

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

Crl.MC.No.3339 of 2013 ()

CRIME NO. 943/2012 OF CHENGANNUR POLICE STATION

PETITIONER(S)/ACCUSED:

SIVAPRASAD, AGED 27 YEARS
S/O.GOPALAKRISHNAN, CHERUVULLIYIL HOUSE, THANDAMKULAM
KODUNGALLOOR P.O., THRISSUR DISTRICT-680664.

BY ADVS.SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI.K.S.BALAKRISHNAN

RESPONDENT(S)/COMPLAINANTS:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.
 2. RAGHUNATHAN NAIR
S/O.SREEDHARAN PILLAI, MIDILAIL HOUSE, LALASSERY
CHENGANNUR MUNICIPAL WARD NO.4
CHENGANNUR VILLAGE P.O., CHENGANNUR
ALAPPUZHA DISTRICT-689121.

R1 BY PUBLIC PROSECUTOR SMT.MADHUBEN M.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.C.3339/2013

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1: CERTIFIED COPY OF THE FIR NO.943/2012 AND FI STATEMENT ON
THE FILE OF THE CHENANNUR POLICE STATION.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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CRL.M.C. No. 3339 OF 2015

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Dated this the 22nd day of December, 2015

ORDER

The captioned Crl.M.C has been filed seeking quashment of FIR No.943/2012 registered at Chengannur Police Station and all further proceedings pursuant thereto. The petitioner claims that he is an Assistant Director of films and that, he has worked as Assistant Director in films like Memory, Doctor Love, Melvilasam, Holiday and English film Purani Dul. The said FIR was registered based on the first information statement lodged by one Reghunathan Nair, S/o.Sreedharan Pillai, under sections 153A, 292(2) of the Indian Penal Code and section 66A (a)(c) of the Information Technology Act. He allegedly lodged the complaint pursuant to certain remarks made by the petitioner through social network media (Face Book) on 14.7.2012 against the practices and customs being followed in Chengannur Mahadeva Temple. In paragraph 3 of the Crl.M.C, it is stated that

going by the first information statement lodged by one Reghunathan Nair, he had occasion to see certain vulgar comments about the practices and customs and also in respect of one of the deities at Chengannur Mahadeva Temple especially regarding the 'Triputharat'. Evidently, going by the complaint, the temple is one among the 108 Siva temples of Kerala, situating on the way to Sabarimala. Going by the recital in paragraph 3, in the complaint it is stated that the complainant had contacted the petitioner over phone and asked him to remove the remarks and it is the inaction on the part of the petitioner that constrained the first informant to lodge the complaint as, according to him the criticism regarding the religious tenets was couched in such a manner to insult the feelings as also the deepest religious convictions of members of Hindu religion. The contention of the petitioner is that he had no intention to create any religious ill-feelings or create any bad impression about the said deity of Chengannur Mahadeva Temple or the customs and practices prevalent therein. The petitioner is also denying the statement in the complaint

that the first informant Reghunathan Nair contacted him over mobile phone to withdraw the writings in the Face Book. It is also stated that he got no intention to belittle the customs, tenets and practices prevailing in the temple.

2.I have heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3.In the contextual situation, it is relevant to refer to ground 'F' in the above Crl.M.C. It is evident from therein that the petitioner had earlier approached this Court for anticipatory bail and as per the order in B.A.No.6399/2012, the petitioner was directed to surrender before the investigating officer on or before 20.9.2012. It is further stated therein that owing to certain personal reasons he could not appear before the investigating officer as has been directed and though he had sought for extension of the time for surrendering before the investigating officer, it was declined. The learned counsel for the

petitioner submitted that in the light of the decision of the Hon'ble Apex Court in **Shreya Singhal v. Union of India** reported in **2015 (2) KLT 1 (SC)**, the petitioner is not liable to be prosecuted under section 66A of the Information Technology Act. The learned counsel drew my attention to paragraph 44 of the said decision. Merely because by virtue of the decision in **Shreya Singhal's** case (supra), the petitioner could not be prosecuted under section 66A of the Information Technology Act, that itself cannot be a reason for not conducting investigation in respect of the other offences viz., under sections 153A and 292(2), IPC. It is true that the Hon'ble Apex Court has struck down section 66A of the Information Technology Act as unconstitutional. But, at the same time, if any particular action of a person would attract any of the provisions under the IPC, continuing investigation in respect of such action is not prohibited by the decision in **Shreya Singhal's** case (supra) if the ingredients of the said offence is prima facie satisfied. As noticed hereinbefore, in this case, FIR was registered against the petitioner not only for the offence under section

66A of the Information Technology Act but also for offences under sections 153A and 292(2), IPC. I am of the view that as regards the allegation relating the offences punishable under sections 153A and 292(2), IPC, the decision in **Shreya Singhal's** case (supra) cannot stand as an impediment. Having registered FIR No.943/2012 under the aforesaid provisions of IPC, the investigating officer is bound to file a report in terms of the relevant provisions under section 173 of the Code of Criminal Procedure. Though I have heard the learned counsel for the petitioner as also the learned Public Prosecutor at length, I do not find any reason to abruptly terminate the proceedings at the crime stage itself. In this case, evidently, what has been done is, based on the complaint lodged by one Reghunathan Nair, F.I.R. was registered against the petitioner and it is being investigated. When an F.I.R is registered under section 154, Cr.P.C an investigation is the procedure that is to be followed. In such circumstances, while making it clear that the petitioner cannot be prosecuted for the offence under section 66A of the Information Technology Act, the investigating

officer shall conduct the investigation, in accordance with law in respect of the offences under sections 153A and 292(2), IPC and file a report in tune with the provisions under section 173, Cr.P.C. It is made clear that this Court has not made any observation touching the merits.

Crl.M.C is disposed of accordingly.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

