



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 10TH DAY OF OCTOBER 2024 / 18TH ASWINA, 1946

CRL.MC NO. 6103 OF 2024

CRIME NO.675/2024 OF Kalamassery Police Station, Ernakulam

PETITIONER/ACCUSED:

DR. P.K. BABY
AGED 52 YEARS
S/O. KURIAKOSE (LATE),
ARA 152, ALFIA NAGAR, UNIVERSITY ROAD,
CUSAT. P.O., SOUTH KALAMASSERY,
ERNAKULAM DISTRICT, PIN - 682022.

BY ADVS.
SALIM V.S.
A.M.FOUSI
A.B.AJIN
H.NUJUMUDEEN

RESPONDENTS/COMPLAINANT & DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

2 RAJESWARI,
AGED 20 YEARS,
D/O. RAJESH, CHELAKKATTUPARAMBU HOUSE,
NEAR TALENT SCHOOL, ASHOKAPURAM, ALUVA,
ERNAKULAM DISTRICT, PIN - 683101.

R2 BY ADV ASIF M A
PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



“C.R”

A. BADHARUDEEN, J.

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Crl.M.C.No.6103 of 2024
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Dated this the 10th day of October, 2024

ORDER

The sole accused in Crime No.675 of 2024 of Kalamassery Police Station, Ernakulam, has filed this Criminal Miscellaneous Case under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) to quash the said FIR.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor, in detail. Perused the petition averments and the relevant documents including the contentions raised by the 2nd respondent/defacto complainant in the counter affidavit filed.

3. The case of prosecution is that during the University Youth Festival, by name, 'Sargam', conducted at Cochin University of



Science and Technology ('CUSAT' for short) Auditorium, when the defacto complainant, who was given charge of Stage Convenor, after the programme ended at 9 p.m on 01.03.2024, attempted to go towards the stage along with one Sharan to take an oil lamp, the accused, who is a teacher of CUSAT, Director of Youth Welfare Board and member of Syndicate of CUSAT, directed the defacto complainant to go outside and when she apprised the purpose, the accused became angry and forcefully caught hold of her left breast. Then, even though she warned him not to touch her body, he caught hold of her breast twice and then Sharan reached nearby. According to the defacto complainant, she had become mentally depressed because of this occurrence, apart from feeling ashamed of the same. The further allegation is that later the accused threatened her not to disclose the occurrence before the police and if she would opt so, she could not continue her studies and the same would be stopped. This is the base on which the prosecution alleged commission of offences punishable under Sections 354, 354A(1) and 506 of the Indian Penal Code ('IPC' for short), by the accused.

4. While seeking quashment of the proceedings, the learned



counsel for the petitioner pointed out that there is 127 days of delay in lodging the FIR and the FIR is an afterthought. He also would submit that ingredients to attract the offences are not at all made out from the prosecution allegations, *prima facie*. It is also submitted that in the light of the stampede that happened during an annual tech festival held on November 25, 2023, whereby four persons were killed and 60 others injured, the Government issued comprehensive directives vide Circular No. G1/200/2023-HEDN, dated 06.12.2023 for conducting fests and celebrations across colleges and University campuses in the State. Following the directives issued by the Government, the Syndicate of CUSAT, approved the guidelines for conducting programmes in the University Campus submitted by the petitioner and Annexure-4 order was issued accordingly by the Registrar. As per the order, all campus events, including union activities, must obtain prior permission from the institution head which includes programme details, guests attending, source of funds etc. and a discipline committee should monitor and supervise the celebrations in college. Clause 14 of Annexure-4 Order is as follows:



“All programmes including Youth Festival, Tech Fest, Talent Time and other such events should be conducted in the presence and under the supervision of teachers. All the programmes are to be restricted up to 9 pm and the organizing committee should give the list of judges and guest in advance. The results of stage events shall be declared by the judges immediately after the events. All results shall be prepared by the committee consisting of Teachers and Administrative staff.”

5. It is submitted that this year to prevent any untoward incident during Youth Festival the University decided to strictly implement Annexure-4 guidelines. Dr. Girish, a teacher of the Hindi department was deputed as staff advisor and the petitioner as the convener of the certificate committee for the Youth Festival commenced on 29.02.2024 and finished on 04.03.2024. The petitioner being a syndicate member was directed by the Vice chancellor to supervise and strictly implement Annexure-4 Order. Several other teachers were also given various other charges.

6. It is submitted that in the previous years, the Youth Festivals are conducted by the university union and funds allocated and



collected were also independently used by the union without any effective control of the University. This year in the light of Annexure-4 order, the University carefully controlled and all activities connected with the youth festival, including the funds and programmes. The grace marks secured by the winners of the youth festival forms part of the total marks secured by students in the university exams. Previous years these marks were entered by those persons deputed by the union without the scrutiny of the teachers. This year in compliance of Annexure-4 the petitioner insisted that the results of each stage events shall be declared by the judges immediately after the events. The said results shall be processed by the committee consisting of teachers. Moreover, the programme continued even after 9 pm. So, the teachers of the University to supervise the conduct of the Youth Festival, Dr. Girish, Dr. Suresh, Dr. Aldrin Antoney, Dr. Bindu, Dr. Aparna Lakshman etc. and the petitioner intervened and stopped the programme by 09:10pm on 01.03.2024. Due to the strict implementation of Annexure-4 Order, the University Union turned hostile to the petitioner. They even spread murmuring campaigns that the petitioner is behind all the restrictions imposed by the University on them. The direction of the



petitioner to declare the results by the judges immediately after the programme and to hand over the mark sheets to the teacher in charge, further aggravated the animosity of the Union members towards the petitioner.

7. It is submitted that immediately after the programme, on 01.03.2024 the petitioner and other teachers intervened and sent all the students out of the main auditorium. When the petitioner along with other teachers, Dr. Girish and Dr. Suresh were coming out from the auditorium, the defacto complainant and a boy came there and tried to enter into auditorium saying that they want to take an oil lamp. The petitioner told them to come and take oil lamp in the next morning, but they refused and tried to forcibly enter into the Auditorium. The petitioner stood in front of them and resisted them from entering the auditorium. Infuriated by that the defacto complainant told that, while intercepting them the petitioner's hand touched on her body. The teachers, Dr. Girish and Dr.Suresh also were also present there to witness this. Other staff members were also near them.

8. According to the learned counsel for the petitioner, this



crime was registered due to political notion with a view to put the petitioner in trouble, who is very strict in official duties and the learned counsel brought the attention of this Court to the complaint filed by the complainant to the Vice Chancellor, CUSAT, i.e after 3 months and 27 days of occurrence. According to the learned counsel for the petitioner, the first complaint itself was lodged after a delay of 3 months and 27 days and the FIR was registered after 4 months and 6 days of the occurrence. According to the learned counsel for the petitioner, intention to outrage the modesty of the defacto complainant or to sexually harass her or threaten her is not at all made out from the facts, since the occurrence is the outcome of the restriction imposed as part of discipline to avoid fatality in view of the stampede that happened during an annual tech festival held on November 25, 2023, and therefore this prosecution is maliciously initiated and the same would require quashment.

9. While opposing quashment, the learned counsel for the de facto complainant argued in terms of the prosecution allegations and the counter statement filed and submitted that deliberate attempt to outrage the modesty of the de facto complainant, who has been studying in Second



Year BBA LLB Course could be seen, *prima facie*, and in such a case, effective investigation is necessary. Therefore, quashment of the FIR itself could not be considered. He also placed the inquiry report submitted by the Internal Complaint Committee (ICC), CUSAT, on the complaint filed by the aggrieved (de facto complainant) against the accused, who is the Director of Youth Welfare Board and Member of Syndicate, CUSAT, regarding sexual assault alleged to be committed on 01.03.2024 to justify registration of the FIR. The learned Public Prosecutor also supported the argument of the de facto complainant on the submission that this matter would require investigation to find out the truth of the allegations, and quashment of FIR could not be considered.

10. On scrutiny of the materials, Annexure 3 is the copy of the initial complaint lodged by the de facto complainant as on 28.06.2024. As pointed out by the learned counsel for the petitioner, the first complaint itself was lodged after a delay of 3 months and 27 days. The complaint would show that the defacto complainant was prevented from ingress to the auditorium. While she was trying to communicate to the petitioner, why she had to go and take oil lamp, the petitioner suddenly started



pushing her and thrusting her breast with the sole intention to sexually assault her. Then she vocally resisted the petitioner by explicitly saying not to touch her, and again the accused did the act twice. On witnessing this incident, one Sharan K.S, came to her aid. In a state of distress, she screamed for help and left the area, crying. The complaint would further show that the petitioner, instead of acknowledging his mistake and apologising, started shouting and threatening her saying that he would ensure disruption and discontinuance of her studies, if she would complain to higher authorities or police. Since the petitioner is very influential and is having much power within the University as the Director of Youth Welfare and Member of the Syndicate Board, the defacto complainant was afraid of reporting this incident to the concerned authorities. This is the sole reason for the delay occurred in lodging the complaint by her. Similar version could be found from FIS, copy of which is produced as Annexure 2 which was lodged after 127 days of delay.



11. Here the accused is none other than the Director of Youth Welfare and Member of the Syndicate Board of CUSAT. The occurrence is soon after closure of the program Sargam, 2024.

12. Now the question arises is; what are the ingredients to attract offence under Section 354 of IPC? Section 354 of IPC provides that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

13. Reading the provision, in order to attract an offence under Section 354 of IPC, assault or use of criminal criminal force to any woman, (1) intending to outrage or (2) knowing it to be likely that he will there by outrage her modesty, is to be made out, *prima facie*.

Similarly sexual harassments dealt in Section 354A(1)(i) to (iv) read as follows:

“Section 354A : Sexual harassment and punishment for sexual harassment:

(1) A man committing any of the following acts—



- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) a demand or request for sexual favours; or*
- (iii) showing pornography against the will of a woman; or*
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment¹.*

(2)Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3)Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

14. Here as I have already pointed out, the accused very well knew that the de facto complainant is the Joint Convenor for the stage program on the date of occurrence. This occurrence was alleged at 9 pm on 01.03.2024, as per the FIS. The exact time of occurrence was not disclosed in Annexure 3 initial complaint. According to the learned counsel for the petitioner, restriction imposed by the petitioner to have entry to the auditorium after 9 pm is the reason for lodging the complaint. Whereas allegation of the de facto complainant is that the accused with intention to outrage her modesty and to sexually harass her, caught hold of her left breast twice forcefully. Thus the crucial question is whether the



overt acts done by the accused is one with the required intention to outrage the modesty or to do sexual harassment or is the immediate response to restrain entry of the de facto complainant to the auditorium as part of the discipline engrafted under the approved guidelines issued by the syndicate of the CUSAT to conduct programs in the university campus smoothly? As per clause 14 of Annexure 4, it has been provided that all programmes including Youth festival, Tech fest, Talent Time and other such events should be conducted in the presence and under the supervision of teachers. All programmes are to be restricted up to 9 pm and the organising committee should give the list of judges and guests in advance to the Staff Advisor. The results of stage events shall be declared by the judges immediately after the events. All results shall be processed by a Committee consisting of Teachers and Administrative staff.

15. As I have already discussed, the most essential ingredient to attract an offence under Section 354 of IPC is assault or use of criminal force to any woman with intent to outrage or knowing it to be likely that he will thereby outrage her modesty. As per Section 354A(1) of IPC, when a man commits the acts of (i) physical contact and advances involving



unwelcome and explicitly sexual overtures; or (ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment, he is punishable for he offence of sexual harassment.

Section 354A(1)(i) provides that an act involving unwelcoming and explicit sexual overtures, is an offence. Section 503 of IPC defines criminal intimidation as, *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.*

16. Summarising the factual matrix in this case, it is discernible that when the defacto complainant attempted to move towards the auditorium on the pretext of taking an oil lamp, after completion of the programme overstepping the outer time limit fixed as 9.00 pm, as per the guidelines, as part of the strict compliance of the discipline, the petitioner



herein objected the same and there was, altercation as part of conductance and resistance. In such a situation, it could not be held, *prima facie*, that the petitioner herein had any intention to outrage modesty of the defacto complainant in any manner or to harass her sexually. That apart, the physical contact as part of such resistance could not be held as the one which advanced unwelcome and explicit sexual overtures. Failure to lodge a complaint in this regard at least to the University Authorities, soon after the occurrence would show that the allegations in the complaint and in the FIS are afterthought events. Viewing the facts in this case from the above perspective, none of the offences are made out, *prima facie*. In view of the matter, the FIR registered after 4 months and 6 days after 3 months and 26 days of lodging the complaint before the Vice Chancellor as an afterthought lacks bona fides and the prayer to quash the FIR is liable to succeed.

17. In the result, this Crl.M.C stands allowed. Annexure 1 FIR in Crime No.675/2024 of Kalamassery Police Station, Ernakulam, as against the petitioner, stands quashed.



However, it is specifically ordered that the petitioner shall not in any way do any hazards or hindrance to the petitioner's study in completing her BA LLB course and any retaliatory measures from the part of the petitioner will be taken with such degree of seriousness and the defacto complainant is free to move as per law to neutralize any such acts.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



APPENDIX OF CRL.MC 6103/2024

PETITIONER' ANNEXURES

Annexure 1 THE TRUE COPY OF THE FIR DATED 06.07.2024 IN
CRIME NO.675/2024 OF KALAMASSERY POLICE
STATION, ERNAKULAM.

Annexure 2 THE TRUE COPY OF THE FIS DATED 06.07.2024 IN
CRIME NO.675/2024 OF KALAMASSERY POLICE
STATION, ERNAKULAM.

Annexure 3 TRUE COPY OF THE COMPLAINT DATED 28.06.2024
SUBMITTED BY THE DEFACTO COMPLAINANT BEFORE
THE VICE CHANCELLOR, CUSAT.

Annexure- 4 TRUE COPY OF THE ORDER DATED 27.02.2024
ISSUED BY THE REGISTRAR, CUSAT.

Annexure 5 THE TRUE COPY OF THE COMPLAINT DATED
08.07.2024 FILED BY THE TEACHER'S ASSOCIATION
OF CUSAT BEFORE THE SHO, KALAMASSERY.

RESPONDENTS' ANNEXURES

Annexure R2 (a) TRUE COPY OF THE INQUIRY REPORT OF THE ICC IN
RESPECT OF SEXUAL ASSAULT COMMITTED ON
01.03.2024.