IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942

Crl.MC.No.4758 OF 2020(D)

AGAINST THE ORDER/JUDGMENT IN CMP 3077/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KOLLAM

CRIME NO.261/2020 OF Kollam East Police Station , Kollam

PETITIONER/S:

SUJA SUDARSANAN
AGED 53 YEARS
W/O.RAJESH, VILAYIL VEEDU, KATTACHAL, CHATANNOOR, AADICHANALLOOR P.O., KOLLAM

BY ADVS.
SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT/S:

1 **STATE OF KERALA**
THROUGH PUBLIC PROSECUTOR, REP. SUB INSPECTOR OF POLICE KOLLAM EAST POLICE STATION

2 **SANTHOSH MAHESWAR**
S/O.MAHESWAR, THIRUVATHIRA, KOOTTIKADA, KOLLAM-691020

OTHER PRESENT:

PP RAMESH CHAND

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17-11-2020, THE COURT ON 04-12-2020 PASSED THE FOLLOWING:

V.G.ARUN, J.

CRL.M.C.No. 4758 of 2020

Dated this the 4th day of December, 2020

O R D E R

Petitioner is the *de facto* complainant in Crime No.261 of 2020 of Kollam East Police Station, registered against the 2nd respondent for the offences punishable under Sections 354 and 294(b) of IPC. By Annexure A1 order, pre-arrest bail was granted to the 2nd respondent subject to certain conditions. By the second condition in Annexure A2, the accused is prohibited from contacting the victim in any manner and circulating any pictures of the victim or making any statement concerning her in social, print or visual media, except before the law enforcement agencies. It was made clear that, in case of violation of any of the conditions, the jurisdictional court will be empowered to consider the application for cancellation, if any, and pass appropriate orders.

2. Later, the petitioner sought cancellation of the bail granted to the 2nd respondent, on the allegation that a reply notice sent by the accused, containing derogatory remarks against the petitioner was posted in a Whatsapp group, even before the notice was received by the counsel to whom it was addressed. It was contended that by posting the reply notice, the accused had violated condition No.2. This accusation was stoutly denied by the accused.

3. The court below found that the source from which the reply notice containing derogatory comments originated was not traced by the Police and the junior counsel, who claimed that she had seen the reply notice in one of her Whatsapp Groups, was not able to provide the requisite details. The learned Magistrate therefore found the available records to be inadequate to find the accused to have posted the reply notice in social media. Relying on the decision of the Apex Court in ***X v. State of Telangana and Others*** [2018 (7) SCALE 494], the learned Magistrate held that in the absence of cogent and overwhelming circumstances, bail already granted cannot be cancelled.

4. Heard Sri.R.Sunilkumar, learned counsel for the petitioner and Sri.Ramesh Chand, learned Public Prosecutor.

5. Learned counsel for the petitioner assailed the finding in Annexure A7 order that, the available materials were insufficient to cancel the bail, as factually incorrect. According to the learned counsel, if proper effort had been taken by the Police, they could have proved the complicity of the accused in posting the reply notice.

6. The legal position on considerations at the time of granting bail and while cancelling bail being entirely different, is well settled. The power to cancel bail cannot, and shall not, be exercised in the absence of clear and cogent evidence regarding violation of the bail conditions. As far as the instant case is concerned, other than the

allegations raised by the petitioner, there is no such evidence. The learned Magistrate was hence justified in rejecting the petition for cancellation of bail.

In the result, the Crl.M.C is dismissed.

sd/-

V.G.ARUN, JUDGE

vgs

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE 1	**TRUE COPY OF THE ORDER OF THIS HONORABLE COURT IN BA NUMBER 1880/2020**
ANNEXURE 2	**THE TRUE COPY OF THE FIRST PAGE OF THE PRINTOUT OF 'WHATSAPP' MESSAGE**
ANNEXURE 3	**TRUE COPY OF THE MEMORANDUM OF CRIMINAL MISCELLANEOUS PETITION 3077/2020 (WITHOUT DOCUMENTS)**
ANNEXURE 4	**TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE ACCUSED IN CRIMINAL MC 3077/2020**
ANNEXURE 5	**TRUE COPY OF THE REPORT SUBMITTED BY THE INVESTIGATING OFFICER IN CRIMINAL MC 3077/2020 DATED 13/7/2020**
ANNEXURE 6	**TRUE COPY OF THE REPORT SUBMITTED BY THE INVESTIGATING OFFICE IN CRIMINAL MC 3077/2020 DATED 14/7/2020**
ANNEXURE 7	**CERTIFIED COPY OF THE ORDER OF THE HONORABLE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM IN CMP 3077/2020**