

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

Crl.Rev.Pet.No. 993 of 2015 ()

CMP 311/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY

REVISION PETITIONER(S)/COMPLAINANT:

**JOHNSON MALIACKAL AGED 48 YEARS
S/O. ITTIACHAN, MALIYEKKAL HOUSE, KARAYAMPARAMBU KARA
KARUKUTTY P.O., KARUKUTTY VILLAGE, ALUVA TALUK
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.S.RAJEEV (ALUVA)
SMT. DHANYA MOHAN**

RESPONDENT(S)/ACCUSED/STATE:

- 1. M.P VEERENDRAKUMAR
FORMER PRESIDENT
SOCIALIST JANATHA (DEMOCRATIC PARTY) ANADAMANDIRAM
KALPPATTA P.O., KALPPATTA VILLAGE, WYNAD DISTRICT.**
- 2. VARGHESE GEORGE
FORMER SECRETARY GENERAL,
SOCIALIST JANATHA (DEMOCRATIC PARTY)
KODUMANTHARAMALAYIL HOUSE
ERAVIPEROOR P.O., THIRUVALLA, PATHANAMTHITTA DISTRICT.**
- 3. V.BHASKARA MENON
PRINTER & PUBLISHER, MATHRUBHOOMI DAILY, KOZHIKODE.**
- 4. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R4 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K.HARILAL, J.

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Crl.R.P.No. 993 of 2015

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Dated this the 17th day of August, 2015

ORDER

The revision petitioner is the complainant in CMP No.311/2015 on the files of the Judicial First Class Magistrate's Court, Angamaly. The above private complaint was filed against respondents 1 to 3 alleging the offences punishable under Sections 499 and 500 read with Section 34 of the IPC. After conducting the enquiry under Section 202 of the Cr.P.C, the learned Magistrate dismissed the complaint under Section 203 of the Cr.P.C on a finding that the allegations in the complaint and the statement given by the witnesses do not constitute the offence alleged against the respondents/accused as the said admitted evidence itself brings out the existence of circumstances bringing ingredients necessary to constitute protection under

Exception No.7 of Section 499 of the Indian Penal Code. The legality and propriety of the findings whereby the court below dismissed the complaint under Section 203 of the Cr.P.C are under challenge in this revision petition.

2. The allegations in the complaint, in brief, is as follows: The complainant is a State Council Member of Socialist Janatha (Democratic) Party. The 1st accused is the State President and the 2nd accused is the Secretary General of the above party. The 3rd accused is the Printer and Publisher of Mathrubhoomi Daily. In the Mathrubhumi Daily dated 18.12.2014, a news item was published which stated that the complainant has been suspended from the Socialist Janatha (Democratic) Party for anti party activities. According to the complainant, he is a politician having great acceptance in the society and the publication of the news item lowered and impaired his good reputation in the society and accused has done it with the intention to cause harm to his reputation. It is also alleged that the 1st and 2nd accused, who have great influence over the 3rd accused, had

caused publication of this news item.

3. Heard the learned counsel for the petitioner. The learned counsel for the petitioner advanced arguments assailing the findings, whereby the learned Magistrate dismissed the complaint under Section 203 of the Cr.P.C. According to the learned counsel, the allegations in the complaint and the statements on oath given by the witnesses are sufficient to constitute the offence under Section 499 of the Cr.P.C. But the court below went wrong by considering Exception 7 of Section 499 of the IPC also and the same is beyond the scope of enquiry under Section 202 of the Cr.P.C.

4. Admittedly, the petitioner has no case that accused Nos.1 and 2 have no authority to suspend him from the party. So also, he has no case that the suspension is a false news. It follows that the suspension is a fact. The allegation against the 3rd accused is that the 3rd accused published the news item stating the suspension only. Thus, it is seen that only a fact is published in the daily and the

petitioner has not challenged the authority of the 1st and 2nd accused to suspend him from the party. It is true that these facts would come under Exception 7 of Section 499 of the IPC.

5. Similarly, the settled legal position under Section 105 of the Indian Evidence Act is that, when a person is accused of any offence, the burden of proving the existence of the circumstance bringing the case within the exceptions in the Indian Penal Code or any law defining the offence is upon him and the court shall presume the absence of such circumstance. According to Section 203 of the Cr.P.C., after considering the statements on oath of the complainant and of the witnesses and the result of the inquiry or investigation under Section 202 of the Cr.P.C, the Magistrate is of opinion that there is no sufficient grounds for proceeding, he shall dismiss the complaint. In the instant case, in the complaint itself, the complainant has admitted the authority of accused Nos.1 and 2 to take disciplinary action against him, as he is the State Council

Member of the party and accused Nos.1 and 2 are the office bearers of the party. The complainant has no case that the accused have no authority to take disciplinary action against him, in accordance with bye-law of the party. Similarly, they admitted that the news item stating the suspension alone is published in the daily. Therefore, the averments in the complaint itself would disclose the facts constituting ingredients of the exception also. It can also be said that the complainant himself discharged the burden of proof cast on the accused by way of his admission. If that be so, nothing remains to be proved by the accused in evidence to seek shelter under the exception.

6. In the above context, the decision in **Gopalakrishnan v. Raman Namboodiri** [1984 KLT 1051] comes relevant and the legal position is extracted below:

“ 10. It is true, that the onus is on the accused to prove the exception contained in Section 499 of the IPC. If the complaint itself discloses the ingredients necessary to attract the exceptions mentioned in Section 499 IPC, it follows that the

complaint does not disclose an offence. It is unnecessary then to direct any further proof or allow the proceedings to continue. The complaint has no legs to stand and has thus to fall without any support. The proceedings if continued will be an abuse of the process of the Court.”

The proposition that can be culled out from the above decision is that if the averments in the complaint itself and substance of examination of the complainant and witnesses on oath disclose the existence of circumstances bringing ingredients necessary to attract or constitute the General or Special exceptions in the Indian Penal Code or any law defining the offence, the complaint will not disclose the offence and it is unnecessary to require or direct any further proof or allow the prosecution to continue, as the continuance of further proceeding will be an abuse of the process of the Court. In short, the burden of proof cast on the accused would pale to insignificance. To consider the entitlement of protection under Exceptions 1 and 2 of Section 499 of the IPC in an enquiry under Section 202 of

the Cr.P.C, the averments in the complaint itself must disclose the facts constituting the ingredients of the Exceptions. In the case of Exception No.7 of Section 499 IPC, the averments in the complaint itself must admit the authority of the accused either conferred by law or arising out of the contract, to pass in good faith any censure on the conduct, in matters to which such lawful authority relates.

7. In short, the ingredients constituting the exception also are disclosed by the evidence and admitted facts. If that be so, the court below is justified in dismissing the complaint under Section 203 of the Cr.P.C. There is no illegality or impropriety in the findings whereby the court below found that there is no grounds to proceed against the accused.

The revision petition is dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge