



2024:KER:77152

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 15TH DAY OF OCTOBER 2024 / 23RD ASWINA, 1946

CRL.MC NO. 5158 OF 2020

CRIME NO.373/2016 OF KODAKARA POLICE STATION, THRISSUR

IN C.C. NO.1244 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT ,

IRINJALAKUDA

PETITIONER/ACCUSED:

VINIL
AGED 43 YEARS
S/O.PAUL, KOCHIEKKADAN HOUSE, KODAKARA DESOM,
THRISSUR - 680684.

BY ADVS.
C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENTS/COMPLAINANT & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTING PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.
- 2 CHITHRA
W/O.LIJO, AGED 40 YEARS, KUTTIKADAN HOUSE, KOFAKARA,
THRISSUR - 680 684.
BY ADV SRI.L.RAJESH NARAYAN
SR PP - RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30.09.2024,
THE COURT ON 15.10.2024 PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 15th day of October, 2024**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure.A1 FIR and Annexure.A2 Final Report in Crime No.373/2016 of Kodakara Police Station, Thrissur, now pending as C.C. No.1244/2016 on the files of the Judicial First Class Magistrate Court, Irinjalakkuda. The petitioner herein is the sole accused in the above case.

2. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel appearing for the defacto complainant, in detail. Perused the relevant materials available.

3. In this matter, the allegation of the prosecution is that, at 10.00 am on 17.03.2016, the accused pursuant to his animosity towards the defacto complainant for questioning cleaning of the boundary of the property, which is under dispute, used obscene words against the



defacto complainant and threw a stone to her and thereby caused abrasion on her hand and also threatened to kill her. It is on this premise, the prosecution alleges commission of offences punishable under Sections 324, 294(b) and 506(i) of Indian Penal Code [hereinafter referred as 'IPC' for short].

4. While canvassing quashment of the case alleging commission of offences punishable under Sections 324, 294(b) and 506(i) of IPC, it is submitted by the learned counsel for the petitioner that, a rift in between the neighbors led to registration of this case as well as the counter case, which has been pending as C.C. No.2879/2016 on the files of the Judicial First Class Magistrate Court, Irinjalakuda. It is argued further that, when the 2nd respondent herein, who is the accused in C.C. No.2879/2016 approached this Court, with prayer to quash the said proceedings, this Court as per Annexure.A4 order dated 02.06.2020 in CrL.M.C. No.6168/2017, quashed the Final Report to the extent the same alleged commission of offences punishable under Sections 324, 294(b) and 506(i) of IPC against the 2nd respondent herein



and held that the 2nd respondent was liable to stand trial for the offence punishable under Section 323 of IPC alone.

5. According to the learned counsel for the petitioner, since this Court quashed offences under Sections 324, 294(b) and 506(i) of IPC in C.C. No.2879/2016, arose out of the same sets of facts, the present case on the same facts also, the offences under Section 294(b), 506(i) and 324 of IPC are liable to be quashed and the trial may be limited in so far as the offence under Section 323 of IPC alone, so as to have parity in between the parties, who are facing trial arose out of the same occurrence, where allegations are substantially the same.

6. Opposing quashment sought for, the learned Public Prosecutor would submit that, going by the FIS, use of abusive words at the courtyard of the house of the defacto complainant and threat to kill her as well as causing hurt by using a stone by the accused are the allegations and the offences are *prima facie* made out. Therefore, quashment cannot be considered.

7. Perusing Annexure.A4 order, it is discernible that



in paragraph No.5, the learned Single Judge of this Court opined as under:

In my opinion, having regard to the nature of weapon used, no charge under Section 324 IPC can sustain. In order to attract an offence under the said Section, the weapon used must be for shooting, stabbing, cutting or it must be an instrument which, used as a weapon of offence, is likely to cause death etc. Having considered the facts on record, the nature of weapon used as well as the place where the simple injury was allegedly caused do not persuade me to assume that an offence punishable under Section 324 IPC could have been committed by the petitioner. In my view, at the most, the petitioner could be charged only with an offence punishable under Section 323 IPC.

8. The said finding has been given much emphasis by the learned counsel for the petitioner, while canvassing trial for Section 323 of IPC alone in the present crime, after quashing all other offences. In so far as the offence punishable under Section 324 of IPC is concerned, the same provides as under:



324. Voluntarily causing hurt by dangerous weapons or means.—

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. Section 118(1) of Bharatiya Nyaya Sanhita, 2023 [hereinafter referred as 'BNS' for short] is the provision analogous to Section 324 of IPC. The same also is as under:

118. Voluntarily causing hurt or grievous hurt by dangerous weapons or means.-(1) *Whoever, except in the case provided for by sub-section (1) of section*



122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

10. Section 319 of IPC and Section 114 of the BNS deals with hurt and the same covers causing bodily pain, disease or infirmity to any person.

11. As per Section 324 of IPC, voluntarily causing hurt, except in the case provided for by section 334 of IPC, by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any



corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, is an offence.

12. Reading Section 324 of IPC as well as under Section 118(1) of the BNS, it is clear that, voluntarily causing hurt by means of any instrument which used as a weapon of offence is likely to cause death, would attract offence under Section 324 of IPC.

13. Here there is specific allegation of calling abusive words, somewhere near the public place, *prima facie* and also there is allegation as to threat at the instance of the petitioner/accused. The records considered by this Court, while passing Annexure.A4 order are not before this Court, to find out whether Annexure.A4 order was passed on similar sets of facts. The decision of this case shall be based on the facts of this case.

14. Here, the question arises for consideration is, whether a stone can be treated as a weapon of offence likely to cause death? In the decision reported in ***Mathai***



v. State of Kerala [2005 (3) SCC 260], the Apex Court held that, *the expression “any instrument which, used as a weapon of offence, is likely to cause death” has to be gauged, taking note of the heading of the section. What would constitute a “dangerous weapon” would depend upon the facts of each case and no generalization can be made.* In another decision reported in **Nanda Gopalan v. State of Kerala** [(2015) 11 SCC 137], after referring **Mathai’s** case (supra) as well as the decision reported in **Dasan v. State of Kerala** [(2014) 12 SCC 666 : (2014) 5 SCC (Cri) 186], the Apex Court held that, the facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in a case, offences under Sections 323, 324, 325 or 326 would apply.

15. Thus, the nature of the stone, the size and sharpness of the same and the manner in which the stone was used, in the process of assault for inflicting injury, would decide whether the stone is a weapon likely to cause death. The Division Bench of this Court in the



decision reported in ***Joy v. State of Kerala*** [2014 (1) KHC 414] also affirmed the said view.

16. Thus, it has to be held that a stone would also come within the purview of a weapon of the offence likely to cause death, depending upon the nature of the stone, the size and sharpness of the said stone and the manner in which the stone was used in the process of assault for inflicting injury. These aspects can be considered by the trial court during trial of the case visualizing those aspects.

17. In view of the above, at the time when a Court considering quashment of criminal proceedings including offence punishable under Section 324 of IPC, without the support of the evidence tendered, merely it was alleged that, hurt was caused by using a stone, it is difficult to hold that the offence punishable under Section 324 of IPC would not attract. But, on evidence, depending on the nature of the stone, the trial court can decide whether the particular stone used in a particular case to be considered as a weapon of offence likely to cause death or not. Here, there is allegation that the injury was caused by the



accused using of a stone. Therefore, it cannot be held *prima facie* that no offence punishable under Section 324 of IPC would attract in the facts of this case.

18. Having considered the facts of the case, the offences alleged by the prosecution punishable under Sections 324, 294(b) and 506(i) of IPC, are made out, *prima facie*, and in such a case, there is no necessity to exercise power under Section 482 of the Code of Criminal Procedure, to quash the proceedings.

19. Therefore, this petition is liable to fail and the same is accordingly dismissed. Interim order of stay in this matter stands vacated.

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



APPENDIX OF CRL.MC 5158/2020

PETITIONER ANNEXURES

**ANNEXURE A1 CERTIFIED COPY OF FIR DATED 17/3/2016 IN CRIME
NO.373/16 OF KODAKARA POLICE STATION.**

**ANNEXURE A2 CERTIFIED COPY OF FINAL REPORT DATED 4/4/16 IN
CRIME NO.373/16 OF KODAKARA POLICE STATION.**

**ANNEXURE A3 TRUE COPY OF FIR DATED 18/3/2016 IN CRIME
NO.375/16 OF KODAKARA POLICE STATION.**

**ANNEXURE A4 TRUE COPY OF ORDER DATED 2/6/2020 IN
CRL.M.C.NO.6168/2017.**