IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 17th DAY OF DECEMBER 2020 / 26TH AGRAHAYANA, 1942

Crl.MC.No.5769 OF 2018

AGAINST THE ORDER/JUDGMENT IN CC 167/2018 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE , ERNAKULAM

AGAINST THE ORDER/JUDGMENT IN ST 1210/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,ERATTUPETTA

PETITIONER/ACCUSED:

P.C. GEORGE M.L.A
AGED 65 YEARS
S/O CHACKO, PLATHOTTATHIL HOUSE, ARUVITHARA PO, ERATTUPETTAH, KOTTAYAM DISTRICT, PIN-686122

BY ADVS.
JOY GEORGE
PRAICY JOSEPH
VINO JOSE
SMT.TANYA JOY

RESPONDENT/COMPLAINANTS:

1 **STATE OF KERALA**
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERAL, ERNAKULAM-682031.

2 **INDULEKHA JOSEPH**
AGED 27 YEARS
D/O. MR. JOSEPH VARGHESE, FLAT NO. 309, PRASANNA VIHAR, HIGH COURT JUNCTION, SHANMUGHAM ROAD P.O, ERNAKULAM-686122.

R2 BY ADV. SRI.S.SABARINADH
R2 BY ADV. SRI.NEERAJ NARAYAN
R2 BY ADV. SRI.P.G.SURESH
R2 BY ADV. SMT.ASWATHY KRISHNAN

PUBLIC PROSECUTOR SMT.K.B.SONY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03-12-2020, THE COURT ON 17-12-2020 PASSED THE FOLLOWING:

O R D E R

Dated this the 17th day of December 2020

The petitioner is the accused in CC No.167/2018 of the Spl.ACJM Court, Ernakulam. Originally the case was registered as ST No.1210/2015 of the JFCM I Court Erattupettah.

2. The above complaint was filed by the 2nd respondent herein alleging that, petitioner had given an interview to the reporter of an online magazine called “Thamasoma” and in the course of the interview, the petitioner made comments touching upon the character of the second respondent. Referring to the second respondent, petitioner herein alleged that, 2nd respondent was having mental illness and that was why, she was raising false allegations against the petitioner and his son. Petitioner further alleged that, her entire family has mental illness and the future of the 2nd respondent was ruined by her parents and her illness can be cured by beating twice in private.

3. Petitioner, claiming that he is a member of the Kerala Legislative Assembly, representing Poonjar Constituency and that as an MLA and as a public servant, he has a very long unblemished and noble past, has approached this Court contending that the complaint is absolutely baseless, and made with mala fide intention. It was also alleged that, he had not given any interview to any person as allegedly made. He has not given any defamatory statement to

the online magazine and even contents of the complaint does not disclose any defamatory comments, it was contended. It was contended that, he has not made any comments with the intention of downgrading the reputation of complainant. The innocent comments made by him in Malayalam language has been distorted and published by the editor of the magazine. It was contended that he was not responsible for the material printed in the online magazine. It was further contended that, he did not made any defamatory material and the Court has taken cognizance of the above complaint without proper application of mind and without any material disclosing the commission of any offence.

4. It was vehemently contended by the learned counsel for the petitioner that, the court below, merely on the basis of the complaint, without following the procedure under Section 202 Cr.P.C. and without proper application of mind, mechanically issued summons to the accused. It was further contended that, neither the reporter of the magazine was examined nor the audio cassette was produced. It was also contended that, the printer and publisher of online magazine have not been made a party and hence the cognizance of offence was wrongly taken.

5. To substantiate the above contention, learned counsel for the petitioner relied on the decision of the Madras High Court reported in ***Shreedhar M. s/o.S.S.Murthy and Others v. Sevalaya Registered Charitable Trust, Thiruvallur District and Another(2019 KHC 4349)***. In that decision, only the

complainant was arrayed as witness and no person other than him was cited as witness. Neither the editor and nor the publisher was arrayed as the accused. On facts, it was held that the proceedings were liable to be quashed.

6. Learned counsel further relied on the decision of this Court in ***Jayarajan E.P.v. Surendran and Another (2010 (1) KHC 904).*** This Court held that, if the complainant had any genuine grievance, he should have first prosecuted the TV channel which had published the offensive article. Non prosecution of the TV channel and the editor of the newspaper, who was in charge of the selection of the news items was held to be malicious. Complaint against the printer and publisher of the newspaper was held to be an abuse of process of the Court and quashed.

7. Relying on the above decisions, learned counsel for the petitioner vehemently contended that, they apply to the facts of the case and hence the present proceeding is liable to be quashed .

8. Answering the above contentions, learned counsel for the complainant contended that, prior to the laying of the complaint notice dated 20/6/2014 was issued to the Executive Editor of Joice Media Group. A reply notice dated 17.09.2014 was sent by the Executive Editor of the above online magazine. It was asserted by the editor that, article was prepared by her by conducting separate telephonic conversation with the complainant and the accused. It was further stated in the reply notice that, she had used the exact

words of both of them as such in the article. It was further asserted that, she had the proof of the mobile conversations and hence, she was not liable to pay any damages. According to the learned counsel, in the light of the above assertion, proceedings were initiated only against the petitioner herein .

9. It seems that, though the complaint did not disclose any list of witnesses as well as the list of documents, complainant has produced few documents along with the counter affidavit. One of the document is the list of documents filed by the complainant along with the complaint. It includes the article published in the online magazine, copy of the notice issued to the petitioner and the reply notice. A list of witnesses were also given and submitted along with the complaint. The Executive Editor of the online magazine 'Thamasoma' as well as one person who is known to the defacto complainant and had occasion to read the article published in the online magazine, were also cited as witnesses. The proceeding of the court below shows that on 8/6/2015, the Court had recorded the presence of the complainant, the statement given by the complainant and that it had examined the statements of her witnesses. The Court, after perusing the documents produced along with the complaint, reached the conclusion that the offence under Section 500 IPC was prima facie made out. Accordingly, summons was ordered to the accused.

10. In the light of the above findings, the question, whether the person in charge of selecting the news item published in the online magazine is liable to

be arrayed as an accused or not, is a matter for consideration by the trial court on evidence. The Executive editor of the online magazine seems to have replied to the effect that she stand by the statement made by the accused in on line magazine. A copy of the above publication is produced along with the complaint. Statement of all the witnesses were recorded before the court below and it was on application of mind, summons was issued.

11. In the light of the above facts and circumstances of the case, grievance of the petitioner that, Section 202 of Cr.P.C enquiry was not conducted, does not survive. The entire facts on record indicate that the court below, after recording the statements of the complainant and other witnesses has applied its discretion properly and issued summons. I find no reason to hold that, no prima facie case is made out.

12. Having considered the above, I am inclined to dismiss the Crl.M.C., leaving the right of the petitioner to raise his objections before the trial court at appropriate stage, open.

Crl.M.C.is dismissed accordingly.

Sd/-

SUNIL THOMAS

JUDGE

dpk

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE P1	**THE CERTIFIED COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT AGAINST THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ERATTUPETTAH.**
ANNEXURE P2	**THE STATEMENT OF THE EDITOR OF THE MAGAZINE BEFORE THE JFCM I COURT ERATTUPETTTAH.**
ANNEXURE P3	**THE COMPUTER PRINTOUT OF THE ELECTION RESULT OF THE LEGISLATIVE ASSEMBLY ELECTION 2016 OF POONJAR CONSTITUENCY.**