

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

CrI.MC.No. 5063 of 2013

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CRIME NO. 526/2013 OF KANNAMALI POLICE STATION , ERNAKULAM

PETITIONER(S)/ACCUSED:

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ANAND, 18 YEARS OF AGE  
S/O.C.A.KUNHIKARISHNAN, RESIDING AT CHIRAKKAL HOUSE  
ANTIKADEVU P.O., CHALPURAM, KOCHI-682 008.

BY ADV. SRI.SHIRAZ ABDULLA

RESPONDENT(S)/DEFACTO COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
26-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

ANNEXURES

|             |                                                          |
|-------------|----------------------------------------------------------|
| ANNEXURE-A- | COPY OF THE FIR IN 525/13                                |
| ANNEXURE-B- | COPY OF THE FIR IN 526/13                                |
| ANNEXURE-C- | COPY OF THE REQUEST UNDER RIGHT TO INFORMATION ACT       |
| ANNEXURE-D- | COPY OF THE REPLY                                        |
| ANNEXURE-E- | COPY OF THE REQUEST UNDER RIGHT TO INFORMATION ACT       |
| ANNEXURE-F- | COPY OF THE COMMUNICATION TO PRODUCE THE CHALLAN RECEIPT |
| ANNEXURE-G- | COPY OF THE COMMUNICATION TO PRODUCE THE CHALLAN RECEIPT |
| ANNEXURE-H- | COPY OF THE WRITTEN COMPLAINT.                           |

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P.S.To Judge

**RAJA VIJAYARAGHAVAN.V. J**

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Crl.M.C. 5063 of 2013  
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Dated 26<sup>th</sup> June, 2015  
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**ORDER**

- 1.This petition is filed under Section 482 of the Code of Criminal Procedure seeking to quash Annexure-B FIR in Crime No 526 of 2013 of the Kannamali Police Station and all further proceedings pursuant thereto.
- 2.The petitioner is the sole accused in the aforesaid crime. The said crime was registered on 7.8.2013 under Section 118(d) of the Kerala Police Act, 2011.
- 3.The gist of the allegation is that the petitioner made phone calls and sent objectionable messages to the de facto complainant and has caused annoyance to her.
- 4.I have heard the learned counsel for the petitioner and the learned Public Prosecutor.

5.The learned counsel for the petitioner submitted that Section 118(d) of the Kerala Police Act , 2011 has been struck down as unconstitutional and ultra vires by the Apex Court in the decision reported in (**Shreya Singhal v. Union of India (2015 (2) KLT 1 (SC)**). According to the learned counsel, in the light of the above, the prosecution against the petitioner, on the strength of Annexure-B, cannot continue. It would be nothing but an abuse of process of the Court, it is submitted.

6.The learned Public Prosecutor submitted, on instructions, that reports have not yet been received from the Cyber cell and despite the striking down of Section 118(d) of the Act, the proceedings are liable to be continued.

7.In para 106 of **Shreya Singal** ( supra) it was held as follows by the Apex Court :-

However, what has been said about Section 66A would apply directly to Section 118(d) of the Kerala Police Act, as causing annoyance in an indecent manner suffers

from the same type of vagueness and over breadth, that led to the invalidity of Section 66A, and for the reasons given for striking down Section 66A, Section 118(d) also violates Article 19(1)(a) and not being a reasonable restriction on the said right and not being saved under any of the subject matters contained in Article 19(2) is hereby declared to be unconstitutional.

8.I have gone through the case diary as well . I am of the considered opinion that Annexure-B FIR is unsustainable in view of the aforesaid pathbreaking judgement.

9.In the light of the above, Crl.M.C is allowed. Annexure-B FIR in Crime No 526 of 2013 of Kannamali police station, on the file of the Judicial First Class Magistrate Court-I, Kochi, and all further proceedings pursuant to are hereby quashed.

Sd/-

**RAJA VIJAYARAGHAVAN.V.**  
**Judge**

MrCs

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