



2024:KER:67835

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 5TH DAY OF SEPTEMBER 2024 / 14TH BHADRA, 1946

CRL.MC NO. 7031 OF 2015

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.26 OF

2015 OF CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

PETITIONERS/ACCUSED NOS. 1 TO 7:

- 1 JAISON
REPORTER, MATHRUBHUMI NEWS T.V CHANNEL,
REGISTERED AND HEAD OFFICE, P.P NO. 46,
KESAVAMENON ROAD, KOZHIKODE 673 001.**
- 2 MANGOSH
CAMERAMAN, MATHRUBHUMI NEWS T.V CHANNEL,
REGISTERED AND HEAD OFFICE, P.P NO. 46,
KESAVAMENON ROAD, KOZHIKODE 673 001.**
- 3 SMRUTHI PARUTHIKADAN
NEWS READER, MATHRUBHUMI NEWS T.V CHANNEL,
REGISTERED AND HEAD OFFICE, P.P NO. 46,
KESAVAMENON ROAD, KOZHIKODE 673 001.**
- 4 V.BHASKARA MENON
PRINTER AND PUBLISHER, MATHRUBHUMI PRESS,
REGISTERED AND HEAD OFFICE, P.P NO. 46,
KESAVAMENON ROAD, KOZHIKODE 673 001.**
- 5 M.KESAVA MENON
EDITOR, MATHRUBHUMI PRESS, REGISTERED AND
HEAD OFFICE, P.P NO. 46, KESAVAMENON ROAD,
KOZHIKODE 673 001.**



2024:KER:67835

- 6 MOHAN NAIR
CHIEF EXECUTIVE OFFICER, MATHRUBHUMI
PRESS, REGISTERED AND HEAD OFFICE, P.P NO.
46, KESAVAMENON ROAD, KOZHIKODE 673 001.
- 7 UNNI BALAKRISHNAN
EDITOR, MATHRUBHUMI PRESS, REGISTERED AND
HEAD OFFICE, P.P NO. 46, KESAVAMENON ROAD,
KOZHIKODE 673 001.

BY ADV C.P.UDAYABHANU

RESPONDENTS/COMPLAINANT:

- 1 A.G.KORAH
AGED 54 YEARS
S/O.LATE A.K.GEORGE, ANTHERIL HOUSE,
P.O MOOLAVATTOM, KOTTAYAM - 686 026.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY ADVS.
SRI.RENJITH.T.R, SR.PP
SRI.C.S.MANU - R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 05.09.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



2024:KER:67835

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.7031 of 2015

Dated this the 05th day of September, 2024

ORDER

Petitioners are the accused in C.C.No.26/2015 on the file of the Chief Judicial Magistrate Court, Ernakulam. The above case is filed by the 1st respondent against the petitioners alleging offences punishable under Sections 120B, 501 and 502 of the Indian Penal Code.

2. The 1st respondent is a Senior Geologist in the Department of Mining and Geology. The 1st petitioner herein is the Reporter of the Mathrubhumi News T.V. Channel. The 2nd petitioner is the Cameraman of the Channel. The 3rd petitioner is the News Reader of the T.V. Channel and 4th and



2024:KER:67835

5th petitioners are the printers and publishers of the Mathrubhumi daily. The 6th petitioner is the Chief Executive Officer of the Mathrubhumi News T.V. Channel and the 7th petitioner is the Editor of the Mathrubhumi News T.V. channel.

3. According to the 1st respondent, a news item telecasted and reported by the channel on 03.05.2013 is defamatory to him. Annexure-A1 is the complaint. According to the petitioners, even if the entire allegations are accepted, no offence is attracted and the petitioners were only doing a sting operation with bonafides. Therefore, there is no offence is made out, even if the entire allegations in Annexure-A1 is accepted, is the submission. Hence, this Criminal Miscellaneous Case is filed.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing



2024:KER:67835

for the 1st respondent.

5. It is the case of the 1st and 2nd petitioners that, they came to know that the 1st respondent was misusing his official position as Senior Geologist by accepting bribe for issuing mining passes. With a view to inform the same to the general public, the 1st petitioner posing as a miner and approached the defacto complainant for issuing mining pass, and the defacto complainant sought for a bribe of Rs.20,000/-.

6. It is further submitted that the 1st petitioner went to the lodge of the complainant and the act of complainant, accepting bribe of Rs.20,000/- was recorded visually. To expose the malafides of the complainant and to protect the general public, the act of the complainant in accepting the bribe was telecasted over the Mathrubhumi T.V.



2024:KER:67835

Channel on 03.05.2013. According to the petitioners, even if the entire allegations are accepted, the petitioners are exempted from prosecution because it is a sting operation without any malafides against the complainant.

7. The counsel for the 1st respondent takes me through the counter affidavit filed by the 1st respondent. The counsel submitted that, the contentions raised by the petitioners are all matters of evidence and this Court may not interfere with the prosecution. The counsel also submitted that the learned Magistrate passed a speaking order while taking cognizance and the same is not produced by the petitioners and the non-production of the said order and non-challenge of the said order itself is a reason to dismiss this CrI.MC. The counsel takes me through each and every contentions raised in the counter and also



2024:KER:67835

submitted that based on the above report in the TV Channel and the News Papers, an FIR was registered by the VACB, Thrissur Unit and the case was investigated by the Deputy Superintendent of Police. A final report is also filed as evident by Annexure-R1(a). It is submitted that, the Enquiry Commissioner and Special Judge, Thrissur considered Annexure-R1(a) final report and passed a detailed order accepting the final report as evident by Annexure-R1(b). Hence, it is submitted that the 1st respondent is justified in prosecuting the petitioners for defamation.

8. This Court considered the contentions of the petitioners and the 1st respondent. This Court in ***Pradeep v. State of Kerala*** [2024 (5) KHC 138], considered the validity of sting operation conducted by Press and Media people. This Court observed that, if there is no malafides behind the



2024:KER:67835

sting operation and there is no intention to target anybody, the Press persons cannot be prosecuted for sting operation. This Court considered all the relevant decisions and thereafter decide the matter. It will be better to extract the relevant portion of the aforesaid judgment:

“14. In the above judgment, the Apex Court observed that a 'sting operation' carried out in public interest has had the approval of the Court. But it is not the rule that, anybody can do 'sting operation' and escape from the legal consequences, if any, by saying that it was for the public interest. If such a view is taken, it will be a society where there is no law and order. But 'sting operation' by law enforcement agency and recognised media people is to be viewed in a different angle. But, there cannot be any uniform rule that all 'sting operation' conducted by the law enforcement agency and media is to be legalised. It is to be decided based on the facts in each case. If the sting operation is done by the press with any



2024:KER:67835

mala fide intention or to target a person individually and to humiliate him, there will not be any backing of law to the media person for such sting operation and the reporting based on such 'sting operation'. But if the 'sting operation' is to find out the truth and to convey the same to the citizen, without any malafide intention, the press is exempted from prosecution for such 'sting operation'. But the press should act with bonafides and their aim should be only to promote the democracy and their intention should be to find out the truth and not to harass or humiliate any person or any section of people or the government. The Apex Court in State of Kerala v. Malayala Manorama [1994 KHC 205] observed about the freedom of press in detail. The relevant portion is extracted hereunder:

"13. Freedom of press has always been a cherished right in all democratic countries, the newspapers not only purvey news but also ideas, opinions and ideologies besides much else. They are



2024:KER:67835

supposed to guard public interest by bringing to force the misdeeds, failings and lapses of the Government and other bodies exercising governing power. Rightly, therefore, it has been described as the Fourth Estate. The democratic credentials of a State is judged today by the extent of freedom the press enjoys in that State. According to Douglas, J. (An Almanac of Liberty) "acceptance by Government of a dissident press is a measure of the maturity of the nation". The learned Judge observed in Terminiello v. Chicago [(1949) 93 L.Ed. 113]: "A function of free speech under our system of Government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices, and preconception



2024:KER:67835

and have profound unsettling effects as it presses for acceptance of an idea There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardisation of ideas either by Legislatures, courts or dominant political or community groups". The said observations were of course made with reference to the 1st Amendment to the U.S. Constitution which express guarantees freedom of press but they are no less relevant in the Indian context subject, of course, to clause (2) of Art.19 of our Constitution. We may be pardoned for quoting another passage from Hughes, C. J. in De Jonge v. State of Oregon (1937) 299 US 353 to emphasise the fundamental significance of free speech. The learned Chief Justice said: "greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and



2024:KER:67835

violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that Government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic the very foundation of the Constitutional Government". [underline supplied]

9. In the light of the above principle, this Court perused the allegations in Annexure-A1 complaint. In Ground B of the Crl.MC, it is stated that certain facts are undisputed and are not controverted in Annexure-A1. The same is extracted hereunder:

- "i. That the 1st petitioner had approached the defacto complainant seeking a mining pass.*
- ii. That the 1st petitioner and the defacto*



2024:KER:67835

complainant had a meeting in the lodge where the defacto complainant was residing.

iii. That the defacto complainant had accepted an amount of Rs. 20,000/- from the 1st petitioner.

iv. That the acceptance of this amount of Rs. 20,000/- was not as a fee or tax.

v. That the 1st petitioner has not applied for any mining permission or sanction.

vi. That the acts of the defacto complainant were recorded in a visual camera.

vii. The defacto complainant has no case that such recording was truncated or manipulated in any fashion what so ever.”

10. Even in Annexure-R(1)(b) order, the Enquiry Commissioner also found that, there is materials to show that the money is deposited in the suitcase. But, the Special Judge accepted the refer report mainly for the reason that the investigation conducted so far would not establish that the accused has demanded money from the



2024:KER:67835

reporter. It will be better to extract paragraph No.10 to 13 of Annexure-R(1)(b):

“10. The investigation conducted so far could not establish that the accused has demanded money from the reporter. Even though, the deposit of money in the suitcase in the sting operation might be genuine, the investigation could not prove that the money was placed in the suitcase to get licenses for clay mining. The application for the clay permit was submitted in the pseudonymous name. It appears that, a notice u/s 91 Cr.PC was sent to Jaison to produce the original device and memory card used to record the operation. Even though, Sri. Jaison appeared in the office of the Investigating Officer, he informed the Investigating Officer that the camera used to record the operation and memory card is damaged and it is not possible to produce the same. Except the claim of the News Reporter, the investigation conducted so far could not conduct the demand part. There is no demand part in the



2024:KER:67835

CD conversation recordings, produced during the investigation. Without the original recording devices used for the sting operation and without any demand from the accused, there is no scope for successful prosecution of this case.

11. Similarly, the disproportionate asset part in this case was also investigated by the Investigating Officer. The allegation about the disproportionate assets, in this case, was added by the complainant based on the news report published in the Mathrubhumi News Channel. Before registering the case, a case in crime No.2/2011 u/s. 13(1) (e) r/w 13(2) of the Prevention of Corruption Act, 1988 had been registered on 20.06.2011 and it was under the investigation at Special Cell, Ernakulam. After the investigation of the said case, a final report was filed on 16.09.2015 before Enquiry Commissioner and Special Judge, Kottayam, that case is pending trial as C.C.40/2015.

12. During the check period of this case, the accused was under the surveillance of the



2024:KER:67835

Vigilance Special Cell, Ernakulam. The investigation could not adduce any disproportionate asset acquired by the accused during the check period of the case in our hand and no disproportionate assets were acquired during the check period.

13. On going through the final report and the materials produced along with it, this Court finds that there is no valid ground to proceed against the accused any further. When the Investigating Officer reports that no sufficient materials could be traced out to proceed further against the accused, when the defacto complainant failed to bring out or point out any element of corruption, this Court finds hardly any ground to proceed against the accused. In view of the absence of materials against the accused warranting further action against him, this Court is inclined to accept the final report.

In the result, final report is accepted and further proceedings against the accused are hereby ordered to be dropped.”



2024:KER:67835

From the above, it is clear that the Special Judge accepted the refer report mainly for the reason that there is no evidence.

11. The petitioners only tried to vindicate the information received by them through a sting operation. There is no case to the 1st respondent that there is any personal malice or personal prejudice to the petitioners towards the 1st respondent. Their intention is only to vindicate an information received through a sting operation. Taking into consideration the entire facts and circumstances of the case, I am of the considered opinion that the proceedings against the petitioners can be quashed.

12. The counsel for the petitioners submitted that the order taking cognizance is not produced and the same is not challenged. When this Court found that, even if the entire allegations in



2024:KER:67835

Annexure-A1 are accepted, no offence is made out in the facts and circumstances of the case, the order taking cognizance need not be separately challenged.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioners in CC No.26/2015 on the files of Chief Judicial Magistrate Court, Ernakulam are quashed.

**Sd/-
P.V.KUNHIKRISHNAN
JUDGE**

SCB/nvj



2024:KER:67835

APPENDIX OF CRL.MC 7031/2015

RESPONDENT ANNEXURES

ANNEXURE R-1(a) TRUE COPY OF THE FINAL REPORT DATED 28-5-2020 IN CRIME NO.VC13/2013/TSR ON THE FILE OF THE VACB, THRISSUR FILED BY THE DEPUTY SUPERINTENDENT OF POLICE VACB BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR

ANNEXURE R-1(b) TRUE COPY OF THE ORDER DATED 16-11-2021 IN VC NO.13/2013/TSR PASSED BY THE VACB, THRISSUR

PETITIONER ANNEXURES

ANNEXURE 1. COPY OF THE COMPLAINT IN CC 26/2015 DATED 6.5.13 ON THE FILES OF THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.

RESPONDENTS EXHIBITS :NIL

//TRUE COPY//

PA TO JUDGE