prosecution will not serve any purpose. Here, this Court finds a real case of settlement between the parties and it is also found that continuance of prosecution in such a situation will not serve any purpose other than wasting the precious time of the court, when the case ultimately comes before the court. On a perusal of the petition and on a close scrutiny of the investigation materials on record and the affidavit of settlement and taking into account the attendant facts and circumstances of this case, this Court is of the considered opinion that the legal principles laid down by the Apex Court in the cases as in *Gian Singh v. State of Punjab* reported in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303 and *Narinder Singh and others v. State of Punjab and anr.* reported in (2014) 6 SCC 466, more particularly paragraph 29 thereof, could be applied in this case to consider the prayer for quashment.

8. Accordingly, the impugned Annexure A-II Final Report and further proceedings arising out of crime No.162 of 2015 of

Cheemeni Police Station now pending as C.C.No.1485 of 2015 on the file of Judicial First Class Magistrate-I, Hosdurg pending against the petitioner herein will stand quashed under Section 482 of the Code of Criminal Procedure.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL

