IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946

CRL.MC NO. 6939 OF 2016

CRIME NO.1360/2014 OF ANTHIKAD POLICE STATION, THRISSUR

AGAINST THE ORDER/JUDGMENT DATED IN OS NO.1322 OF 2014 OF PRINCIPAL MUNSIFF COURT,THRISSUR ARISING OUT OF THE ORDER/JUDGMENT DATED IN CC NO.122 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,THRISSUR

PETITIONERS 1 TO 3/ACCUSED NO.1 TO 3:

1 DR.RINKO C MATHEW
AGED 42 YEARS, S/O.MATHEW , CHOWALOOR HOUSE,
THIRUVAMBADY P O, PATTURAIKKAL,
THRISSUR DISTRICT - 680022.

2 MRS.BOBY SWAPNA
AGED 36 YEARS, W/O.RINKO C MATHEW, CHOWALOOR HOUSE,
THIRUVAMBADY P O, PATTURAIKKAL,
THRISSUR DISTRICT - 680022.

3 MR.DAVIS
AGED 63 YEARS, S/O.DEVASSY, NELLISEERY HOUSE,
VIYOOR DESOM, THRISSUR DISTRICT, PIN-680010.

BY ADVS.
SRI.E.VIJIN KARTHIK
SRI.P.V.JEEVESH

RESPONDENT/STATE/DEFACTO COMPLAINANT:

1 STATE OF KERALA
(CRIME NO 1360/2014 SUB INSPECTOR OFPOLICE, ANTHIKKAD POLICE STATION), REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.

2 SEENA SIMON
AGED 49 YEARS, MANGAN HOUSE, MANALOOR,
KANJANY, THRISSUR DISTRICT, PIN-680612.

BY ADVS. SRI.RENJITH.T.R, SR.PP
SMT.O.V.BINDU
SMT.V.P.SATHI - R2
SRI.THOMAS C.ANTONY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.6939 of 2016

Dated this the 05th day of August, 2024

O R D E R

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C. No.122/2015 on the file of Judicial First Class Magistrate Court-II, Thrissur, arising from Crime No.1360/2014 of Anthikkad Police Station. The above case is charge sheeted alleging offences punishable under Sections 448, 294(b) and 506(i) r/w 34 of IPC.

2. It is alleged that the petitioners 1 to 3, on 24.02.2014 at 5.00 PM, trespassed into the textile shop run by the husband of the defacto complainant and threatened the defacto complainant who was

sitting in the cash counter. Hence, it is submitted that the accused committed the offence. Eventhough, the offences under Section 448, 294(b) and 506(i) are alleged in the final report, the learned Magistrate took cognizance only under Sections 448 and 506(i) of IPC. According to the petitioners even if the entire allegations are accepted, no offence under Section 448 and 506(i) IPC are made out. Hence, this Criminal Miscellaneous Case is filed.

3. Heard the learned counsel appearing for the petitioners and the learned Public Prosecutor.

4. The offence alleged are under Sections 448 and 506(i) of IPC. As far as Section 506(i) IPC is concerned, the Apex Court considered the ingredients to attract the same in ***Manik Taneja and Another v. State of Karnataka and Another***

(2015 KHC 4046). The relevant portion of the above said judgment is extracted hereunder:

> *"13. S.506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in S.503 IPC is as under:*
>
> *"503. Criminal Intimidation.-- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*
>
> *Explanation.-- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."*

14. A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

15. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with

intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in S.503 IPC."

5. In this case, the final report reads like this:

"1 മുതൽ 3 കൂടിയ പ്രതികൾ 24.02.14 തീയ്യതി 17.00 മണിക്ക് ആവലാതിക്കാരിയുടെ തുണിക്കടയിൽ അതിക്രമിച്ചു കയറി കെട്ടിടത്തിലെ മുകൾ നിലയിലെ കടമുറിയെ സംബന്ധിച്ചുള്ള തർക്കത്തെ കുറിച്ച് സംസാരിച്ചു ആവലാതിക്കാരിയെ തെറിവിളിച്ചും കൊല്ലുമെന്ന് ഭീഷണിപ്പെടുത്തുകയും 4 ഉം 5 ഉം പ്രതികൾ 6.8.14 തീയ്യതി 17.30 മണിക്ക് കടയിൽ അതിക്രമിച്ചു കയറി കൊന്നുകളയുമെന്ന് ഭീഷണിപ്പെടുത്തുകയും ചെയ്തതായി അന്വേഷണത്തിൽ നിന്നും വെളിവാകുന്നതിനാൽ പ്രതികൾ മേൽ വകുപ്പുകൾ പ്രകാരം ശിക്ഷിക്കത്തക്ക കുറ്റം ചെയ്തിരിക്കുന്നു എന്ന് "

6. Even if the above allegations are accepted, no offence under Section 506(i) IPC is attracted as far as the petitioners are concerned, in the light of the principle laid down by the Apex Court in ***Manik Taneja***'s case (supra).

7. The other offence alleged is under Section 448 I.P.C. Section 448 I.P.C. says about punishment for house trespass. House trespass is defined in Section 442 I.P.C. House trespass means

whoever commits criminal trespass by entering into or remaining in any building tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property. Criminal trespass is defined in Section 441 IPC. Criminal trespass means, whoever enters into or upon the property in the possession of another with intent to commit an offence or intimidating, insulting or annoy any person in possession of such property.

8. In this case, this Court already observed that, the offence under Section 506(i) IPC is not made out. If that be the case, there is no criminal trespass because there is no case for the prosecution that the petitioners entered into the property of the defacto complainant with intention to commit an offence or intimidate, insult or annoy the

defacto complainant in possession of such property. Moreover, the alleged place where the petitioner enters is a textile shop owned by the defacto complainant. It is a place where public got access. In such circumstances, I am of the considered opinion that, there is no criminal trespass under Section 441 IPC and consequently there is no house trespass as evident by Section 442 and hence, there is no offence under Section 448 IPC committed by the petitioners.

9. The upshot of the above discussion is that no offence under Section 448 and 506(i) IPC is made out against the petitioners.

Hence, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioners in C.C. No. 122/2015 on the file of Judicial First Class Magistrate Court-II, Thrissur,

arising from Crime No.1360/2014 of Anthikkad Police Station are quashed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

nvj

APPENDIX OF CRL.MC 6939/2016

PETITIONER ANNEXURES

ANNEXURE A1	**THE CERTIFIED COPY OF THE FIS ALONG WITH FIR DTD 23/8/2014**
ANNEXURE A2	**THE CERTIFIED COPY OF THE CHARGE SHEET FILED BY THE POLICE BEFORE THE HON'BLE MAGISTRATE COURT, NO-2, THRISSUR DTD 19/12/2014**
ANNEXURE A3	**THE CERTIFIED COPY OF THE PLAINT IN OS 1322/2014 DTD 26/2/2014**
ANNEXURE A4	**THE CERTIFIED COPY OF THE INJUNCTION APPLICATION DTD 26/2/2014 VIDE NUMBER, IA 5258/2014**
ANNEXURE A5	**THE COMMISSION APPLICATION VIDE NUMBER IA 5259/2014 DTD 26/2/2014**
ANNEXURE A6	**THE CERTIFIED COPY OF THE APPLICATION AGAINST INJUNCTION VIOLATION DTD 4/8/2014 VIDE NUMBER IA 15760/2014.**
ANNEXURE A7	**THE CERTIFIED COPY OF THE APPLICATION VIDE NUMBER IA 15761/2014 DTD 4/8/2014 FOR APPOINTING 2ND COMMISSION.**
ANNEXURE A8	**THE CERTIFIED COPY OF THE COUNTER DTD 22/9/2014 FILED BY THE HUSBAND OF THE DEFACTO COMPLAINANT.**

RESPONDENTS EXHIBITS: NIL

//TRUE COPY// PA TO JUDGE