2024:KER:61273

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946

CRL.MC NO. 2585 OF 2021

CRIME NO.256/2021 OF Perumbavoor Police Station, Ernakulam
CC NO.127 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, PERUMBAVOOR

PETITIONER/ACCUSED:

K.P. ALIYAR, AGED 52 YEARS
S/O. K.A.PAREED, KAROTHUKUDY HOUSE,
PARAPPURAM BHAGOM, PERUMBAVOOR KARA,
PERUMBAVOOR VILLAGE, ERNAKULAM DISTRICT.

BY ADVS.
THOMAS J.ANAKKALLUNKAL
SMT.MARIA PAUL

RESPONDENTS/STATE AND DE FACTO COMPLAINANT:

1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031.

2 SANUMOL, AGED 27 YEARS
D/O. DEVASSYKUTTY, PALLASSERY HOUSE, POTHIYEKKARA, PALTHARA, MATTOOR, PERUMBAVOOR, ERNAKULAM RURAL-683 546.

BY ADVS.
ANOOP.V.NAIR
DEVI P.

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27.06.2024, THE COURT ON 09.08.2024 PASSED THE FOLLOWING:

2024:KER:61273

"C.R"

A. BADHARUDEEN, J.

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Crl.M.C No.2585 of 2021-F

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Dated this the 9th day of August, 2024

O R D E R

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (`Cr.P.C' for short) by the sole accused in C.C.No.1275/2023 pending before the Judicial First Class Magistrate Court-I, Perumbavoor, with the prayers to allow this Criminal Miscellaneous Case and quash Annexure 1 final report against the petitioner in the above case.

2. Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor in detail. Perused Annexure 1 final report and the relevant documents.

3. In this matter the prosecution allegation is that at

about 1.30 p.m on 17.02.2021, the accused, who is the employer of the defacto complainant, abused her at the office cabin arose out of animosity since she joined the labour union and persuaded other staff to join the trade union.

4. The learned counsel for the petitioner argued that offence under Section 294(b) of the Indian Penal Code (`IPC' for short hereafter) would not attract in the facts of this case. In this connection, he has placed decision of the Allahabad High Court reported in [1962 SCC OnLine All 170 : MANU/UP/0034/1963], ***Zafar Ahmad Khan v. The State***, wherein Allahabad High Court held that the word `obscene' would have to be judged on the facts of each case where in the context of the surroundings to find out whether the questioned act is `obscene' or not. It was further observed that the words were likely to express and personate to the mind of the hearers, including the girls, something which delicacy, purity and decency forbade to be expressed. The girls, as also others who were present, must have suffered a moral shock to hear such sensuous words addressed to them by an utter stranger.

5. He has also placed another decision of the High Court of Mysore reported in [1972 SCC OnLine Kar 250 : MANU/KA/0163/1972],

Patel H.M Malle Gowda v. The State of Mysore. In the said case, the Mysore High Court held that *annoyance is generally associated with the mental condition, and for that reason it is difficult to prove as a fact by positive evidence. In almost all the cases it is to be inferred from proved facts. In the instant case the words attributed to the petitioner are clearly abusive and obscene, especially when directed against a doctor and a public servant at that. The fact that the doctor and some other members of the public were impelled to complain about it, is sufficient indication of the fact that they were all annoyed by the use of such words in a public place. In my view these circumstances are sufficient to establish the ingredient relative to annoyance contained in Section 294 IPC*.

6. He has also placed decision of this Court in Crl.M.C. No.2322/2018 dated 20.10.2022 wherein this Court considered the question as to whether consulting room of the petitioner at TM Hospital, Chavakkad, is a public place or near a public place. In paragraphs 7 and 8 this Court observed as under:

> *"7. In order to attract Section 294(b) of IPC, the following two ingredients are to be satisfied. (i) The offender has sung, recited or uttered any obscene song or word in or near any*

public place and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered is not in or near any public place or that it caused no annoyance to others, no offence is committed.

8. Admittedly, the place of occurrence is the consulting room of the petitioner at the T.M. Hospital, Chavakkad. It can never be termed as a public place or near public place. That apart, in order to satisfy the definition of obscenity to attract Section 294(b) of IPC, the words uttered must be capable of arousing sexually impure thoughts in the minds of its hearers. [See ***Sangeetha Lakshmana v. State of Kerala*** *(2008 (2) KLT 745)]. There is no case for the prosecution that the words allegedly uttered by the petitioner aroused sexually impure thoughts in the minds of the hearers. In these circumstances, I am of the view that the basic ingredients of Section 294(b) of IPC are not attracted. "*

7. Resisting this contention, the learned counsel for the respondent placed a decision of the Cuttack High Court in Crl.M.C.No.2097/2010 dated 07.08.2018 **(Lakshmi Narayan Das v. State of Orissa & Ors.**) with reference to page No.25, where the Cuttack High Court observed as under:

"As regards the obscene act, the term `public place' is used in section 294(a) of the Indian Penal Code whereas for obscene song, ballad or words, the term `in or near public place' is used in section 294(b) of the Indian Penal Code. The term `in or near public place' is much wider in its sweep than the term `public place' as it encompasses even those areas which are in the vicinity of

public place meaning thereby that if the obscene words uttered in a `public place' is heard by someone who is in the vicinity of the public place then offence under section 294 of Indian Penal Code can be made out. The term `in or near public place' contained in section 294(b) of the Indian Penal Code does not literally mean that the abusive words should be uttered necessarily in a place which is frequented by members of public. If such utterances though made in private place but are audible in a public place because of being in close vicinity to the private place then in that eventuality also the offence under section 294 of the Indian Penal Code would be attracted. The said offence is not only made out when an obscene act is committed to the annoyance of others in any public place but also when the accused utters words to the annoyance of others in or near any public place."

8. Similarly, he has placed a decision of this Court reported in [1986 KHC 48 : 1986 KLT 158 : 1985 KLN SN 88 : 1986 CriLJ 1120], ***Deepa & Ors. v. S.I of Police***, to contend that whether anybody was actually annoyed by the overt acts and possibility of annoyance are matters to be decided on evidence after trial. In paragraph 3 of the judgment, this Court observed as under:

"Normally a charge must fail for want of mens rea but there may be offences where mens rea may not be required. But actus reus must always exist. Without it there cannot be any offence. Mens rea can exist without actus reus, but if there is no actus reus there can be no crime. Even if mens rea is there, no conviction could be had without actus reus without which there cannot be a crime. For example a man

may intend to marry during the lifetime of his wife and enter into a marriage believing that he is committing the offence of bigamy. Mens rea is there. But if unknown to him his wife died before he married again, in spite of the mens rea there cannot be an offence of bigamy. Over and above the three ingredients under Section 294(a) of which I will be referring hereafter the above aspects are also factors normally to be considered in deciding whether commission of a crime is proved or the ingredients exist. But in these cases while exercising the inherent jurisdiction to quash the proceedings before trial it will be premature to consider those aspects which will have to be decided on evidence. The allegations by themselves are not capable of excluding the above ingredients even though it was argued that mens rea and actus reus cannot be read from the allegations."

9. Another decision reported in [2014 (2) KHC 604 : 2014 (2) KLD 21 : 2014 (2) KLT 987 : ILR 2014 (3) Ker. 78 : 2014 (3) KLJ 83], ***Latheef v. State of Kerala***, has been placed where this Court observed in paragraphs 4 and 5 as under:

"4. Sub-section (1) of S.292 IPC provides that for the purposes of sub-section(2), dealing with punishment and sentence for obscenity, "a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious, or appeals to the prurient interest, or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it." Thus sub-section (1) to S.292 IPC gives a clear idea

as to what is meant by obscenity under the law, punishable under Sections 294(2), 293 and 294 IPC.

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 S.294(b) IPC, it must satisfy the definition of obscenity. S.294 IPC does not define obscenity. Being a continuation of the subject dealt with under S.292 IPC the definition of obscenity under 292(1) IPC can be applied in a prosecution under S.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 KHC 231 : 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 S.294 (b) I.P.C. 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."

10. Other decisions of this Court reported in [2023 KHC 858 : 2024 (1) KLD 9 : 2023 KHC OnLine 858 : 2023 KER 79432], ***Basil v. State of Kerala***; [2008 (1) KHC 812 : 2008 (1) KLD 339 : 2008 (2) KLT 745], ***Sangeetha Lakshmana v. State of Kerala***; and [2019 KHC 528 : 2019 (2) KLD 172], ***Sajan C.K v. State of Kerala & anr.***, also have been placed by the learned counsel for the party respondent to contend that the defacto complainant was abused with the words which made sexually impure thoughts in the mind of her and caused annoyance to others, when she was inside the cabin of a textiles. Accordingly, it is submitted that the cabin of the textiles is a place nearby a public place, which would come within the ambit of ` near public place', as dealt under Section 294(b) of IPC.

11. While addressing the essentials to constitute Section 294(b), it is relevant to extract Section 294(b) of IPC as under:

"S. 294. Obscene acts and songs.

Whoever, to the annoyance of others:

(a) xxxx xxxx xxxx

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with

imprisonment of either description for a term which may extend to three months, or with fine, or with both.

12. In the decision reported in [(1996) 4 SCC 17], ***Pawankumar v. State of Haryana & anr.***, the Apex Court held that *in order to secure a conviction the provision of Section 294(b) IPC requires two particulars to be proved by the prosecution, i.e (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.*

In the same decision, the Apex Court held that *the courts should be sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards and its changing views of obscenity.*

13. Further, in the decision reported in ***Basil v. State of Kerala*** 's case (*supra*), in para.29, 30 and 31 this Court observed as under:

"29. The expression 'public place' is not defined in the Criminal Procedure Code or in the Penal Code. It is not defined in

NDPS Act also. In ***Queen v. Wellard*** *[(1884) 14 QBD 63, Grose, J. laid down that a public place "is a place where the public go, no matter whether they have a right to go or not", and this definition has been accepted by subsequent judicial decisions both in India and in England. A place in order to be public, must, therefore, be open to the public i.e. a place to which the public have access by right, permission, usage or otherwise.*

30. The Apex Court in ***Satvinder Singh @ Satvinder Singh Saluja and others v. State of Bihar*** *[2019 KHC 6613 : (2019) 7 SCC 89] held that, when the word 'place' includes vehicle, the word 'public place' has to be interpreted in the same light. While analysing the definition of 'public place' in Section 2(17A) of the Bihar Excise (Amendment) Act, 2016, the Apex Court observed that, when a private vehicle is intercepted when it was on the public road, it will come under the definition of a public place. When a private vehicle is passing through a public road, it cannot be accepted that public have no access. It is true that public may not have access to private vehicles, as a matter of right, but definitely public have opportunity to approach the private vehicle while it is on the public road. So, a private vehicle on public road was considered to be public place under Section 2(17A) of the Bihar Excise (Amendment) Act, 2016.*

31. The word 'access' is defined in Black's Law Dictionary in the following words:

"Access: - A right, opportunity or ability to enter, approach, pass to and from, or communicate with access to the courts".

14. Concluding the discussion, it is held that as

regards to obscene act, the term public place used in Section 294(a) of the Indian Penal Code, is much wider in its sweep as it encompasses even those areas which are in the vicinity of public place, meaning thereby that if the obscene words uttered in a `public place' is heard by someone who is in the vicinity of the public place, so as to cause annoyance to them. In such cases, offence under section 294(b) of Indian Penal Code would attract. The term `in or near public place' referred in Section 294(b) of the Indian Penal Code does not limit its orbit in absolute public place alone. In order to secure a conviction the provision of Section 294(b) IPC requires two particulars to be proved by the prosecution, i.e (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed. Thus the offence is made out, when an obscene act is committed to the annoyance of others in any public place in or near any public place.

15. In the decision in ***Vineet Kumar & Ors. v. State of U.P***

& anr., reported in **[2017 KHC 6274 : AIR 2017 SC 1884 : 2017 (13) SCC 369]**, the Apex Court held in paragraph 39 that, *inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in* ***[AIR 1960 SC 866], State of Haryana*** *v.* ***Bhajan Lal.*** *Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in* ***State of Haryana*** *v.* ***Bhajan Lal*** *(supra), which is to the following effect:*

> *"(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance*

on the accused and with a view to spite him due to private and personal grudge."

16. Similarly, in another decision in ***Mahmood Ali*** *v.* ***State of U.P.*** reported in **[2023 KHC 7029 : 2023 KHC OnLine 7029 : 2023 LiveLaw (SC) 613 : 2023 KLT OnLine 1751 : AIR 2023 SC 3709 : AIR OnLine 2023 SC 602 : 2023 CriLJ 3896]**, the Apex Court while considering the power under Section 482 Cr.P.C, in paragraph 12 held that, '*whenever an accused comes before the Court invoking either the inherent powers under S.482 of the Code of Criminal Procedure or extraordinary jurisdiction under Art.226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the*

necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under S.482 of the Cr.P.C. or Art.226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation / registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.'

17. Therefore, the legal position is clear that quashment of criminal proceedings can be resorted to when the prosecution materials do

not constitute materials to attract the offence alleged to be committed. Similarly, the Court owes a duty to look into the other attending circumstances, over and above the averments to see whether there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding instituted maliciously with ulterior motives. Once the said fact is established, the same is a good reason to quash the criminal proceedings.

18. In the instant case the allegation of the prosecution is that at about 1.30 p.m on 17.02.2021, the accused, who is an employer of the defacto complainant abused her at the office cabin, arouse out of animosity, since she persuaded other staff to join the trade union. This crime was registered on 19.02.2021 regarding the occurrence on 17.02.2021. Annexure 3 is a letter issued to the defacto complainant on 05.11.2020 pursuant to a reply given by her to a show cause notice given to the defacto complainant on 25.10.2020, by the management of Seemas Wedding Collections. In the said notice dereliction of duty was pointed out and Advocate Abu Mathew, High Court of Kerala, was appointed as Enquiry Officer against the defacto complainant. Annexure 4 is a letter given by one Amritha.K.C, an employee of the textiles to the management

of Seemas Wedding Collections stating that the defacto complainant approached her during duty time and requested to join trade union. Thus it appears that before the alleged occurrence and before registration of the present crime, the defacto complainant has been facing disciplinary proceedings and for which enquiry officer was appointed. In the FIS it is stated that at about 1.30 p.m on 17.02.2021, the accused requested her to reach cabin of the accused and nobody was in the cabin. The alleged abusive words allegedly uttered inside the cabin and the 2 persons present therein were the defacto complainant and the accused. It is true that if the abusive words were heard by the others so as to cause annoyance, the cabin of the textile is to be treated as a place having access to the public, though with permission.

19. Having noticed the facts of the case, it is discernible that the prosecution was launched by the defacto complainant, who has been facing disciplinary proceedings much earlier before the occurrence and the entire case rests on calling of abusive words against the defacto complainant. In such view of the matter, the prosecution case is found to be a retaliatory measure at the instance of the defacto complainant to avoid disciplinary action against her initiated during 2021.

In the result, this Criminal Miscellaneous Case stands allowed. Annexure 1 final report and all further proceedings in C.C.No.127/2021 on the files of the Judicial First Class Magistrate Court-I, Perumbavor arose out of Crime No.256/2021 of Perumbavoor Police Station, Ernakulam, stand quashed.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/

APPENDIX OF CRL.MC 2585/2021

PETITIONER'S ANNEXURES

ANNEXURE-1	**CERTIFIED COPY OF THE FINAL REPORT FILED BY THE CRIME BRANCH IN CC NO.127/2021 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PERUMABVOOR.**
ANNEXURE-2	**CERTIFIED COPY OF THE FIR IN CRIME NO.256/2021 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRCT.**
ANNEXURE-3	**TRUE COPY OF THE CHARGE SHEET DATED 05.11.2020 ISSUED TO SABITHA.**
ANNEXURE-4	**TRUE COPY OF THE LETTER DATED 16.02.2021 SUBMITTED by AMRITHA .K.C.**