



2024:KER:72492

CRL.MC NO. 4854 OF 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 30TH DAY OF SEPTEMBER 2024 / 8TH ASWINA, 1946

CRL.MC NO. 4854 OF 2021

CRIME NO.784/2020 OF THADIYITTAPARAMBA POLICE STATION,

ERNAKULAM

CC NO.475 OF 2021 OF JUDICIAL FIRST CLASS

MAGISTRATE COURT, KAKKANAD

PETITIONERS/ACCUSED 1 TO 3 :

- 1 ANSON I.J.,
AGED 37 YEARS
S/O. JOSICHAN KORATH JOSE,
ILLIPARAMBIL (H), ARATTUTHARA (P.O.),
WAYANAD, NOW RESIDING AT 1105,
CONFIDENT AURIGA, POOKATTUAPDI,
ERNAKULAM 683 561.
- 2 RAHUL GEORGE,
AGED 43 YEARS
S/O.GEORGE, KURUVILLA, FLAT NO. 201,
CONFIDENT AURIGA III, POOKATTUAPDI,
ERNAKULAM 683 561.
- 3 DYVIN KURUVILLA ELDHOSE,
AGED 33 YEARS
S/O.M.T. KURUVILLA, FLAT NO. 503,
CONFIDENT AURIGA III, POOKATTUPADI,
ERNAKULAM 683 561.

BY ADVS.

JOHN SEBASTIAN RALPH V
VISHNU CHANDRAN(K/001339/2018)
RALPH RETI JOHN(K/001520/2018)
GIRIDHAR KRISHNA KUMAR(K/00744/2022)
APPU BABU(K/000634/2020)
VISHNUMAYA M.B. (K/002474/2021)
GEETHU T.A. (K/3389/2022)
APOORVA RAMKUMAR(K/002237/2021)



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RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.
- 2 STATION HOUSE OFFICER,
THADIYITTAPARAMBU POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.
- 3 SAMEERA,
AGED 36 YEARS
W/O. MUHAMMED RAFI, FLAT NO. 503,
CONFIDENT AURIGA III, POOKKATTUPADI,
ERNAKULAM 683 561.

BY ADVS.
P.V.SARITHA VENUGOPAL
BASIL MATHEW

SRI.RENJIT GEORGE, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 30.09.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



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CR**ORDER**

Dated this the 30th day of September, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, to quash Annexure A2 Final Report and all further proceedings against the petitioners in C.C.No.475/2021 on the files of the Judicial First Class Magistrate Court, Kakkanad. The petitioners herein are accused Nos.1 to 3 in the above case.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor in detail. Perused the relevant documents, including the decisions of this Court in **Sibi v. State of Kerala** reported in **2021 (1) KLT 749** and **xxxx V. State of Kerala** reported in **2024 KHC Online 584** placed by the learned counsel for the petitioners.

3. The prosecution case is that the accused herein committed offence punishable under Section 509 of



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IPC and the specific allegation is that the accused persons, with intention to insult the modesty of the complainant, made defamatory remarks in and out the premises of the flat building, where the accused and the defacto complainant have been residing, stating that the defacto complainant is a prostitute. Recording the statement of the victim, crime was registered and investigated. Thereafter, final report filed, alleging commission of offence punishable under Section 509 r/w 34 of IPC, for which cognizance also was taken by the Magistrate.

4. While canvassing quashment of the proceedings, the learned counsel for the petitioners pressed the point that even if the words alleged to be stated by the accused are defamatory, the same by itself would not attract offence under Section 509 of IPC. In this regard, he has placed the decision in **Sibi's** case (*supra*) wherein this Court held as under:



“In the instant case, the allegation is not that the petitioners/accused persons have uttered any word or made any sound or gesture, etc, to the wife of the 2nd respondent, who is said to be the victim, with the intention to insult her modesty. The allegation is that the petitioners have sent derogatory and defamatory letters about the said woman to a third party (CW3). The said lady victim is mentioned as CW2 in Annexure-2 charge sheet. The said factual allegations, if true, may have disclosed offence as per S.500 of the IPC or S.501 of the IPC which deals with defamation. The investigation agency has rightly understood that the offence as per section 500 or 501 of the IPC cannot be the subject matter of taking cognizance by the learned Magistrate on the basis of a police report/final report/charge sheet. By no such imagination the act of the accused persons in sending derogatory or defamatory letters about the lady victim to a third person, even if it is assumed that the same is done with the intention to insult the modesty of the lady victim, cannot be subject matter of the offences under S.509 of the IPC. Hence, in the instant case none of the offences alleged in the impugned criminal proceedings including the one at Annexure -A2 court charge would lie in the instant case.”



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5. The learned counsel also placed decision of this Court in **Ramesh V. Sub Inspector of Police** reported in **2021(1) KLT 735** to buttress his contention though the facts dealt therein are different from the facts of this case.

6. In **xxxx V. State of Kerala (supra)**, this Court analysed the ingredients to attract offence under Section 509 of IPC, after referring the decision of this Court in **Joseph M.V. v. State of Kerala**, reported in **2024 KHC OnLine 440**, in paragraph No.11, which reads as under:

*“11. In the decision in **Joseph M.V. v. State of Kerala** reported in [2024 KHC OnLine 440 : 2024 KER 36566], in paragraph Nos.11 to 13, this Court held as under:*

“11. In order to bring home an offence punishable under S.509 IPC, the ingredients are; utterance of any word, makes any sound or gesture, or exhibits any object, with an intention to insult the modesty of a woman, or with intention to intrude upon the privacy of such a woman.

12. Coming to the definition of the word 'modesty', the same has not been defined in the Indian Penal Code. So it is worth to look into its dictionary meaning. As per Shorter Oxford English Dictionary (Third Edition) modesty is the quality of



being modest and in relation to woman means "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third new International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency' a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1993 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

13. To sum up, mere utterance of unpleasant or abusive words without an intention either to insult the modesty of the woman or to intrude upon the privacy of such woman would not attract offence under S.509 of IPC. Here the allegation is confined to use of a proverb which contains an abusive element, as extracted herein above. Merely because the accused made a comment/proverb which contains an abusive element, in reply to a humiliating comment made by the defacto complainant, stating that the sim seemed



like one bitten by a dog, it could not be held that the accused either insulted the modesty of a woman or intruded on her privacy.”

7. In the said decision, finally, in paragraph Nos.13 and 14, this Court held as under:

“13. On perusing the sentence uttered, the same in no way suggest any sexual intent or words to outrage the modesty or to intrude upon the privacy of the victim. Even though there is allegation that some gestures shown by the accused using his tongue, what is the gesture, not disclosed to analyse whether the said gesture poses any sexual intent or something to outrage the modesty of the victim or intrude upon her privacy.

14. Going by the prosecution allegations and ingredients of the offences discussed hereinabove, prima facie, it could not be held that the above offences are made out in the facts of this case, where the statement of the mother of the victim itself shows rivalry in between the father of the victim and the accused in the matter of road works regarding Mayyampaavu road. Thus, the prosecution allegation in this case not made out prima facie and in such view of the matter, the quashment, as sought for, is liable to be allowed.



8. Section 79 of Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS' for short) is corresponding to Section 509 of IPC. The same reads as under:

"79. Word, gesture or act intended to insult modesty of a woman - Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

9. Adverting to the penal provisions under Section 509 of IPC and under Section 79 of BNS and the ratio of the decisions referred, in order to bring home an offence punishable under Section 509 of IPC or under Section 79 of BNS, the first part is utterance of any word, makes any sound or gesture, or exhibits any object with an



intention to insult the modesty of a woman, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman. The second part provides that the above overt acts done with intention to intrude upon the privacy of such a woman. Here, the first part of the offence is not at all made out since the defacto complainant has no case that the accused persons used the derogative text directly to the defacto complainant either to be heard or to be seen by her and the allegation is that the accused stated so to the inmates of the flat and nearby shop owners and the defacto complainant has no direct knowledge regarding the same.

10. The second part of S.509 of IPC is intruding upon the privacy of a woman. Thus the question is; while referring the defacto complainant as a prostitute before the inmates of the flat and nearby shop owners, whether the accused persons intruded upon the privacy of such woman.



11. The word 'intrude' is not defined in the IPC. Its dictionary meaning is to put oneself deliberately into a place or situation where one is unwelcome or uninvited. To put it otherwise, intrude means trespass, horn in, pry into or to join in something without invitation or consent to the privacy of the woman. Even though the statement alleged to be spoken by the accused persons was not intending to be heard by the defacto complainant or seen by her, but to third parties, it may attract some other offence, the same itself would not constitute an offence dealt in second part of Section 509 of IPC prima facie. That apart, this case has emanated from a difference of opinion in a residence association where the defacto complainant and the accused are members. In view of the matter, the prayer for quashment is liable to succeed. Therefore, I am inclined to allow this petition.

In the result, this petition stands allowed and Annexure A2 Final Report and all further proceedings



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against the petitioners in C.C.No.475/2021 on the files of the Judicial First Class Magistrate Court, Kakkanad, as against the petitioners/accused Nos.1 to 3 stand quashed.

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.MC 4854/2021

PETITIONER ANNEXURES

ANNEXURE A1 CERTIFIED TRUE COPY OF THE FIR DATED
20.11.2020.

ANNEXURE A2 CERTIFIED TRUE COPY OF THE FINAL
REPORT DATED 29.02.2021.

ANNEXURE A3 A COPY OF THE FI STATEMENT DATED
20.11.2020 BY THE DEFACTO COMPLAINANT

RESPONDENTS ANNEXURES : NIL