



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 1ST DAY OF JULY 2024 / 10TH ASHADHA, 1946

CRL.MC NO. 5375 OF 2022

AGAINST THE PROCEEDINGS IN ST NO.4540 OF 2019 ON THE FILES OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERRY, THRISSUR
DISTRICT

PETITIONER/ACCUSED NO.16:

O. ABDUL RAHIMAN
AGED 74 YEARS
S/O. ODUNGAT MOYIN, KUNNATHODI HOUSE,
CHENNAMANGALLUR P.O., MUKKAM VIS., KOZHIKODE DISTRICT,
PIN - 673 602.
EDITOR, MADHYAMAM MALAYALAM DHINAPATHRAM, THRISSUR
DISTRICT, PIN - 673602
BY ADV K.RAKESH

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031
- 2 SREEKUMARI
AGED 55 YEARS
W/O. GOPALAKRISHNAN, KRISHNAGIRI HOUSE,
PATTIPARAMBU DESOM, THIRUVILLAMALA VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT, PIN - 680588
BY ADVS.
PUBLIC PROSECUTOR
SAJITH KUMAR K
K.SHIBILI NAHA(S-1714)

PP - NIMA JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
01.07.2024, ALONG WITH CRL.MC.9355/2023, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 1ST DAY OF JULY 2024 / 10TH ASHADHA, 1946

CRL.MC NO. 9355 OF 2023

IN ST NO.4540 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS,

VADAKKANCHERRY

PETITIONER/ACCUSED NO.17:

FAROOK T.K.
AGED 57 YEARS
S/O. ABDULLA T.K., ILLATHANKANDI HOUSE,
CHEIRYA KUMBALAM, PALERI, KOZHIKODE,
PRINTER AND PUBLISHER, MADHYAMAM MALAYALAM DAILY,
THRISSUR, PIN - 673508
BY ADV K.RAKESH

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031
- 2 SREEKUMARI
W/O. GOPALAKRISHNAN, KRISHNAGIRI HOUSE,
PATTIPARAMBU DESOM, THIRUVILLAMALA VILLAGE,
THALAPPILLY TALUK, PALAKKAD DISTRICT, PIN - 680588

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
01.07.2024, ALONG WITH CRL.MC.5375/2022, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

**“C.R”****COMMON ORDER****Dated this the 1st day of July, 2024**

These Criminal Miscellaneous Cases have been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings in S.T. No.4540 of 2017 (originally referred in these cases as S.T. No.4540 of 2019 and subsequently corrected) on the files of the Judicial First Class Magistrate Court, Wadakkanchery. The petitioners herein are accused Nos.16 and 17 in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, in detail. Though, notice was served to the 2nd respondent, she did not appear. Perused the relevant documents including the decisions placed by the learned counsel for the petitioners.

3. In this matter, the prosecution allegation is that the accused No.16, who is the editor and accused No.17, who is the printer and publisher of Madhyamam daily published a news item on 06.07.2016 in Madhyamam news paper as against the 2nd respondent stating that the wife of one Jayakumar, who is the 1st accused in the above crime,



died due to the harassment of the 2nd respondent. The publication has been extracted in paragraph no.5 of the private complaint. The same is as under:

"യുവതിയുടെ മരണം അയൽക്കാരിയുടെ പീഡനം മൂലമെന്ന് , അറസ്റ്റ് ചെയ്യാതെ സംസ്കരിക്കില്ലെന്ന് ബന്ധുക്കൾ. ഒടുവിൽ വഴങ്ങി '

തിരുവിലാമല : യുവതിയുടെ ആത്മഹത്യ സാമ്പത്തിക ബാധ്യതയും അയൽക്കാരിയുടെ മാനസിക ശാരീരിക പീഡനം മൂലമെന്ന് ബന്ധുക്കളും നാട്ടുകാരും. പട്ടിപറമ്പ് കാക്കശ്ശേരികളും ജയകുമാറിന്റെ ഭാര്യ പ്രിയയാണ് (41) തിങ്കളാഴ്ച രാവിലെ വീടിനുള്ളിൽ തൂങ്ങി മരിച്ചത് . പ്രിയ അയൽക്കാരിയായ എൽ. പി. സ്കൂളിലെ ടീച്ചറുടെ കൈയിൽ നിന്ന് 30,000/ രൂപ പലിശക്ക് വാങ്ങിയിരുന്നു. ഇരട്ടിയിലധികം രൂപ മടക്കി നൽകി. പീനീട് പ്രിയയെ ശീതളപാനീയത്തിൽ മയക്കി നഗ്നഫോട്ടോ എടുത്തുവെന്നും പീഡിപ്പിച്ചുവെന്നും പറയുന്നു. ഇന്റർനെറ്റിൽ പരസ്യപ്പെടുത്തുമെന്ന് പറഞ്ഞ് ലക്ഷങ്ങൾ തട്ടിയെന്നും ഭർത്താവ് ജയകുമാർ പറഞ്ഞു. പഴയന്നൂർ സ്റ്റേഷനിൽ പരാതിപ്പെട്ടെങ്കിലും കേസെടുത്തില്ല . അയൽക്കാരിയെ അറസ്റ്റ് ചെയ്യാത്തതിൽ നാട്ടുകാർ പ്രതിഷേധിച്ചു. അയൽക്കാരിയെ അറസ്റ്റ് ചെയ്യാതെ സംസ്കരിക്കില്ലെന്ന് ബന്ധുക്കൾ വാശി പിടിച്ചു . ഒടുവിൽ സ്ഥലത്തെത്തിയ സി. ഐ. വിജയകുമാർ അയൽക്കാരിയായ കൃഷ്ണഗിരി ഗോപാലകൃഷ്ണന്റെ ഭാര്യ ശ്രീകുമാരിയെ കസ്റ്റഡിയിലെടുത്ത ശേഷമാണ് മൃതദേഹം സംസ്കരിച്ചത് . ശ്രീകുമാരിയെ ചോദ്യം ചെയ്തു വരുന്നതായി പോലീസ് അറിയിച്ചു. പ്രിയയുടെ മകൻ രാഗേഷ്" എന്ന വാർത്ത പ്രസിദ്ധീകരിച്ചിട്ടുള്ളതാണ് .

4. While canvassing quashment of the proceedings as against accused Nos.16 and 17, the learned counsel for the



petitioners placed decisions of this Court referring the decisions of the Apex Court dealing with the essentials to constitute an offence under Section 499 of IPC and fervently argued that the offence as against the petitioners not at all made out.

5. The learned counsel for the petitioners placed the decision reported in **Mammen Mathew v. M.N. Radhakrishnan and Another** [2007 (4) KHC 502 : 2007 (2) KLD 523 : ILR 2007 (4) Ker 406 : 2007 (4) KLT 833 : 2008 (1) KLJ 98 : 2008 CriLJ 845]. In the said decision this Court analyzed the essential ingredients to constitute an offence under Section 499 of IPC in paragraph No.9 as under:

“9. The offence of defamation consists of three essential ingredients, namely,--

(1) making or publishing an imputation concerning a person

(2) such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations and

(3) the said imputation must have been made with the intention to harming or with knowledge or having reason to believe that it will harm the reputation of the person concerned.

(Vide -- Sunilakhya Chowdhury v. H. M. Jadwet and Another, AIR 1968 Calcutta 266). Thus, the



mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned. By no stretch of imagination could it be said that Annexure B news item was published with the intention of harming the reputation of the complainant. If it were so, then as soon as the complainant voiced his protest, the first accused would not have published Annexure C news item faithfully conveying to the public what the complainant had represented to the Malayala Manorama Daily. Merely because in the reply to the lawyer notice the first accused had informed the complainant that the correspondent of Malayala Manorama was present when the agitating employees gave the information to Malayala Manorama, it cannot be said that a case has been made out for evidence. The important aspect is to be examined is as to whether Annexure A complaint together with the news item prima facie makes out the offence under S.499 IPC. A reading of Annexure B news item does not give the impression that it was actuated by any malevolent motive or a desire to calumniate or cast aspersions on the complainant or to expose him to public ridicule or to inflict even the slightest injury to his reputation. If so, it will be an abuse of



the process of Court to drag the first accused to face the ordeal of a trial.”

6. Dealing with the above case, this Court held as under:

“Thus, even going by the averments in the complaint, the Editor is not responsible either for making or publishing the news. If only, the first accused had a role in the making or publishing of the news item, can he be prosecuted for the offence. Hence, even if the complaint as well as the offending news item could constitute an imputation made with the intention of harming the reputation of complainant, such complaint would not be maintainable against a person like the first accused who had no role either in the making or in the publishing of the imputation.”

7. Another decision of this Court reported in ***K.M. Mathew v. Nalini*** [1988 KHC 576 : 1988 (2) KLT 832] has been placed to contend that in the absence of materials to show that the Chief Editor was responsible for selecting the materials, he could not be liable to be proceeded for the offence under Section 499 of IPC. In the said decision, this Court referred the decisions of the Apex Court in



C.H. Mohammed Koya v. Muthu Koya [AIR 1979 SC 154],
State of Maharashtra v. Choudhury [AIR 1968 SC 110]
and **D.P. Mishra v. K.Sharma** [AIR 1971 SC 856] and held
in paragraph No.10 to 14 as under:

"10. The words of the Supreme Court in Mohammed Koya's case bear repetition. Rejecting a like contention the court observed:

".....it is not even pleaded in the petition, much less proved, that the appellant being the Chief Editor, it was part of his duty to edit the paper and control the selection of the matter that was published....." "Petitioner himself has not at all anywhere pleaded that appellant was the editor, nor has he mentioned the duties or responsibilities which were performed by the appellant as Chief Editor as to bring him within the fold of S.1 of Press Act"....."Petitioner has miserably failed to prove either that appellant was the editor of the paper or that he was performing the functions, duties or shouldering the responsibilities of the editor. It is obvious that a presumption under S.7 of the Press Act could be drawn only if the person concerned was an editor within the meaning of S. 1 of the Press Act. Where however a person does not fulfil the conditions of S: 1 of the Press Act, and



does not perform the functions of an editor, whatever may be Ms description or designation, the provisions of the Press Act would have no application". (emphasis supplied)

It is useful to notice another passage from the decision of the Supreme Court cited supra, to the effect that:

"Where a person is not shown in the newspaper to be its Editor, no such presumption under S.7 of the Press Act can be drawn, but it must be held that he has no concern with the publishing of the article..... Chief Editor is an office which is, not at all contemplated by the Press Act". (emphasis supplied)

It is now necessary to notice the definition of Editor. S.1(1) reads: "Editor means the person who controls the selection of the matter that is published in the newspaper".

Thus, the definition of the 'Editor' is functional. The functions being controlling selection of matter.

11. The law declared by the Supreme Court is that, whether a person is 'editor' is a matter of pleading and not presumption, that 'Chief Editor is not all an office contemplated by the Press Act', that the "mere mention of the name of the Chief Editor is neither here nor there", that an editor is a person who selects



the material, and that the editor is the only legal entity recognised, T cannot accept the contention that a presumption must be raised that the respondent.

“need not specifically mention in the complaint that he is the person who selected the material for publication”.

12. From the foregoing discussion, petitioner does not answer the description of an 'editor' and there is no material whatsoever in the complaint or in the rejoinder affidavit, to suggest that a prima facie case is made out or that the complaint is maintainable against the petitioner.

13. The inherent jurisdiction must be used to prevent abuse of process of court. The text to decide whether complaint should be quashed, is indicated by the Supreme Court in Municipal Corporation of Delhi v. Ram Kishan (1983 (1) SCJ 228):

"Test is that taking the allegation add the complaint as they are without adding or subtracting anything, if no offence is made out. then the High Court will be justified in quashing the complaint".

In the instant case, much will have to be added to the complaint, if even prima facie an offence is to be inferred. In Chandrapal Singh's Case (1982 (1) SCC 466), in the same context



Supreme Court warned:

"Chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking the jurisdiction of criminal court". Being asked to stand a trial, when there is no basis therefore, could be agonising. It could even lead to loss of faith in the institution. Proceeding with complaints for which there are no basis has been viewed with disfavour by the highest court, lest courts which are the temples of justice turn out to be instruments of harassment and vengeance.

14. Having regard to paucity of pleadings and material, to suggest that even a prima facie case is made out against the petitioner, and in the circumstances indicated above the complaint against the petitioner is not maintainable. I think that this is a fit case for exercising the inherent jurisdiction under S.482 of the Code of Criminal Procedure. Accordingly, the complaint in C.C. 147/86 in so far as it relates to the petitioner herein, is quashed. The learned Magistrate will proceed with the case, against the other accused."

8. The learned counsel for the petitioners also placed another decision of this Court reported in **John Brittas v. Babu** [(2021) 0 CrLJ 1402 : (2021) 2 KLT 544 :



(2021) 0 Supreme (Ker) 259] to contend that positive averments against the petitioners in the complaint to attribute their specific role in committing the alleged offence should be made in the complaint. The fact dealt in the above decision is extracted in paragraph No.3 of the said decision. The same is as under:

“3. The aforesaid case is one instituted upon the complaint filed by the first respondent (hereinafter referred to also as the complainant:) against nine persons including the petitioner. The material averments in the complaint are as follows: The complainant was the Additional Sub Inspector of the Pathanamthitta Police Station. On 16.03.2015, when he was checking vehicles at the M.L.A. Road at Chemmannur, he stopped the motor cycle driven by the first accused. The second accused was the pillion rider of the motor cycle. The complainant directed the first accused to pay a fine of Rs.100/- for not wearing the helmet while riding the motor cycle. He paid the amount and received the receipt but a wordy altercation took place. The first and the second accused told the complainant that they were persons from a television channel and they threatened him. The second accused took video pictures of the



complainant. On that day, at 13:30 hours, visuals of the complainant opening the zipper of his trouser in front of the first and the second accused were telecast in the Fox television channel with the caption hero of the blue film. The complainant had not committed any such act. The telecast was repeated on several days in the aforesaid television channel with a view to defame the complainant.”

9. Finally in paragraph Nos. 17 and 18 this Court held as under:

“17. It is incumbent upon the complainant to make specific allegations as to how and on what basis each of the accused has committed the offences alleged. Merely because an accused happens to be the Managing Director of a company, it would not make him vicariously liable for the acts of the employees of the company. Distinct and separate allegation qua each of the accused as to how he is responsible or as to his specific role in the commission of the offence has to be made in the complaint.

18. In the instant case, the complainant has failed to make positive averments against the petitioner in the complaint and attribute to him any specific role in committing the



alleged offence. It is not stated as to how the petitioner was involved or was responsible for the broadcast of the defamatory matter against the complainant. Merely because a person is alleged to be the Managing Director of a company which owns a television channel, he cannot be held responsible for defamation on account of broadcasting defamatory material unless it is specifically alleged that he is personally or individually responsible for such publication.”

10. Summarizing the legal position as regard the ingredients to attract an offence under Section 499 of IPC punishable under Section 500 of IPC in **Mohd. Abdulla Khan v. Prakash K** [(2018) 1 SCC 615 : (2018) 1 SCC (Cri) 255 : AIR 2017 SC 5608 : (2018) 181 AIC 5 : (2018) 1 Cal LJ 117 : 2018 Cri LJ 924 : (2018) 1 KCCR 321 : (2018) 1 ECrN 171], it is held that in order to constitute offence of defamation, the ingredients are; (i) a person to make some imputation concerning any other person; (ii) such imputation must be made either (a) with intention, or (b) knowledge, or (c) having a reason to believe that such an imputation will harm the reputation of the person against whom the imputation is made. (iii) imputation could be, by



(a) words, either spoken or written, or (b) by making signs, or (c) visible representations (iv) imputation could be either made or published. Under the said provision, the lawgiver has made the making or publishing of any imputation with a requisite intention or knowledge or reason to believe, as provided therein, that the imputation will harm the reputation of any person, the essential ingredients of the offence of defamation.

11. Adverting the ingredients extracted hereinabove and the principles settled as per the decisions referred above, in the instant case, a news was published stating that a young lady, who is the wife of one Jayakumar committed suicide due to financial crisis and due to mental persecution of her neighbor. The profession of the neighbor was stated as an L.P. School Teacher. It was alleged that the neighbor took nude photos of the lady who committed suicide. The husband of the lady, who committed suicide made complaint before the Pazhayannoor Police Station in this regard, but no case registered. Then, people of the locality protested and resisted the burial of the dead body, without arresting the neighbor. Thereafter, C.I. Vijayakumar reached the place and arrested the neighbor. The names of



the neighbor and her husband were disclosed in the news published. The crucial question herein is whether the petitioners herein published such a news with a requisite intention or knowledge or reason to believe that the imputation would harm the reputation of the neighbor/2nd respondent. Reading the alleged imputation, what is reported is the protest by the people in the locality and the allegation raised by them for the said protest. That apart, Jayakumar stated that he had given complaint also before the Police in this regard. Later, C.I. of Police reached and arrested the lady.

12. In such a case, it could not be held that the editor and publisher, who published the news, published the same with a requisite intention or knowledge or reason to believe that the imputation would harm the reputation of the neighbor, in any manner and as such no offence under Section 499 of IPC, *prima faice*, made out against the petitioners.

13. Therefore, the proceedings as against the petitioners are liable to be quashed for want of the requisite intention or knowledge or reason to believe that the imputation would harm the reputation of the 2nd respondent,



in any manner. In the result, these petitions stand allowed and all further proceedings in S.T. No.4540 of 2017 on the files of the Judicial First Class Magistrate Court, Wadakkanchery, stand quashed as against the petitioners/accused Nos.16 and 17.

Registry is directed to forward a copy of this order to the trial court, within three days, for information and further steps.

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.MC 9355/2023

PETITIONER ANNEXURES :

- | | |
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| Annexure A | A TRUE COPY OF THE PRIVATE COMPLAINT
FILED BY THE 2ND RESPONDENT BEFORE THE
J.F.C.M, WADAKKANCHERY DATED 20-5-2017 |
| Annexure B | A TRUE COPY OF ORDER DATED 10-08-2022 OF
THIS HON'BLE COURT IN
CRL.M.C.NO.5375/2022 |

RESPONDENTS' ANNEXURES : NIL



APPENDIX OF CRL.MC 5375/2022

PETITIONER ANNEXURES :

**Annexure A CERTIFIED COPY OF THE PRIVATE COMPLAINT
FILED BY THE 2ND RESPONDENT BEFORE THE
J.F.C.M, WADAKKANCHERY DATED 20-5-2017**

RESPONDENTS' ANNEXURES : NIL