

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Cr1.MC.No. 4726 of 2014

CRIME NO. 262/2014 OF MARAYAMUTTAM POLICE STATION,
THIRUVANANDAPURAM

PETITIONERS/ACCUSED 1 TO 6:

1. SURESH.M.S,
MELEVILAKOM VEEDU,
MARUTHATHOOR, CHAIKKOTTUKONAM P.O., NEYYATTINKARA.
2. ANIL.M.S,
SANKARA VILASOM, MARAYAMUTTOM P.O., NEYYATTINKARA.
3. SREEKUMAR,
SARAWATHY VILASOM, ONAMKODU, MANALUVILA,
MARAYAMUTTOM P.O., NEYYATTINKARA.
4. AJAYAKUMAR,
AJAYAVILASOM, MARAYAMUTTOM P.O., NEYYATTINKARA.
5. SANTHOSH,
ROADARIKATHU VEEDU, MANALUVIALA, MARAYAMUTTOM P.O.
NEYYATTINKARA
6. BINIL,
KUMAR SADANAM, MANALAUVILA, MARAYAMUTTOM P.O.,
NEYYATTINKARA.

BY ADV. SRI.G.SUDHEER

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. C.SUGATHAN
SUB INSPECTOR OF POLICE, MARAYAMUTTOM POLICE STATION
MARAYAMUTTOM P.O., NEYYATTINKARA.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 4726 of 2014

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE-A. COPY OF THE FIR IN CRIME NO.262/2014 DATED 17/6/2014
OF MARAYAMUTTOM POLICE STATION.

ANNEXURE-B. COPY OF THE LAWYER NOTICE ISSUED BY THE 2ND
RESPONDENT'S ADVOCATE TO THE 2ND PETITIONER

ANNEXURE-C. COPY OF THE NEWS PUBLISHED IN RASTHRA DEEPIKA DAILY
DATED 18/6/2014.

ANNEXURE-D. COPY OF THE CASUALTY OUT PATIENT RECORD OF THE 3RD
PETITIONER ISSUED BY THE DISTRICT HOSPITAL, NEYYATTINKARA.

ANNEXURE-E. COPY OF THE ACKNOWLEDGEMENT OF RECEIPT OF COMPLAINT
WITH NO.899/ESD/DP/2014 DATED 17/6/2014 ISSUED BY THE DY.SP
NEYYATTINKARA.

ANNEXURE-F. COPY OF THE KAICHIT SIGNED BY THE 3RD PETITIONER
DATED 17/6/2014.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.4726 of 2014

Dated this the 12th day of January, 2015

O R D E R

The petitioners herein are the six accused in Crime No.262/2014 of the Marayamuttom Police Station, registered under Sections 294(b) and 188 of the Indian Penal Code, on the allegation that at about 9 pm. on 17.6.2014, the petitioners, as part of a criminal design, uttered some obscene words near the premises of the police station, and when the police directed them to disperse they did not obey the direction. The petitioners now seek orders quashing the said FIR and further proceedings on the ground that the allegations made by the police in the FIR do not contain anything essential for such a prosecution, and continuance of the proceeding will be a sheer abuse of legal process.

2. On examination of the FIR in this case I find that permitting continuance of the proceedings in this crime will be a sheer abuse of legal process because the FIR does not contain the essential ingredients of the offence alleged by the prosecution. Of course as regards Section 188 of the Indian

Penal Code, there will be a bar of cognizance under Section 195 of the Code of Criminal Procedure. Section 195 of the Code of Criminal Procedure provides that no court shall take cognizance of an offence under Section 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned, or some other public servant to whom he is administratively subordinate.

3. The offence under Section 188 of the Indian Penal Code has two components. When disobedience to the order passed by the public servant causes any obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to persons lawfully employed, such disobedience is punishable with imprisonment for one month or a fine of ₹200/- or both. So also when such disobedience causes or tends to cause danger to human life, health or safety or causes, or tends to cause riot or affray, the offence under Section 188 of IPC is punishable with imprisonment for six months or with fine of ₹1,000/- or both. These two are the circumstances specifically made punishable under Section 188 of IPC. A mere disobedience to the orders passed by the public servant, or a simple case of disobedience to the orders passed by the public servant, without causing any obstruction, annoyance or injury, or without causing any danger

to human life, health or safety, is not made punishable under Section 188 of IPC. Such a simple disobedience will come under some other sections, and not under Section 188 of IPC.

4. In this case the FIR does not contain anything to show that any annoyance or obstruction or threat to life or health or public safety was caused by the petitioners. What is alleged is a mere or simple instance of disobedience to the direction given by the Sub Inspector to disperse. What is interesting is that within no time the mob dispersed. Then it is not known how a prosecution is possible under Section 188 of IPC. I find that the allegations made by the police in this case do not constitute any of the essentials of Section 188 IPC.

5. As regards the allegation under Section 294(b) IPC, I find that the words alleged to have been uttered or spoken by the petitioners at the premises of the police station will not in any manner attract a prosecution under Section 294 (b) IPC. This Court has settled the legal position very clearly in so many decisions, including the very recent one, that for such a prosecution, the alleged words or acts must arouse some sort of sexual feelings or impulses. Here the words alleged to have been used by the accused will not come under the purview of obscenity as defined under the the law. Thus I find that the

prosecution under Section 294(b) IPC is also legally unsustainable in this case.

6. As discussed above, I find that this prosecution is legally unsustainable because the allegation made by the police against the petitioners will not in any manner come under Section 188 IPC or under Section 294(b) IPC. Instead of dealing with the situation appropriately otherwise, or instead of bringing a right prosecution under the correct provisions of law, the police brought an unsustainable prosecution against the petitioners. I find that this proceeding will be a sheer abuse of legal process, and if it is allowed to continue it will definitely cause harm and hardship to the petitioners.

In the result, this Criminal Miscellaneous Case is allowed. The FIR and the other proceeding in Crime No.262/2014 of the Marayamuttom Police Station against the petitioners herein will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

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