

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.MC.No. 4952 of 2015

**CC 1035/2014 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT(ECONOMIC
OFFENCES),ERNAKULAM.
CRIME NO. 1262/2014 OF ERNAKULAM TOWN SOUTH POLICE STATION, ERNAKULAM.**
.....

PETITIONER(S)/ACCUSED NO 1:

**SHINU, AGED 27 YEARS,
S/O. JANARDHANAN, H1,
PEEDEYEKKAL APARTMENT,
PALARIVATTOM, ERNAKULAM.**

BY ADV. SRI.M.REVIKRISHNAN

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH.R

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

Crl.MC.No. 4952 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A : TRUE COPY OF THE FINAL REPORT IN CRIME NO 1262/2014 OF
 ERNAKULAM TOWN SOUTH POLICE STATION, KOCHI CITY.**

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ALEXANDER THOMAS, J.

=====

Crl.M.C No.4952 of 2015

=====

Dated this the 4th day of August, 2015

O R D E R

The present Crl.M.C has been filed for quashment of the impugned Anx.A final report/charge sheet filed in the impugned Crime No. 1262/2014 of Ernakulam Town South Police Station, Kochi city which has led to the institution of C.C No. 1035/14 on the file of the Additional Chief Judicial Magistrate Court (EO), Ernakulam. The impugned Crime No. 1262/2014 of the aforestated police station registered for offences u/s 294(b), 323 r/w 34 of the IPC. The crux of the allegations in the case is that on 14.8.2014 at about 7.30 p.m, the petitioner herein (A1) allegedly due to previous animosity towards CW1 assaulted with his hand and further abused him and as such committed the aforesaid offences. The allegations of remains A2 is that he was used vulgar abusive words against the de facto complainant. As to what exactly are the so called abusive words which made out the offence under 294(b) of the IPC are not mentioned anywhere in the impugned Final report and the

impugned FIR, except the bold averment that A1 and A2 had used the vulgar abusive words.

2. Heard. Sri.M. Revikrishnan, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent, State of Kerala. On going through the impugned materials in the final report/charge sheet in the FIR, can be seen that the only allegations attending to roping the offence u/s 294(b) (obscenity) of the IPC is that the petitioner had used abusive words to CW1. The matter in issue in that regard is covered by the decision of this Court in Latheef v. State of Kerala [2014(2) KLT 987], Para 5 thereof, which reads as follows:....

“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) IPC., it must satisfy the definition of obscenity. S.294 the I.P.C., does not define obscenity. Being a continuation of the subject dealt with under S.292 IPC. 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) the 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.”

3. So unless there are allegations that the words allegedly used by the accused involved 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. There is no question of imputing the offence u/s 294(b) of the I.P.C. This view has been taken by the Court on the basis of well established 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) etc. Therefore the impugned criminal proceedings to the extent which prays to Court in the offence u/s 294(b) IPC is untenable. The only other remaining offence alleged in the impugned criminal proceeding is one u/s 323 of IPC which is indisputably a non-cognizable offence and the prosecution has no case that the prior permission of the Jurisdictional Magistrate was obtained as envisaged u/s 155(2) of

the Cr.P.C, before including such offence for commencement of the investigation in this case. Therefore, maintaining the impugned criminal proceedings mainly under Section 323 IPC is also equally untenable. So it is indisputably not possible to prosecute the offence for Sec. 34 of IPC which involves the question of issue of mens rea of common intention. In this view of the matter, this Court has no hesitation to exercise its inherent power u/s 482 of the Cr.P.C, as otherwise it will amount to mere wastage of time and energy in the investigation measuring as well as the judicial organs of the State. Accordingly, it is ordered in the interest of justice that the impugned Anx.A final report in the impugned Crime No.1262 of 2014 which has led to the institution of C.C No.1035 of 2014 on the file of Additional Chief Judicial Magistrate Court (EO), Ernakulam Town South Police Station, Kochi City pending against the petitioner will stand quashed.

Accordingly the Crl.M.C sands finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE

