



CRL.MC NO. 415 OF 2015

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

“CR”

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 19TH DAY OF JULY 2024 / 28TH ASHADHA, 1946

CRL.MC NO. 415 OF 2015

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.1618 OF 2014 OF
JUDICIAL MAGISTRATE OF FIRST CLASS - I, KARUNAGAPPALLY

PETITIONER/S:

1 PRAKASH
AGED 46 YEARS
S/O.P.N.KRISHNAN NAIR, EXECUTIVE ENGINEER, REPORTER
CHANNEL, INDO-ASIAN NEWS CHANNEL PRIVATE LIMITED,
REPORTER STUDIO COMPLEX, H.M.T.COLONY, KALAMASSERY,
KOCHI-683 503.

2 NIKESH KUMAR
AGED 42 YEARS
S/O.M.V.RAGHAVAN, DIRECTOR AND CHIEF EDITOR,
REPORTER CHANNEL, INDO-ASIAN NEWS CHANNEL PRIVATE
LIMITED, REPORTER STUDIO COMPLEX, H.M.T.COLONY,
KALAMASSERY, KOCHI-683 503.

BY ADV SRI.C.P.UDAYABHANU

RESPONDENT/S:

1 VANDANA
"SREE MANDIRAM", AZHEKKAL P.O., KOLLAM-690 547.

2 THE STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

OTHER PRESENT:

SMT.NIMA JACOB, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“CR”****P.V.KUNHIKRISHNAN, J****-----
Crl.M.C. No. 415 of 2015
-----****Dated this the 19th day of July, 2024****O R D E R**

The petitioners are accused Nos.2 and 3 in CC No. 1618/2014 on the file of the Judicial First Class Magistrate, Karunagappally. It is a private complaint filed by the 1st respondent alleging offences punishable under Secs. 499 and 500 IPC. Annexure-I is the certified copy of the complaint.

2. The allegation in Annexure-I complaint briefly is like this : The petitioner No.1, who is the 2nd accused in the case is the Executive Editor of Reporter Channel and the 2nd petitioner, who is the 3rd accused in the case is the Director and Chief Editor of Reporter Channel. The petitioners aired a program “Big Story” on 18.02.2014, wherein the contents of a book



published by a foreigner against Mata Amritanandamayi was the topic of discussion. According to the 1st respondent, she is an ardent devotee of Mata Amritanandamayi and she was able to conceive through the blessings of the said personality. The 1st accused in the case made imputations to the effect that the Amritanandamayi Math is a source point of sex, black money, gold and narcotics in respect of which he has obtained an anonymous letter. The imputations of the 1st accused, Rishi Kumar indicate that the complainant was impregnated by persons of the Mata Amritanandamayi's Ashram other than her husband and thereby, she has been defamed. The allegations against the petitioners are contained from paragraph 5 of the complaint onwards. It is stated in the complaint that the 1st petitioner made an opening remark regarding the publication of a book by one Gail Tredwell against Mata Amritanandamayi Amma. The 1st petitioner had detailed the contents of the book written by



Gail Tredwell and made clear that the allegations of Treadwell are true. He has, therefore, defamed Mata Amritanandamayi and Ashram is the case of the complainant. The 1st petitioner also criticized godman and godwoman in the light of the revelations of Gail Tredwell and warned that the people of Kerala should be more cautious. Hence, it is alleged that the 2nd accused had dented the image of Mata Amritanandamayi and the Ashram. The 2nd petitioner, who is the 3rd accused being the Director and Chief Editor of the Reporter Channel, had carefully edited the above program and thereby, the accused had committed the offence mentioned is the further allegation. Hence, it is alleged that the petitioners and the 1st accused committed the offences punishable under Sec. 500 of the Indian Penal Code. According to the petitioners, even if the entire allegations in Annexure-I complaint are accepted, no offence under Sec. 500 of the IPC is made out and therefore, the continuation of Annexure-I complaint is an abuse of the



process of the court. Hence, this Crl.M.C. is filed.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor. Even though notice is issued to the 1st respondent, there is no appearance.

4. The counsel for the petitioners raised two contentions. The 1st contention is that the 1st respondent will not come within the purview of "some person aggrieved by the offence" mentioned in Sec. 199 of the Cr.P.C. and therefore, the complaint is not maintainable. The 2nd contention of the petitioners is that even if the entire allegations are accepted, no offence is made out against the petitioners. It is also contended by the petitioners that the book of Gail Tredwell is available in the market. It is in the public domain and is available even in Amazon. Therefore, it is submitted that a discussion made on a book, which is in the public domain will not attract the offence under Sec.500 IPC.

5. I will consider the 1st contention regarding the



maintainability of the complaint, based on Sec. 199 Cr.P.C. Chapter XXI of the Indian Penal Code deals with defamation. Sec. 500 IPC is about the punishment for defamation. Sec. 199 Cr.P.C. says that no court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by "some person aggrieved by the offence". What is meant by "some person aggrieved by the offence"? The Apex Court and this Court considered this point in several decisions. In ***John Thomas v. K. Jagadeesan*** [2001 KHC 648], the expression 'except upon a complaint made by some person aggrieved' is considered by the Apex Court. It will be better to extract the relevant portion of the above judgment.

13. "The collocation of the words "by some persons aggrieved" definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact



would certainly fall on every director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too far-fetched to rule out any one of its directors, feeling aggrieved on account of pejoratives hurled at the company. Hence the appellant cannot justifiably contend that the director of the K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in S.199(1) of the Code. (underline supplied)

6. In **K.M.Mathew and others v. Balan** [1984 KHC 363], after considering the earlier decisions on this issue, this court observed like this in paragraphs 25 and 26 of the judgment and the same is extracted hereunder :

"25. The principles that emerge from the decisions appear to be the following: As a general rule a complaint can be filed by anybody, whether he is an aggrieved person or not. S.199, CrI. P.C. engrafts an exception to that general rule. In relation to offences covered by S.499 to 502 occurring in Chap.21 of the IPC only an aggrieved person can move the Magistrate. The section is mandatory. If a complaint is filed by one who is not an aggrieved person, the trial and conviction would be void.

26. Under S.499, read along with Explanation.2, a



defamatory imputation against a collection of persons would fall within the definition of defamation. The language of the 'Explanation' is no doubt wide. Nevertheless, the collection of the persons must be an identifiable body so that it is possible to say with definiteness that the particular group of persons, as distinguished from the rest of the community, was defamed. The identity of the collection of persons must be established as relatable to the defamatory words or imputations. (See Para.13 and 14 of the judgment in AIR 1972 SC 2609 supra). Only a definite and determinate body would amount to "a collection of persons" referred to in S.499, IPC. read with Explanation.2 thereto." (underline supplied)

7. In ***Khushboo S. v. Kanniammal and another*** [2010 KHC 4300], the Apex Court considered the applicability of Sec.199 Cr.P.C. It will be better to extract the relevant portion of the above judgment.

25. *"This takes us to the question of whether the impugned complaints were made in a bona fide manner. As we have already noted, most of the complainants are associated with the PMK, a political party which is active in the State of Tamil Nadu. This fact does add weight to the suggestion that the impugned complaints have been filed with the intention of gaining undue political mileage. It may be reiterated here that*



in respect of the offence of defamation, S.199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as 'persons aggrieved' within the meaning of S.199(1)(b) CrPC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people. In M. S. Jayaraj v. Commissioner of Excise, Kerala and Others, 2000 KHC 716 : 2000 (3) KLT 820 : 2001 (1) KLJ NOC 53 : 2000 (7) SCC 552 : AIR 2000 SC 3266, this Court observed as under:

" The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense." (underline supplied)

8. In **Subramanian Swamy and others v. Union of**



India, Ministry of Law and others [2016 KHC 6401] also, the Apex Court considered the meaning of "some person aggrieved". The relevant portion of the judgment is extracted hereunder:

"189. The said provision is criticized on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be Stated that the "person aggrieved" is to be determined by the Courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In John Thomas v. Dr. K. Jagadeesan, 2001 (6) SCC 30 while dealing with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the Court depending upon the facts of each case. In S. Khushboo (supra), while dealing with "person aggrieved", a three - Judge Bench has opined that the respondents therein were not "person aggrieved" within the meaning of S.199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or



readily identifiable group of people. The Court placed reliance on M. S. Jayaraj v. Commr. of Excise, 2000 (7) SCC 552 and G. Narasimhan (supra) and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not a "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words "some person aggrieved" are determined by the Courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a "person aggrieved" is too spacious a submission to be accepted." (underline supplied)

9. This Court in **Jacob Mathew and others v. State of Kerala and anr.** [2013 (3) KHC 465] also, the applicability of Sec. 199 Cr.P.C. is considered. Paragraph 13 of the above judgment is extracted hereunder :

"13. In order to attract class defamation, it must be proved that a defamatory imputation is against a collection of persons. The language of Explanation 2 is, no doubt, wide. The collection of persons must be an identifiable body so that it is possible to show with definiteness that a particular group of persons as distinguished from the rest of the community was defamed. The identity of collection of persons must be established as relatable to the defamatory words or imputations. Only a definite and determinate body would amount to collection of persons referred to in S.499 of IPC read with Explanation 2 thereof. If



the publication relates to general allegations regarding certain persons belonging to a class generally, will not be sufficient to attract the definite class of persons so as to file a complaint under the section. Further, the person entitled to file a complaint must be an aggrieved person. That means, the complainant himself must be aggrieved. S.198 of CrPC lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not and modifies that rule by permitting only an aggrieved person to move a Magistrate in cases of defamation. The Section is mandatory so that if the Magistrate were to take cognizance of an offence of defamation of a complaint filed by one, who is not an aggrieved person, the trial and conviction would be void and illegal. In the case of a class of persons, against whom imputation concerning collection of persons is made, the complaint by an individual member of that collection, is identifiable, definite and determinate in relation to such imputation. So, if an allegation is made against a class of persons, which is identifiable, definite and determinate in relation to imputation, then, a member of that class so affected, is a person aggrieved, entitled to file a complaint under S.499 of IPC with the aid of Explanation 2 of that Section.” (underline supplied)

10. In **Shine George v. State of Kerala** [2018 KHC 338], this Court observed like this in paragraphs 15 and 16. The same is extracted hereunder:



15. *"In M. S. Jayaraj v. Commissioner of Excise, Kerala & Others, 2000 KHC 716 : 2000 (7) SCC 552 : 2000 (3) KLT 820 : 2001 (1) KLJ NOC 53 : AIR 2000 SC 3266, it is held that "The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense."*

16. *As per the decision cited above, it has been borne out that only an identifiable aggrieved person can approach to rectify his grievance. A restriction was imposed under S.199 Cr.P.C so as to curtail the filing of the cases." (underline supplied)*

11. Again in ***Rajeev Chandrasekhar v. State of Kerala and anr.*** [2021 (2) KHC 622], this Court observed that the aggrieved person need not be the defamed person, but there should be a direct nexus between imputation and the complainant. The relevant portion of the above judgment is extracted hereunder :

3. *"The aggrieved person need not be the defamed person, but there should be a direct nexus between the imputation and*



the complainant. In the absence of such a nexus between the imputation and the complainant, it cannot be said that he can maintain an action for the offence of defamation. No cognizance can be taken for the offence of defamation under Chapter XXI of IPC, unless there is a complaint lodged by the aggrieved or defamed person. It is not permissible to permit any ill - motivated person to harass or prosecute the accused in substitution of the aggrieved person or defamed person. The very act and the intention of the complainant is well explicit even going by the allegation levelled in the complaint stating that he is a party worker occupying an official position and hence aggrieved by the above said publication, though the same is not focused against any particular political party or their ideology. It is against the institution run by Sri. Thomas Chandy and encroachment over the government properties and acquisition of property given as excess land to the poor persons. The complainant without having any personal grievance came up to prosecute the accused person for the defamation and thereby misused the judicial machinery so as to show his loyalty towards Sri. Thomas Chandy and his private company. Necessarily, the second respondent should not be allowed to go with free hand and as such, it is fit and proper to direct him to pay an amount of Rs.5,000/ (Rupees five thousand only) to the KELSA within one month from today, failing which, KELSA shall recover the same from the second respondent. Hence the complaint and the entire proceedings thereof including cognizance taken are liable to be quashed. I do so. (underline supplied)



12. From the above decisions, it is clear that no court can take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. The complaint can be made only by a person aggrieved by the offence and aggrieved person need not be the defamed person. But, there should be a direct nexus between the imputation and the complainant.

13. In this case, the 1st respondent clearly stated in her complaint that she is an ardent devotee of Mata Amritanandamayi. She narrated her attachment to Mata Amritanandamayi as a devotee in the complaint. Therefore, it cannot be said that if any defamatory statement is made by the accused against Mata Amritanandamayi, the devotees of Mata Amritanandamayi will not come within the purview of "some person aggrieved". Therefore I am of the considered opinion that, the 1st respondent will definitely come within the purview of 'some person aggrieved' mentioned in Sec. 199



Cr.P.C. Hence, the first contention of the petitioners in this regard is to be rejected.

14. Petitioners are admittedly media persons. The 1st petitioner was the Executive Editor of Reporter Channel and the 2nd petitioner was the Director and Chief Editor of Reporter Channel. This Court perused the Annexure-I complaint. There are some allegations against the 1st accused in the complaint. The 1st accused is not a party in this CrI.M.C. and therefore, this Court need not consider the allegation against the 1st accused in Annexure-I complaint. But it is stated that the 1st accused was allowed to participate in the TV show of the petitioners, known as 'Big Story' which was aired on 18.02.2014. Simply because the 1st accused was allowed to participate in a discussion in which the main aim was to discuss about a book which is published, I am of the considered opinion that the petitioners are not responsible for the views of the 1st accused about the book. Therefore, the participation of the 1st



accused in the program aired by the petitioners in their Channel alone cannot be treated as a ground to implicate the petitioners in a defamation case. But I make it clear that, the allegation against the 1st accused is not considered by this court.

15. The main issue which leads to the defamation of Mata Amritanandamayi is about a book published by one Gail Tredwell. Gail Tredwell published the book in the year 2013 and the name of the book is 'Holy Hell'. On the cover page of the book itself, it is stated that it is the revelations of her 20 years as personal attendant to the 'Hugging Saint'. In the book, it is stated that the copyright 2013 by Gail Tredwell. It is published by Wattle Tree Press, Maui, Hawai'i. The cover illustration and design are by Lisa Desimini. This is a book which is available in the market and it is even available in Amazon. A copy of the book published in English is handed over to the Court by the counsel appearing for the petitioners. The same book is published in Malayalam. It is published by



Mythri books, Annas Arcade, Spencer Junction, Thiruvananthapuram. This is translated by a team of 12 persons and their names are also mentioned in the Malayalam book. The first edition of the Malayalam translation of 'Holy Hell' was published in April 2014 and that is also available in the market. The title of the Malayalam book is 'വിശുദ്ധ നരകം' (Vishudha Narakam). A copy of this book is also handed over to the Court by the counsel appearing for the petitioners.

16. This Court perused the above books. It is true that there are serious allegations against Mata Amritanandamayi and the Math of Mata Amritanandamayi. There are serious allegations against the inmates of Mata Amritanandamayi also in this book. The petitioners who are the editors of Reporter Channel aired a program called 'Big Story' on 18.02.2014 about this book. As on that date, the English book of Gail Tredwell was available in the market and it was in the public domain. Based on the book, certain comments are made by the



petitioners in the program. The same is extracted in Annexure-I complaint. Whether this amounts to defamation of the 1st respondent is the point to be decided.

17. First of all, even though the 1st respondent is the complainant before the court below, she refused to appear before this Court to defend this case. That itself shows that she is not interested to proceed with the case now. Moreover, it is not clear whether any complaint is filed by Mata Amritanandamayi Math against the author of the book 'Holy Hell'. Either, Mata Amritanandamayi Math decided to neglect the book or decided not to proceed against the author for the reasons best known to them. But when the media persons discuss about the contents of a book, which is in the public domain, whether they can be prosecuted for the same is the question to be decided in this case.

18. I am of the considered opinion that, when a book is published by an author through a publication agency and the



same is in the public domain, it is the duty of the media persons to discuss the same and they cannot be kept mum by filing complaint against them alone alleging defamation, without arraigning the author of the book or the publisher of the book.

19. Admittedly, the 1st respondent is not prosecuting the author of the Book 'Holy Hell', even though her full address and all other details are available in the book itself. The 1st respondent also has not initiated any prosecution against the publishers of the books. The 1st respondent is prosecuting the persons who discussed the contents of a book which is available in the public domain. In such a situation, there cannot be any prosecution against the petitioners who are media persons for discussing the contents of a book published by an author whose name and address are also available in the public domain. Since the book published by Gail Tredwell is in the public domain, and its contents are publicly available, by



discussing the contents of the book, the petitioners are essentially engaging in fair comment or criticisms which is part of their freedom of speech. This Court in the order dated 08.07.2024 in Crl.M.C No. 2924 of 2015 considered the duties and freedom of press. The relevant portion of that order is extracted hereunder:

“10. The press is known as the ‘fourth estate’. It is also known as ‘fourth pillar’ in a democratic society. The origin of the term ‘fourth estate’ is attributed to Edmund Burke, an Anglo-Irish politician, who said to have used it in a British Parliamentary debate in 1771. The ‘fourth estate’ and ‘fourth pillar’ refers to the media, or press, which plays a crucial role in democracy. The fourth estate is holding those in power accountable by investigating and exposing corruption, abuse of power, and wrongdoing. They provide a platform for diverse perspectives giving way to various opinions, views and interests. The fourth estate informs the public by reporting accurate and unbiased information enabling them to make informed decisions. The fourth estate is acting as a watchdog overseeing government actions, policies and decisions. The fourth estate is also facilitating public debates and discussions and encouraging dialogue and scrutiny of important issues. The fourth estate is supporting transparency and accountability, shedding light on government activities, and promoting openness and good



governance. The fourth estate is also empowering the citizens by providing information enabling them to participate actively in the democratic process. In summary, the fourth estate is essential to a healthy democracy, ensuring that power is not abused and that the citizens are well informed and engaged in the democratic process.”

20. I am of the considered opinion that the petitioners in this case who are media persons are only discussing about a book which is available in the public domain and I am also of the considered opinion that, it is the duty of the media persons to discuss such things in the public domain to see that the matter is reached to the people. I make it clear that the Matha Amritanandamayi Math or the devotees of Matha Amritanandamayi are free to prosecute the author of the book and publisher of the book, if they feel that there is any defamation to the Mata Amritanandamayi because of the contents of the book. If any such proceedings are pending before any court, or is going to be filed, the same will be considered untrammelled by any observation in this case. But



as long as Mata Amritanandamayi Math or its devotees are not prosecuting the author of the Book, it cannot be said that no others could speak about the contents of the book and the devotees of Mata Amritanandamayi will be defamed if they are discussed. A reading of the contents of the program which is extracted in the complaint, makes it clear that, it is only a fair and honest discussion of the book's contents. If that is prohibited, it will infringe the freedom of speech available to media. After going through the contents of the book which is made available by the counsel for the petitioners, I am surprised, as to why the author and publishers of the book are not prosecuted in this case, if the 1st respondent who claims to be a devotee of Amritanandamayi, feel that there is defamation to her. The stance of the complainant seems like the author and publisher of the book (the book is in the public domain) can say anything, and they are free from prosecution, but nobody should speak about the contents of the book, which



CRL.MC NO. 415 OF 2015

24

cannot be accepted. It is just like a dialogue in a popular Malayalam film "Sandesham" in which it is stated that "പോളണ്ടിനെ പറ്റി ഒരക്ഷരം മിണ്ടരുത്" (Polandine patti oraksharam mindaruth). Every Malayali know this dialogue, for which no further explanation is necessary. I said this not to hurt anybody. But prosecution for defamation should not be against 'pick and choose persons' alone. If there is defamation, the 1st respondent ought to have prosecuted all the persons who defamed her. In this case even after getting notice, the 1st respondent refused to appear. That itself shows that she is not interested in prosecuting the petitioners also. Therefore I am of the considered opinion that the prosecution against the petitioners can be quashed.

21. The upshot of the above discussion is that the proceedings against the petitioners is to be quashed.

Therefore this Criminal Miscellaneous Case is allowed. All proceedings against the petitioners alone in C.C.No. 1618 of 2014 on the file of the Judicial First Class Magistrate Court, Karungappally are quashed.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS/DM/vnk/-



CRL.MC NO. 415 OF 2015

25

APPENDIX OF CRL.MC 415/2015

PETITIONER ANNEXURES

ANNEXURE-I : CERTIFIED COPY OF THE
COMPLAINT IN CC NO.1618/2014 ON THE FILES
OF THE JUDICIAL MAGISTRATE OF
KARUNAGAPPALLY.