CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 8TH DAY OF SEPTEMBER 2023 / 17TH BHADRA, 1945

CRL.MC NO. 1242 OF 2018

AGAINST THE ORDER/JUDGMENT IN ST 677/2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

PETITIONER/ACCUSED:

FR GEEVARGESE JOHN @ SUBIN JOHN
MANNATHARA HOUSE, CHUNGATHATHRA, EDAKKARA,
MALAPPURAM DISTRICT.

BY ADVS.
SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 THE STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER,
EDAKARA POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI - 31

2 K.A. ALEXANDER
S/O. ABRAHAM, GRACE HOME, VALLIKKUNNAM,
EDAKKARA, MALAPPURAM DISTRICT.

BY ADVS.
SRI.K.RAKESH

OTHER PRESENT:

SRI. VIPIN NARAYAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08.09.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No. 1242 of 2018

Dated this the 08th day of September, 2023

O R D E R

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for the sake of brevity).

2. The petitioner herein is the accused in Crime No. 263/2017 of Edakkara Police Station now pending before the Judicial Magistrate of First Class Court, Nilambur as S.T. No.677/2017. The above case is charge sheeted against the petitioner alleging offences punishable under Section 120(o) of the Kerala Police Act. The case was registered based on a complaint filed by the 2nd respondent. Annexure-A1 is the complaint. Annexure-A3 is the F.I.R. Annexure-A4 is the First Information

Statement. Annexure-A5 is the Facebook post.

3. The 2nd respondent is an Orthodox Christian Priest of the Indian Orthodox Church. The main allegation in the complaint lodged by the 2nd respondent is that on 08.08.2017, about 35 priests from Malankara Orthodox Church conducted a Hunger Strike before the Head of the Orthodox Church in the Main centre, Kottayam holding a Banner. But, it is stated that with an intention to insult, the rival priest replaced the banner and defamed him before the fellow priests and public at large. Based on Annexure-A1 to A5, the Judicial Magistrate of First Class Court, Nilambur, passed Annexure-A6 order granting permission to register the case. Annexure-A7 is the memorandum of evidence produced along with the charge sheet. Annexure-A8 is the final report. According to the petitioner, the offence under Section 120(o) of the

Kerala Police Act, is not attracted, even if the entire allegations in the final report are accepted. Hence, this Crl. M.C. is filed.

4. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

5. The short point to be decided is whether Section 120(o) of the Kerala Police Act, 2011 is attracted in this case. It will be better to extract Section 120(o) of the Kerala Police Act, 2011.

> ***"Section 120: Penalty for causing nuisance and violation of public order***
>
> *If any person,---*
>
> *(o) causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger,*
>
> *shall, on conviction, be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both."*

6. The ingredients of an offence under

Section 120(o) of the Kerala Police Act, 2011 are:

i. A person causing a nuisance of himself to another person;

ii. Causing such nuisance shall be through any means of communication;

iii. Act causing nuisance may be done by the repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger;

7. In other words, a person causing nuisance of himself to any other person through any means of communication, is the essential ingredient of an offence punishable under Section 120(o) of the Kerala Police Act, 2011.

8. The Annexure-A1 is the complaint filed by the 2nd respondent. The contents of Annexure-A1 complaint is extracted here under;

"സർ,

ഞാൻ മലങ്കര ഓർത്തഡോക്സ് സുറിയാനി സഭയിൽപെട്ട ഒരു വൈദികാനാണ് . ഞങ്ങളുടെ സഭയുടെ മലബാർ ഭദ്രാസനത്തിലെ ചില

ക്രമകേടുകൾ ചൂണ്ടിക്കാട്ടി ഞങ്ങൾ മുപ്പത്തി അഞ്ചോളം (35) വൈദികർ ഞങ്ങളുടെ സഭയുടെ പരമാധ്യക്ഷൻ മുൻപാകെ ഒരു നിരാഹാര സമരം ഈ മാസം 8- ആം തിയ്യതി നടത്തുകയുണ്ടായി. ഞങ്ങൾ ഉയർത്തിപിടിച്ച 'ബാനർ' വളരെ യുക്തവും ആകർഷണീയവും ആയിരുന്നു. എന്നാൽ ഞങ്ങളെ അപമാനിക്കാനായി ഞങ്ങളുടെ തന്നെ സഹപ്രവർത്തകനായ ഒരാൾ ഞങ്ങളുടെ ബാനറിന്റെ സ്ഥാനത്ത് മറ്റൊരു 'ബാനർ' പ്രദർശിപിച്ച് ഞങ്ങളെ പൊതു സമൂഹത്തിന് മുൻപിൽ അപമാനിച്ചു. ഇങ്ങനെ ചെയ്ത വ്യക്തി ആ പോസ്റ്റ് പിന്നീട് പിൻവലിച്ചിട്ടുണ്ട് എന്നാണ് അറിയുന്നത്. ഫാദർ ഗീവർഗീസ് ജോൺ (സുബിൻ അച്ചൻ) മണത്തറ വീട് , ചുങ്കത്തറ, നിലമ്പൂർ എന്ന വ്യക്തിയാണ് ഇത് ചെയ്തിരിക്കുന്നത്. ആ വ്യക്തിക്കെതിരേ ആവശ്യമായ ശിക്ഷാനടപടികൾ സ്വീകരിക്കണമെന്ന് താഴ്മയായി അപേക്ഷിക്കുന്നു ."

9. The main allegation in the complaint is that a photo was posted on Facebook with a wrong banner manipulated by the accused. Annexure-A8 is the final report. It will be better to extract the contents of Annexure-A8 also;

"08.8.17 തിയ്യതി അന്യായക്കാരനും മറ്റ് സാക്ഷികളും ഉൾപ്പെടുന്ന സഭയായ മലബാർ ഭദ്രാസനത്തിലെ ക്രമക്കേടുകൾക്കെതിരെ കോട്ടയം ദേവലോകം എന്ന സ്ഥലത്ത് വച്ച് സഭയുടെ പരമാധ്യക്ഷൻ മുൻപാകെ അന്യായക്കാരനും

മറ്റ് വൈദികരും നടത്തിയ നിരാഹാര സമരത്തിൽ വൈദികർ പ്രദർശിപ്പിച്ച "അനിശ്ചിത കാല നിരാഹാര സത്യാഗ്രഹം മെത്രോപ്പോലീത്തയുടെ അനീതിയും, ആക്രമണവും, ഗുണ്ടായിസവും അവസാനിപ്പിക്കുക" എന്നും മറ്റും എഴുതിയ ഫോട്ടോയിൽ പ്രതി അന്യായക്കാരനും, സഭക്കും പൊതു സമൂഹത്തിൽ മാനഹാനി ഉണ്ടാക്കി അപമാനിക്കണമെന്ന ഉദ്ദേശത്തോടെ എഡിറ്റ് ചെയ്ത "ധിക്കാരികളും കാമവെറിയൻമാരുമായ വൈദികർക്കെതിരെ നടപടി സ്വീകരിക്കുക" എന്നും മറ്റും എഴുതിയ ബാനർ വൈദികർ പിടിച്ച് നിൽക്കുന്നതായി Facebook ൽ മന:പൂർവം post ചെയ്തിരിക്കയാൽ മേൽ വകുപ് പ്രകാരം ശിക്ഷാർഹമായ കുറ്റം ചെയ്തിരിക്കുന്നു എന്നും മറ്റും "

10. In ***Sajidh D. v. State of Kerala [2019 (4) KLT 808],*** this Court observed that, the act of the petitioner - sharing the Facebook post - cannot be considered as a responsible act done by him. This Court in ***Sanjeev S. v. State of Kerala [2023 (3) KHC 324]*** considered the scope of Section 120(o) of the Kerala Police Act, 2011 once again. It will be better to extract the relevant portion of the above judgment;

“12. The remaining question is whether

S.120(o) of the Police Act, is attracted in the present case. The Section reads as 'if any person, causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger shall be punished on conviction. The essential ingredients of the offence under Section 120(o) of Police Act is that a person causes nuisance of himself to any other person through a means of communication. The allegations in the FIR do not indicate that petitioner caused a nuisance of himself by posting a modified word in the WhatsApp group. In this context, it is necessary to observe as mentioned earlier that the word " [illegible] " is not a defamatory word, nor is it a word which has a tendency to cause a nuisance. In the above circumstances, the offence under Section 120(o) of Police Act is also not made out.

13. In this context, reference to the decisions in Sajidh D. v. State of Kerala, 2019 (4) KLT 808 and in Monish v. Jayaraj P.C. and Another, 2020 SCC Online Ker. 13404 are also relevant.

14. Resultantly, this Court is of the view that even if the allegations in Crime No.942/2022 of Paravoor Police Station, Kollam are admitted, they do not make out an offence either under

S.153 IPC or under S.120(o) of the Police Act. Consequently, the registration of the crime is an abuse of the process of the Court. Hence, FIR No. 942/2022 of Paravoor Police Station is quashed.

The criminal miscellaneous case is allowed as above."

11. In the light of the above dictum laid down by this Court, I am of the considered opinion that the offence under Section 120(o) is not attracted in the facts and circumstances of the case. Section 120(o) lays down the penalty for causing nuisance and violation of public order, where any person causing through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger. If this Court started to hold that all these Facebook posts amount to an offence under Section 120(o) of the Kerala Police Act, 2011, almost all posts made on Facebook is to be declared as an offence under Section 120(o) of the Kerala

Police Act.

12. After perusing the Facebook post, the complaint as well as the final report, I am of the considered opinion that this would not come within the purview of Section 120(o) of the Kerala Police Act, 2011.

13. But, the defamatory Facebook posts continue to do the rounds on Facebook and other Social Media platforms. There is no proper punishment for such defamatory statements and posters on Facebook. The legislature must look into this aspect seriously, especially in the backdrop of this new era of technology and Social Media mania in existence in our society.

14. At any rate the offence punishable under Section 120(o) of the Kerala Police Act, 2011 is not attracted, even if, the allegations in Annexure-A8 final report are accepted *in toto*.

Therefore, this Criminal Miscellaneous case is allowed. All further proceedings in S.T No.677/2017 on the files of Judicial Magistrate of First Class Court, Nilambur arising from Crime No. 263/2017 of Edakkara Police Station, are quashed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

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APPENDIX OF CRL.MC 1242/2018

PETITIONER ANNEXURES

ANNEXURE 1	TRUE COPY OF COMPLAINT DATED 29.08.17 OF THE COMPLAINANT.
ANNEXURE 2	TRUE COPY OF THE SEIZURE MAHAZAR DATED 16.10.2017.
ANNEXURE 3	CERTIFIED COPY OF THE FIR DATED 12.10.17.
ANNEXURE 4	CERTIFIED COPY OF THE FIS DATED 12.10.17.
ANNEXURE 5	CERTIFIED COPY OF THE PHOTO OF THE POST IN THE FACEBOOK.
ANNEXURE 6	TRUE COPY OF THE SANCTION GRANTED BY THE MAGISTRATE.
ANNEXURE 7	TRUE COPY OF THE MEMORANDUM OF EVIDENCE DATED 01.11.17 ALONG WITH THE STATEMENT OF COMPLAINANT AND WITNESSES.
ANNEXURE 8	CERTIFIED COPY OF THE FINAL REPORT DATED 01.11.17.

RESPONDENTS EXHIBITS :NIL

//TRUE COPY//

PA TO JUDGE