

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.MC.No. 4198 of 2014

C.C.NO.57/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANNUR

PETITIONER(S)/ACCUSED 1 - 4 :

- 1. MANOJ V., AGED 39 YEARS,
S/O.PALARI MADHAVAN, CHATTIOL, KUTTUR AMSOM,
KANNUR DISTRICT.**
- 2. SURESH V., AGED 32 YEARS,
S/O.PALARI MADHAVAN, CHATTIOL, KUTTUR AMSOM,
KANNUR DISTRICT.**
- 3. KUNHAPPAN, AGED 62 YEARS,
S/O.MANIYARA KELU, PALERI HOUSE, PERINTHATTA AMSOM,
KANNUR DISTRICT.**
- 4. PRASAD P., AGED 29 YEARS,
S/O.KUNHAPPAN, PALERI HOUSE, PERINTHATTA AMSOM,
KANNUR DISTRICT.**

**BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU**

RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED THROUGH THE SUB INSPECTOR OF POLICE,
PERINGOME POLICE STATION, KANNUR DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN- 682 031.**
- 2. KANNAN NAMBIAR, S/O.CHANDKUTTY,
KULANGARATH HOUSE, CHATTIOL, OLAYAMBADI (P.O),
KUTTUR AMSAM, KANNUR DISTRICT, PIN- 670 306.**

**R1 BY PUBLIC PROSECUTOR SRI.R.GITHESH
R2 BY ADV. SRI.MAHESH V RAMAKRISHNAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE 1:** THE CERTIFIED COPY OF THE FIR IN CRIME NO.69/2013 OF PRINGOME POLICE STATION.
- ANNEXURE 2:** THE CERTIFIED COPY OF THE COMPLAINT SUBMITTED BY THE 2ND RESPONDENT BEFORE THE SUB INSPECTOR OF POLICE, PERINGOME POLICE STATION.
- ANNEXURE 3:** THE CERTIFIED COPY OF THE FINAL REPORT.
- ANNEXURE 4:** THE TRUE COPY OF THE PLAINT FILED BY THE MOTHER OF THE PETITIONERS 1 AND 2 AGAINST THE 2ND RESPONDENT AND HIS CHILDREN.
- ANNEXURE 5:** THE TRUE COPY OF THE INTERIM INJUNCTION ORDER DATED 05.02.2013 IN I.A.NO.295/2013 IN O.S.NO.28/2013.
- ANNEXURE 6:** THE TRUE COPY OF THE ADVOCATE COMMISSIONER'S REPORT.
- ANNEXURE 7:** THE TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND RESPONDENT.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4198 of 2014

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Dated this the 27th day of July, 2015

O R D E R

The prayer of the petitioners in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure praying for invocation of this Court's inherent powers conferred as per that provision, is for an order from this Court to quash the impugned Anx.3 final report/charge sheet filed in the impugned Anx.1 Crime No.69/2013 of Peringome Police Station, which has led to the institution of Calendar Case, C.C.No.57/2014 on the file of the Judicial First Class Magistrate's Court, Payyannur pending against the petitioners and all further proceedings arising therefrom pending against the petitioners.

2. The petitioners are the accused in the impugned Anx.1 Crime No. 69/2013 of Peringome Police Station, Kannur district, for offences under Secs. 447, 427, 294(b) read with Sec.34 of the I.P.C. It appears that the matter has emanated basically due to boundary disputes between the accused and the defacto complainant. The

Police, after investigation has submitted the impugned Anx.3 final report/charge sheet in the said crime, whereby offences under Secs. 447 and 427 of the I.P.C. have been deleted and presently the offences charged in the impugned Anx.3 final report/charge sheet are those under Secs.294(b), 506(i) read with Sec.34 of the I.P.C, which has led to the pendency of Calendar Case, C.C.No. 57/2014 on the file of the Judicial First Class Magistrate's Court, Payyannur.

3. The Judicial First Class Magistrate's Court, Payyannur as per the report dated 7.8.2014, has also inter alia reported that the offences alleged in the said impugned crime are those under Secs.294(b), 506(i) read with Sec.34 of the I.P.C., etc.

4. The main allegation raised against the petitioners accused in the impugned Anx.3 final report/charge sheet is that the petitioners had used vulgar and abusive language against the defacto complainant, etc. 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 a 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 no 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.A FIR does not have any other offence. The offence under Sec.34 of the I.P.C. (acts done by several persons in furtherance of common intention) is not an independently prosecutable offence.

7. In the light of these aspects it is only to be held that the impugned criminal proceedings for the aforestated offences under Secs.294(b) and 506(i) read with Sec.34 of the I.P.C. are not sustainable or tenable. Accordingly, the impugned criminal proceedings at Anx.3 final report/charge sheet filed in the impugned Crime No. 69/2013 of Peringome Police Station, which has led to the institution of Calendar Case, C.C.No.57/2014 on the file of the Judicial First Class Magistrate's Court, Payyannur, pending against the petitioners and all further proceedings arising therefrom

pending against the petitioners are quashed.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge