

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

CRL.MC NO. 4384 OF 2019

CRIME NO.634/2017 OF Nadakkavu Police Station, Kozhikode

AGAINST THE ORDER IN CC NO.199 OF 2018 OF JUDICIAL

MAGISTRATE OF FIRST CLASS -IV, KOZHIKODE

PETITIONERS/ACCUSED NOS.1 TO 5:

- 1 MAMMEN VARGHESE, AGED 89 YEARS
S/O.K.M.VARGHESE MAPILLAI,
PRINTER AND PUBLISHER, MALAYALA MANORAMA,
KOTTAYAM RESIDING AT THAYYIL KANDATHIL,
MUTAMBALAM, KOTTAYAM
- 2 MATHEW VARGHESE, S/O.VARGHESE,
EDITORIAL DIRECTOR, MALAYALA MANORAMA KOTTAYAM
RESIDING AT 115 H.B COLONY,
PANAMBILLY NAGAR, KOCHI
- 3 JACOB MATHEW, S/O.K.M.MATHEW,
MANAGING EDITOR, MALAYALA MANORAMA, KOTTAYAM
RESIDING AT KANDATHIL OLD SEMINARY ROAD,
CHUNGAM, KOTTAYAM.
- 4 PHILIP MATHEW, S/O.K.M.MATHEW,
EDITOR, MALAYALA MANORAMA, KOTTAYAM
RESIDING AT MANORAMA, PANDITTU KARUPPAN ROAD,
THEVARA, KOCHI.
- 5 MAMMEN MATHEW, S/O.K.M.MATHEW,
CHIEF EDITOR, MALAYA MANORAMA, KOTTAYAM
RESIDING AT MANORAMA MANDHIHIRAM, MANGANAM,
KOTTAYAM.
BY ADV SRI.MILLU DANDAPANI

RESPONDENTS/COMPLAINANTS:

- 1 STATE OF KERALA, REPRESENTED BY THE S.I. OF
POLICE, NADAKKAVU POLICE STATION,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031

Crl.MC 4384/2019

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2 BIJU KURUP
GENERAL SECRETARY,
BJP EDAKKAD AREA COMMITTEE,
NADAKKAVU, KOZHIKODE-673001
BY ADVS.
SRI.PRATHAP. S.R.K.

OTHER PRESENT:

SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

‘CR’

P. V. KUNHIKRISHNAN, J.

Crl.M.C.No.4384 of 2019

Dated this the 22nd day of July, 2024

ORDER

An artistic picturisation of the father of the Nation with an Indian flag by a Cartoonist in connection with the celebration of the 70th Independence Day of India is treated as an offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 [for short, ‘the Act 1971’]. The petitioners are the accused in C.C.No.199/2018 on the file of Judicial First Class Magistrate Court-IV, Kozhikode arising from Crime No.634/2017 of Nadakkavu Police Station. The final report is filed alleging an offence punishable under Section 2 of the Act 1971.

2. The facts which lead to the registration of the above crime is like this: The defacto complainant, who is the General Secretary of Bharatiya Janatha Party, Edakkad Area Committee filed a complaint before the Sub Inspector of Police, Nadakkavu on

23.08.2017 stating that, in a Malayalam daily dated 15.08.2017, a cartoon is published with a National Flag and the father of the Nation and the same looks like the number '70'. According to the defacto complainant, the number '70' also looks like the picture of the father of the Nation with the National Flag. According to the defacto complainant, the top side of saffron portion of the National Flag is outlined with a black line. According to the defacto complainant, this black colour is purposefully given to dishonour the National Flag. According to the defacto complainant, he and the other public could not understand the reason for drawing a black line on the top of the saffron colour of the National Flag. Therefore, it is submitted that, there is a violation of the Act 1971. Based on the above complaint, Nadakkavu police registered Crime No.634/2017. Thereafter, a final report is filed alleging the offence punishable under Section 2 of the Act 1971. The petitioners are (i) Printer and Publisher of Malayala Manorama, Kottayam (ii) Editorial Director, Malayala Manorama, Kottayam, (iii) Managing Editor, Malayala Manorama, Kottayam, (iv) Editor, Malayala Manorama, Kottayam and (v) Chief Editor, Malayala Manorama,

Kottayam. According to the petitioners, even if the entire allegations are accepted, no offence is made out against the petitioners and there is no intention to insult the National Flag or the father of the Nation.

3. Heard learned counsel for the petitioners and the Public Prosecutor.

4. The counsel for the petitioners submitted that the petitioners are the Printer and Publisher, and Editors of Malayala Manorama, which is one of the main Malayalam daily publishing from Kerala. The counsel submitted that Malayala Manorama has got a tradition and it will never disrespect the National Flag or the father of the Nation and no readers of Malayala Manorama will think like that. The counsel for the petitioners submitted that the intention of the petitioners in picturising the father of the Nation with the National Flag is important to find out whether the offence under Section 2 of the Act 1971 is attracted or not. The counsel also submitted that the Malayala Manorama published articles in connection with the celebration of the 70th anniversary of the Independence of India. The editorial page of the newspaper dated

15.08.2017 is produced along with the Criminal Miscellaneous Case, in which several famous persons stated about the achievements of India after 70 years of Independence. A Cartoonist attached to the newspaper depicts the 70th anniversary of the Independence in his own way with his freedom as an artist. According to the counsel, the black colour on the top of the saffron is only to show the top portion of the number '7' and '0' is used to depict the image of the father of the Nation. There is no dishonour either to the father of the Nation or to the National Flag, is the submission. The Public Prosecutor submitted that the contention raised by the petitioners are all matters of evidence and submitted that, this Court may not interfere with the same at this stage. The Public Prosecutor submitted that, prima facie offence is made out and therefore Criminal Miscellaneous Case may be dismissed.

5. This Court considered the contention of the petitioners and the Public Prosecutor. This Court also perused the documents produced along with the Criminal Miscellaneous Case and the cartoon, which according to the prosecution, violates Section 2 of Act 1971.

6. The art of caricature involves exaggerating and distorting the physical features, personalities, or characteristics of individuals often for humorous, satirical, or critical effect. Caricaturists used various techniques to create visual representations that are both recognizable and distorted, making their subject appear ridiculous, ironical, or thought provoking. One of the key elements of the art of caricature is exaggeration, which means emphasizing prominent features or traits. Another element is distortion, which means manipulating proportions, shapes, and sizes. Another element of the art of caricature is simplification which means reducing complex features to simple forms. Nevertheless, it focuses on essential characteristics using visual metaphors or allusions. Effective caricatures require observation skills, creativity, technical skills (drawing, painting, or digital art), an understanding of human Anatomy and psychology, and knowledge of current events and cultural conflicts. By mastering the art of caricatures, artists can create powerful visual commentary that engages, provokes, and inspires audiences.

7. India has a rich tradition of cartooning and several

renowned cartoonists have made significant contributions to the field. R.K. Laxman, Shankar, O.V. Vijayan etc., are some of the famous Indian Cartoonists. Pandit Jawaharlal Nehru, the First prime Minister of India was known for his appreciation of Cartoonist Shankar's work. Shankar's Cartoon often appeared in Hindustan Times and Pandit Nehru would regularly write views praising his wit and insight. Panditji once said 'Don't spare me Shankar' encouraging the Cartoonist to continue his sharp criticism through his art. Panditji believed that Cartoons like Shankar's played a vital role in a democratic society holding leaders accountable and sparking important discussions. Therefore, the Cartoonists are also part and parcel of the press and media, and the cartoonists are also entitled to the freedom of expression guaranteed by Article 19(1)(a) of the Constitution. The fundamental right allows them to express their opinions, ideas, and creativity through cartoons, caricatures, and other forms of visual art. However, this freedom is subject to reasonable restriction under Article 19(2) of the Constitution, which permits the State to impose limitations on freedom of expression in the interest of sovereignty

and integrity of India, security of the State, friendly relation with foreign States, public order, decency or morality, contempt of court, defamation, incitement to an offence etc. But a small picturization of a cartoonist will speak volumes. In other words, writing an article in several pages can be reduced to a small caricature by a cartoonist which will convey the same message. That is the beauty of Cartoon and the Cartoonist.

8. Coming back to the facts in this case, admittedly, the cartoon in which the father of the Nation with the National Flag was picturised on the 70th year of Indian Independence ie, on 15.08.2017. Annexure C is the front page of Malayala Manorama dated 15.08.2017. On the first page of Annexure-C, '70' is written by the Cartoonist, in which, below the top parallel portion of the number '7', the National Flag is picturised and the zero ('0') is picturised as the father of the Nation 'Mahatma' in an artistic manner. The Cartoon, with a small curved line connecting these two, shows that the Mahatma is carrying the flag. Whether this amounts to an offence under section 2 of the Act, 1971 is the question.

9. The Prevention of Insults to National Honour Act, 1971 was enacted by the Parliament in the 22nd year of Republic of India. The Act starts with the sentence “An Act to prevent insults to national honour”. 'Insult' is not defined in the Act. Therefore this Court has to take the ordinary meaning of 'Insults'. 'Insults' refer to derogatory or demeaning remarks, comments or actions intended to offend or humiliate someone, lower someone's self-esteem or dignity or provoke anger or hostility or show contempt or disrespect. Therefore, the Act 1971 is to prevent insults to national honour which means, the intention on the part of a person to insult the national honour is the main ingredient to attract the provisions of Act 1971. Unless there is a deliberate action with an intention to insult the national honour, the provisions of the Act 1971 is not attracted.

10. Now the question to be decided is whether the Cartoon published in the daily is with an intention to insult the national flag or the father of the Nation. As I mentioned earlier, the Cartoon was published in the first page of Malayala Manorama daily 15.08.2017 in connection with the 70th Anniversary of Indian Independence.

According to me the cartoon clearly conveys the message of the 70th Independence Anniversary to its readers. I am of the considered opinion that it is one of beautiful picturisation of the 70th Independence Anniversary for which the cartoonist deserves encomium. As I mentioned earlier, the number '70' is written by the Cartoonist, in which, below the top parallel portion of the number '7', the National Flag is picturised and the zero ('0') is picturised as the father of the Nation 'Mahatma' in an artistic manner. The parallel top portion of the number "7" is treated as a black border to the saffron portion of the National Flag by the prosecution to attract the offence. It is a far fetched imagination of the prosecution. Moreover, in the editorial page of the newspaper, which is produced as Annexure-D, several historians, writers, film directors etc wrote about the importance of Independence and the achievement of India during the 70 years after the Independence. Therefore it is abundantly clear that the intention of the newspaper is to celebrate the 70th Independence Day of India. Annexure-E is the Metro Manorama published in Kozhikode on the same day. There also, the importance of Kozhikode during the freedom fight

days is mentioned. Of course, the National flag carried by the people was also picturised by the cartoonist here also.

11. On going through this news along with the cartoon, I am of the considered opinion that, there is absolutely no intention on the part of the petitioners to insult either the national flag or the father of the Nation. The newspaper is trying to celebrate the 70th anniversary of Indian Independence with its readers and several information and articles are there in the 70th Independence Anniversary edition of Malayala Manorama. We have to appreciate the newspaper for such an edition and not prosecute the newspaper. Without considering the positive aspects of this 70th Independence Anniversary celebration edition of the newspaper, the prosecution is researching to find out negatives in it. There is a Malayalam word “ദോഷൈകദ്രിക്” (Doshaikadrik) which means a person who sees only the evil side of things. The word is almost similar to the English word, 'hypercritical'. In one of the Malayalam movies (Njan Prakashan) directed by the famous director, Sathyan Anthikad, this behavior of some of the Malayalees is sarcastically described. After taking a delicious "sadya" (feast) in

which there is nothing to complain about, the character blames the inadequacy of vegetable pieces in 'Sambar' (a vegetarian curry in south India). They are called as "ദോഷൈകദ്രക" (Doshaikadrik). I leave it there without blaming anybody because there is a person like "ദോഷൈകദ്രക" in all our minds. Our effort should be to restrain such behaviour.

12. I am of the considered opinion that the prosecution against the petitioners is absolutely unnecessary in the facts and circumstances of the case. Whether an act attracts the offence under Section 2 of the Act 1971 is to be decided based on the factual situation of that case and the intention behind the person making the alleged insults. Section 2 of the Act 1971 is extracted hereunder:

“2. Insults to Indian National Flag and Constitution of India.—Whoever in any public place or in any other place within public view burns, mutilates, defaces, difiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.”

12. Hence, the offence is attracted when a person in any public place or in any other place within public view burns, mutilates, defaces, difiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt whether by words, either spoken or written, or by acts the Indian National Flag or the Constitution of India or any part thereof with an intention to insult it. The Act itself is made to prevent insults to national honour. There is absolutely no insult to the national honour or to the father of the Nation in the caricature created by the cartoonist which is published by the petitioners in the special edition of the newspaper on the 70th anniversary of Indian Independence.

13. The upshot of the above discussion is that the prosecution against the petitioners is an abuse of process of the court.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioners in C.C.No.199/2018 on the file of the Judicial First Class Magistrate Court-IV, Kozhikode are quashed.

Sd/-
P. V. KUNHIKRISHNAN
JUDGE

APPENDIX OF CRL.MC 4384/2019

PETITIONER ANNEXURES

- ANNEXURE A TRUE COPY OF THE FIR NO.634/2017
DTD.24.08.2017 OF NADAKKAVU POLICE STATION
- ANNEXURE B TRUE COPIES OF THE SUMMONS DTD.24.5.2018
ISSUED BY THE JFCM COURT NADAKKAVU TO THE
PETITIONERS
- ANNEXURE C TRUE COPY OF THE 1ST PAGE OF THE MALAYALA
MANORAMA DAILY DTD.15.08.2017
- ANNEXURE D TRUE COPIES OF PAGE 12 AND 13 OF MALAYALA
MANORAMA DAILY DT.15.08.2017
- ANNEXURE E TRUE COPY OF THE METRO MANAORAMA
DTD.15.8.2017