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CrI.M.C.No.5451 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 2ND DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946

CRL.MC NO. 5451 OF 2024

CRIME NO.1/2021 OF CYBER CRIME POLICE STATION, KOTTAYAM,
KOTTAYAM IN CC NO.43 OF 2022 OF CHIEF JUDICIAL MAGISTRATE,
KOTTAYAM

PETITIONER/ACCUSED:

P.V SAMUEL @ SAMUEL KOODAL
AGED 78 YEARS, S/O LATE MATHEN VARGHESE,
RESIDING SAM DALE, KALANJOOR, P.O,
PATHANAMTHITTA, PIN-689694

BY ADVS.
C.UNNIKRISHNAN (KOLLAM)
M.R.SUDHEENDRAN
UTHARA A.S
VIJAYKRISHNAN S. MENON
D.JAYAKRISHNAN
PRAVEEN P.
VIVEK NAIR P.

RESPONDENTS/STATE-DEFACTO COMPLAINANT:

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



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2 STATION HOUSE OFFICER
CYBER CRIME POLICE STATION,
KOTTAYAM, PIN - 686002

3 JOSE MATHEW
S/O O.P. MATHEW, OLIKKAL HOUSE,
VEROOR P.O, CHETHIPUZHA, CHANGANASSERY,
KOTTAYAM, PIN - 686106

R1&R2 SRI.M.P.PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02.09.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



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'C.R.'

ORDER

Dated this the 2nd day of September, 2024

This Crl.M.C. has been filed under Section 482 of the Code of Criminal Procedure by the petitioner/sole accused in Crime No.1/2021 of Cyber Crime Police Station, Kottayam, now pending as C.C. No.43/2022 on the files of Chief Judicial Magistrate Court, Kottayam, to quash the same.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Scrutinized the available records.

3. Here the prosecution alleges that the accused/petitioner herein committed offences punishable under



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Sections 298 and 504 of the Indian Penal Code (IPC for short hereinafter) as well as Sections 3 and 4 of the Indecent Representation of Women (Prohibition) Act, 1986.

4. The sum and substance of the allegation is that the accused/petitioner herein published a news item stating that nuns are the concubine of priests and bishops in YouTube and Facebook, whereby the accused with deliberate intention of wounding the religious feelings of nuns, intentionally insulted and thereby given human provocation, intending or knowing it to be likely that such provocation would cause harm to all the nuns. Apart from that, it is alleged that thereby the accused indecently represented nuns.

5. While arguing for quashment of the entire proceeding, the learned counsel for the petitioner given much emphasis to the



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ingredients to attract offence under Section 504 of IPC, after reading the Section and also highlighting the allegations of prosecution. The learned counsel placed decision of the Apex Court in **Fiona Shrikhande and Anr. vs. State of Maharashtra, [2013 (14) SCC 44]**, to contend that in order to attract offence under S.504 IPC, the intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not



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sufficient by itself to warrant a conviction under S.504 IPC. As such, it is submitted that the ingredients required to attract the offence under Sec. 504 is totally absent in this case and hence the offence will not lie against the Petitioner.

6. The learned counsel for the petitioner also placed decision of the Apex Court in **Mohammed Wajid V. State of Up (AIR 2023 SC 3784)**, where the Hon'ble Supreme Court has held that mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of S.504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each



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case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under S.504, IPC if he merely uses abusive language against the complainant. In **King Emperor v. Chunnibhai Dayabhai**, 1902 (4) Bom. LR 78, a Division Bench of the Bombay High Court pointed out that:- “To constitute an offence under S.504. I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.” (Emphasis supplied)

7. In **Mohammed Wajid V. State of Up (AIR 2023 SC 3784)** it was also held as follows:- *In the FIR, all that the first informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is*



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not stated in the FIR. One of the essential elements, as discussed above, constituting an offence under S.504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present. In the present case in FIR also, apart from stating that the petitioner has used abusive words, it is not mentioned what abusive words are used. As such the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



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8. According to the learned counsel for the petitioner, no ingredients to attract offence under Section 504 of IPC is made out from the prosecution records.

9. He also brought the attention of this Court to the offences under Sections 3 and 4 of Indecent Representation of Women (Prohibition) Act, while contending that as per the prosecution allegations and as per the news item alleged to be published, the same in no way lead to hold that the women were indecently represented so as to attract the above offences. He also pointed out that, in the above circumstances, offence under Section 298 of IPC also would not attract in the facts of this case.

10. Whereas, referring to the statements given by the witnesses, disclosing the allegation of publication effected that nuns are the concubines of priests and bishops stated by the



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defacto complainant as well as the witnesses, along with the recovery of the same by the Investigating Officer during investigation, the learned counsel for the defacto complainant zealously opposed quashment sought for.

11. The learned Public Prosecutor also fervently opposed quashment on the submission that prima facie ingredients to attract offences alleged to be committed by the accused are made out and therefore, quashment sought for is liable to be rejected.

12. While addressing the ingredients to attract offences is alleged, it is necessary to extract the provisions as such. Therefore, Sections 298 and 504 of IPC as well as Sections 3 and 4 of the Indecent Representation of Women (Prohibition) Act, 1986 are extracted hereunder;



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Section 298 of IPC : Uttering words, etc. with deliberate intent to wound religious feelings -

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 504 of IPC : Intentional insult with intent to provoke breach of the peace -

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.



Section 3 of Indecent Representation of Women (Prohibition) Act - Prohibition of advertisements containing indecent representation of women -

No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

Section 4 of Indecent Representation of Women (Prohibition) Act : Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women -

No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form:

Provided that nothing in this section shall apply to-



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(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or

(ii) which is kept or used *bona fide* for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in--

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or



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(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose;

(c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

13. According to the learned counsel for the petitioner, since the videos only contain the revelations made by two Nuns earlier as to the sexual harassment and torture suffered by them at the hands of Priests, the publication is justified in the context for the public good as the public should be aware of what actually happened in such a place. It is a matter of general concern and only when the public is aware of the same, at least there should be some control in such sort of harassment/torture in future.



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14. Here the allegation is that on 01.06.2020, the accused published a video in YouTube stating that nuns are the concubine of priests and bishops. The further allegation is that thereby the accused intentionally insulted Christian priests and bishops who also hold Christian beliefs.

15. First of all, I shall address as to whether the offence under Section 504 of IPC is made out, as it is submitted by the counsel for the petitioner that no offence under Section 504 of IPC is made out as the first submission.

16. Going by the statutory wordings in Section 298, whoever, with deliberate intention of wounding the religious feelings of any person, places any object in the sight of that person shall be punished. Similarly, under Section 504 of IPC, whoever intentional insults, and thereby gives provocation to any



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person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence is punishable. Under Section 4 of Indecent Representation of Women (Prohibition Act), publication or sending by post of books, pamphlets, no person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing painting, photograph, representation or figure which contains indecent representation of women in any form is an offence.

17. Going by the allegations herein, the arguments advanced by the learned counsel for the petitioner that none of the offences would attract on the facts of the case cannot be appreciated so as to quash the proceedings, since the offences are prima facie made out from the materials.



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18. In view of the matter, prayer for quashment is found unsustainable and is dismissed. The interim order shall stand vacated accordingly.

Registry is directed to forward a copy of this order to the trial court for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

bpr



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APPENDIX OF CRL.MC 5451/2024

PETITIONER'S ANNEXURES

Annexure A1

COPY OF FINAL REPORT FILED BY KOTTAYAM
POLICE STATION IN CRIME NO. 1/2021 DATED
18/04/2022