

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. 6799 of 2014

**C.C.NO.2726 OF 2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KOTTAYAM
CRIME NO. 469 OF 2013 OF KOTTAYAM EAST POLICE STATION ,
KOTTAYAM DISTRICT**

PETITIONER(S)/ACCUSED :

**V.RADHAKRISHNA PILLAI, AGED 53 YEARS,
S/O.(LATE) K.VASUDEVAN PILLAI, 'SREELAKSHMI',
KOMALLOOR P.O., CHARUMOODU (VIA), CHUNAKKARA VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA, PIN-690 505
ERNAKULAM, PIN-683 511.**

**BY ADVS.SRI.PRASUN.S
SRI.PAUL MATHEW (PERUMPILLIL)**

RESPONDENT(S)/COMPLAINANT/STATE :

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

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A1: THE TRUE COPY OF THE FINAL REPORT IN THE
AFORESAID C.C.NO.2726 OF 2013 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT, KOTTAYAM.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 6799 of 2014

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Dated this the 27th day of July, 2015

O R D E R

The prayer in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure seeking invocation of inherent powers conferred on this Court as per that provision is to quash the impugned Anx.A-1 final report/charge sheet filed in the impugned Crime No.469/2013 of Kottayam East Police Station, which has led to the institution of Calendar Case, C.C.No.2726/2013 on the file of the Judicial First Class Magistrate's Court-I, Kottayam, pending against the petitioner and all further proceedings arising therefrom pending against the petitioner. The offences charged against the petitioner in the impugned Anx.A-1 final report/charge sheet are those under Sec.294(b) and Sec.506(i) of the I.P.C. The main imputation of factual allegations raised against the petitioner in Anx.A-1 is that the petitioner has used vulgar and abusive words and had intimidated the defacto complainant, etc. It has been held by this Court in rulings as in

Latheef v. State of Kerala reported 2014(2) KLT 987, based on the earlier rulings of this Court in cases 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 mere abusive words or humiliating words or vulgar 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 Sec. 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 for obscenity, the alleged words must be in a sense lascivious or it must appeal to the prurient interest, or should 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 or vulgar, 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.'

2. 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 therein is that the petitioner

accused had used humiliating, abusive, vulgar or defamatory words and there is not even of remote whisper anywhere therein that the words used contained lascivious elements or prurient elements or words, which arouse sexual thoughts or feelings or words which have the effect of depraving persons and defiling morals by sex appeal or lustful desires, etc. Therefore, indisputably the offence under Sec.294(b) of the I.P.C. is not made out in the facts of this case.

3. The only other surviving offence is the one under Sec.506(i) of the I.P.C., which indisputably is a non-cognizable offence and there is no case for the prosecution that prior permission of the Magistrate was secured as mandated in Sec.155 (2) of the Cr.P.C. before the registration and investigation of the crime under Sec.506(i) of the Cr.P.C., which is only a non-cognizable offence. The impugned Anx.1 final report/charge sheet does not have any other offence. In this view of the matter, this Court has no hesitation to hold that the impugned criminal proceedings are ultra vires and unenforceable. Accordingly, the final report/charge sheet filed in the impugned Anx.A-1 FIR filed in the impugned Crime No.469/2013 of Kottayam East Police Station,

which has led to the pendency of Calendar Case, C.C.No. 2726/2013 on the file of the Judicial First Class Magistrate's Court-I, Kottayam, pending against the petitioner and all further proceedings arising therefrom pending against the petitioner are quashed.

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

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge