



2024/KER/58416

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 1<sup>ST</sup> DAY OF AUGUST 2024/10TH SRAVANA, 1946

CRL.MC NO. 4223 OF 2022

CRIME NO.1222/2014 OF Payyannur Police Station, Kannur  
CC NO.250 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST  
CLASS, PAYYANNUR

PETITIONER/ACCUSED NOS.1 & 2:

- 1 SUNIL P.P, AGED 55 YEARS  
SON OF KUNJAMBU, PUTHIYAPURAYIL HOUSE,  
VELLACHAL, KODAKKADU, KASARAGOD DISTRICT NOW  
RESIDING AT THRICHAMBARAM, THALIPARAMBU P.O,  
KANNUR DISTRICT, PIN - 670141.
- 2 SUBAIR.K, AGED 58 YEARS  
SON OF T.K. ABOOBACKER, KOLAYATHU HOUSE,  
NEAR GOV.HOSPITAL, KARUVALOOR P.O,  
KANNUR DISTRICT, PIN - 670521.

BY ADVS.  
I.V.PRAMOD  
K.V.SASIDHARAN  
SAIRA SOURAJ P.

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031.
- 2 SUNITHA P.M  
AGED 28 YEARS  
WIFE OF JAYESH E.K, POYINACHI MOTTAYIL HOUSE,  
VISWAKARMA NIVAS, KONATHAVAYAL, EDACHAKAI,  
UDDINOOR AMSOM & P.O, KASARAGOD-671349.

BY ADVS.  
M.BAIJU NOEL  
T.S.LIKHITHA(K/000211/2018)  
SHINTO SABASTIAN(K/000736/2022)  
PUBLIC PROSECUTOR SRI M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
22.07.2024, THE COURT ON 01.08.2024 PASSED THE  
FOLLOWING:



***A. BADHARUDEEN, J.***

=====  
*Crl.M.C.No.4223 of 2022-G*  
=====

*Dated this the 1<sup>st</sup> day of August, 2024*

***O R D E R***

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, to quash Annexure-1 complaint, Annexure-2 FIR and Annexure-3 final report in C.C.No.250/2017 on the file of Judicial First Class Magistrate Court, Payyannur, in Crime No.1222/2014 of PYYnnue Police Station.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor in detail.

3. I have perused Annexures-A1 to A3, which are under challenge.

4 The prosecution allegation herein is that the petitioners/accused committed offences punishable under Sections 354(C) of the Indian Penal Code ('IPC' for short) and Sections 66(E) and 67 of the Information Technology Act ('I.T



Act' for short). The specific allegation is that the defacto complainant undergone cesarean operation in between 11.13 hours and 11.16 hours on 18.07.2014 and gave birth to 3 children at Government Taluk Hospital, Payyannur.

5. The 1<sup>st</sup> accused videographed the same and forwarded the same to WhatsApp groups. The 2<sup>nd</sup> accused also photographed 19 photos of the defacto complainant and forwarded the same to CW17. As part of the investigation, those items were recovered by the police from the mobile phones as well as from the Tab of the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively.

6. The learned counsel for the petitioners vehemently canvassed quashment on the submission that the prosecution records in no way justify commission of the above offences by the accused and the identity of the victim could not be known from the so called materials collected from the mobile phone and the Tab.

7. Whereas the learned Public Prosecutor fervently opposed quashment of the proceedings on the



submission that in this case when the defacto complainant undergone cesarean procedure, the accused had videographed and photographed the same and thereafter they had shared the videographs and photographs through WhatsApp and thereby they outraged the modesty of the defacto complainant and committed offences punishable under Section 66(E) of the IT Act. Therefore quashment sought for cannot be considered in this case, where prosecution materials are in plenty, *prima facie*, warranting trial of the case.

8. On perusal of the prosecution records along with statements of the witnesses as well as the records collected during investigation, it could be gathered, *prima facie*, that the 1<sup>st</sup> accused videographed the cesarean procedure in between 11.13 hours and 11.16 hourson 18.07.2014 and the 2<sup>nd</sup> accused also took 19 photographs of the cesarean procedure and sent the same to CW17 through WhatsApp. That apart, the WhatsApp videographs and photographs of the cesarean procedure sent by the accused were collected during investigation to justify the



involvement of the petitioners in this crime, *prima facie*. Thus the matter shall go for trial, and, therefore, the quashment sought for cannot be considered. In such a case, involving very serious offences, quashment of the proceedings could not be resorted to. Hence this petition fails and is accordingly dismissed.

9. Therefore, the quashment, as prayed for, stands disallowed, with liberty to the petitioners to raise their contentions before the trial court during trial.

10. In the result, this petition is dismissed.

11. Interim order shall stand vacated.

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

*Sd/-*

**(A. BADHARUDEEN, JUDGE)**

