



2024:KER:61880

CRL.MC NO. 8647 OF 2017

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 12TH DAY OF AUGUST 2024 / 21ST SRAVANA, 1946

CRL.MC NO. 8647 OF 2017

CRIME NO.831/2016 OF Ernakulam Central Police Station
CC NO.1517/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,
ERNAKULAM

PETITIONER/ACCUSED:

A.K.RAVEENDRAN @ MAJOR RAVI
AGED 59 YEARS, S/O. P.K.S.P.NAIR,
FLAT NO. 5A-1, HOLY FAITH, KUNDANNOOR,
MARAD VILLAGE, ERNAKULAM DISTRICT.

BY ADVS. SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE
SRI.V.VINAY

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
(CRIME NO. 831/2016 OF ERNAKULAM CENTRAL POLICE
STATION, ERNAKULAM DISTRICT)
- 2 SINDHU SOORYAKUMAR
CHIEF COORDINATING EDITOR, ASIANET NEWS,
THIRUVANANTHAPURAM - 695 001.
BY ADV SRI.V.V.NANDAGOPAL NAMBIAR
SRI.RENJITH.T.R, SR.PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
12.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.8647 of 2017

Dated this the 12th day of August, 2024

ORDER

Petitioner is the accused in C.C.No.1517/2016 on the file of the Judicial First Class Magistrate Court-II, Ernakulam. The above case is charge-sheeted against the petitioner alleging offences punishable under Sections 354A, 500 and 501 of the Indian Penal Code (for short, IPC) and Section 120(o) of the Kerala Police Act (for short, KP Act).

2. The petitioner is a former army officer and the second respondent is the Chief Co-ordinating Editor of Asianet News. The case was registered based on a complaint filed by the 2nd respondent alleging that the petitioner had defamed the defacto complainant and also committed the offences alleged in the final report in a speech made by him at BTH Hotel, Ernakulam. According to the petitioner, even if the entire allegations in the final report are accepted, the



offences alleged are not made out and therefore prayed for quashing the final report.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor. I also heard the learned counsel for the 2nd respondent.

4. The counsel for the petitioner submitted that even if the entire allegations in the final report are accepted, the offences alleged in the final report are not made out. The counsel for the petitioner also submitted that the learned Magistrate who took cognizance has not applied his mind before taking cognizance. It is submitted that, it is fundamental in criminal law that, as per Section 199 Cr.P.C., no court can take cognizance of an offence punishable under Chapter XXI IPC, except upon a complaint made by some persons aggrieved by the offence. It is submitted that the learned Magistrate took cognizance under Sections 500 and 501 IPC based on a Police charge when there is a clear bar under Section 199 Cr.P.C. Hence the counsel submitted that, the same itself shows that the learned Magistrate has not



applied his mind. Therefore the counsel submitted that if this Court feel that the final report as such need not be quashed, this Court may at least quash the order taking cognizance because it is an order passed without application of mind.

5. The counsel for the 2nd respondent and also the Public Prosecutor fairly conceded that there is a clear bar in Section 199 Cr.P.C. to take cognizance under Sections 500 and 501 IPC and therefore taking cognizance based on the final report submitted by the Police under Sections 500 and 501 IPC is not sustainable. But the counsel for the 2nd respondent submitted that, it is a clear case in which the offences under Section 354A IPC and Section 120 (o) of the Kerala Police Act are attracted. The Public Prosecutor also supported the same.

6. This Court considered the contentions of the petitioner and the respondents. As submitted by both sides, the learned Magistrate erred in taking cognizance under Sections 500 and 501 IPC based on a Police report in the light of the prohibition under Section 199 Cr.P.C. Therefore



taking cognizance under Sections 500 and 501 IPC is to be set aside.

7. What remains is Section 354A IPC and Section 120 (o) of the KP Act. The first contention of the counsel for the petitioner is that since the learned Magistrate has taken cognizance even for Sections 500 and 501 IPC, that itself shows that the learned Magistrate has not applied his mind and therefore taking cognizance as such may be set aside for all the offences. I cannot agree with the same. If the learned Magistrate took cognizance for different offences in an order and if this Court found that taking cognizance as far as some of the offences concerned are bad, this Court need not set aside the order taking cognizance as such. Simply because of a legal embargo regarding some of the offences, the order taking cognizance as far as the remaining offences need not be set aside, if there is nothing to interfere with the same. The principle in the Latin maxim "*falsus in uno, falsus in omnibus*" is not applicable to judicial orders. Therefore, this Court has to consider whether the order taking



cognizance under Section 354A IPC and Section 120 (o) of the KP Act is to be interfered with or not.

8. Final report filed by the Police against the petitioner is extracted hereunder:

“ഒന്നാം സാക്ഷിക്ക് മാനഹാനിയും മനോവിഷമവും ഉണ്ടാക്കണമെന്നുള്ള ഉദ്ദേശത്തോടും കരുതലോടും കൂടി പ്രതി എറണാകുളം വില്ലേജ്, ടി കരയിൽ BTH ഹോട്ടലിൽ വെച്ച് തപസ്യ കലാസാഹിത്യവേദിയുടെ ആഭിമുഖ്യത്തിൽ 12.03.2016 തീയതി വൈകിട്ട് നടന്ന മഹാകവി അക്കിത്തം നവമി പ്രണാമ സ്വാഗത സംഘ രൂപീകരണ പരിപാടിയിൽ പ്രതി, ദുർഗ്ഗാദേവിയെ വേശ്യയെന്ന് വിളിക്കുമ്പോൾ ഒരു വിഷ്വൽ മീഡിയയിൽ ഇരുന്ന് അതിനെ തെറ്റായി തോന്നിയിട്ടില്ലായെന്നും, അവരുടെ വർഗ്ഗം അതുതന്നെ യാണെന്നും, സ്വന്തം അമ്മ വേശ്യയാണെങ്കിലും കുഴപ്പമില്ലായെന്നും മറ്റും വളരെ മോശമായി രീതിയിൽ ഒന്നാം സാക്ഷിക്കെതിരെ ലൈംഗിക ചുവയുള്ള പ്രസ്താവനകൾ നടത്തി, പ്രതി പ്രസംഗിച്ചത് റിപ്പോർട്ടർ ടിവി യിലൂടെ ടെലികാസ്റ്റ് ചെയ്യാൻ ഇടവരുന്നതിനും ഇടയാക്കി, പ്രതി ഒന്നാം സാക്ഷിയുടെ സൽപ്പേരിനു കളങ്കവും, ഒന്നാം സാക്ഷിക്ക് മാനഹാനിയും മനോവിഷമവും വരുത്തി മേൽവകുപ്പുകൾ പ്രകാരമുള്ള കുറ്റകൃത്യം ചെയ്തതല്ല എന്നുള്ളത്”

9. Section 354A IPC reads like this:



“354A. Sexual harassment and punishment for sexual harassment--

(1) A man committing any of the following acts--

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. ”

10. Sections 354A(1)(i) or 354A(1)(ii) or 354A(1)(iii) may not attract in the facts and circumstances of the case. The question to be decided is whether Section 354A(1)(iv) is attracted in the facts and circumstances for the purpose of



taking cognizance as per the final report. Section 354A says that if a man makes sexually coloured remarks, he shall be guilty of the offence of sexual harassment. In this case the petitioner made certain comments in a speech in a public function. It is the case of the 2nd respondent that it includes sexually coloured remarks. The counsel for the petitioner submitted that even the prosecution has no case that the sexually coloured remarks are against the 2nd respondent and in the speech the name of the 2nd respondent is not at all mentioned. But the case of the 2nd respondent is that, she was the anchor of Asianet News, and at 8 pm every day, there is a news hour program in which she was the anchor on 26.02.2016. It is the definite case of the 2nd respondent that the statement of the petitioner is about her. The counsel for the petitioner takes me through the statement given by the 2nd respondent under Section 161 Cr.P.C. In that statement also the 2nd respondent has a definite case that the speech contained sexually coloured remarks. The counsel for the petitioner takes me through the statement of



Charge Witness No.2 Saji Kumar S/o Sukumaran Nair. This Court perused that statement under Section 161 Cr.P.C. of Saji Kumar S/o Sukumaran Nair. It is true that he gave a statement to the effect that the petitioner has not mentioned anybody's name in the speech. That itself shows that it is a matter of evidence. Whether the speech of the petitioner is about the 2nd respondent or not cannot be decided by the court while taking cognizance. Taking cognizance is on the offence and not the offender. Whether the statement made by the petitioner in the speech amounts to “sexually coloured remarks” as stated in Section 354A (1) (iv) IPC, is also a matter of evidence. In addition to that, the charge witness No.4, who is the cameraman of Reporter channel, gave a statement under Section 161 Cr.P.C in which he stated that the video of the speech rendered by the petitioner is kept in the channel office. If that is the case, the prosecution and the jurisdictional Court has to decide whether the same is to be summoned at the appropriate stage to find out whether the offence under Section 354A(1)



(iv) IPC is made out or not. Hence I am of the considered opinion that, this Court need not interfere with the order taking cognizance by the learned magistrate under Section 354A IPC invoking the power under Section 482 Cr.P.C at this stage. The contentions raised by the petitioner in this criminal miscellaneous case is to be raised before the trial Court at the appropriate stage. In other words, the petitioner has to face trial to substantiate his case.

11. The other offence alleged is under Section 120(o) of the KP Act. Section 120(o) says that if any person causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger is punishable with imprisonment which may extend to one year or with fine which may extend to Rs.5,000/- or with both. This Court carefully perused the Police report and the other documents produced by the prosecution to prove Section 120(o) of the KP Act. I am of the considered opinion that there is no error on the part of



the learned Magistrate in taking cognizance for the offence under Section 120(o) of the KP Act. Therefore, I am of the considered opinion that there is nothing to interfere with the order taking cognizance under Section 120(o) of the KP Act and under Section 354A IPC.

12. The petitioner was an army officer and also is a celebrity. The common people will usually watch them and their words. While making speech and statements, it is the duty of such people to be careful. Facing trial in this case is an opportunity to the petitioner to prove his innocence. If the petitioner is sure that no offence is committed by him, he should prove it before jurisdictional court instead of rushing to the High Court to invoke the extraordinary jurisdiction under Section 482 Cr.P.C. Even the error in taking cognizance under Sections 500 and 501 because of the bar in Section 199 Cr.P.C. can be brought to the notice of the learned magistrate. Therefore, the petitioner need not shy to approach the trial court, because that is the place where citizen can prove their innocence. But I make it clear that



the observations of this Court is only for the purpose to find out whether the learned Magistrate is justified in taking cognizance under Section 354A IPC and Section 120(o) of the KP Act. I also make it clear that the petitioner is free to substantiate his case before the trial Court at the appropriate stage. While disposing of the case finally, the learned Magistrate will decide the matter untrammelled by any observations in this order.

Therefore this criminal miscellaneous case is disposed of with the following directions:

1. The order taking cognizance under Section 354A IPC and Section 120(o) of Kerala Police Act is confirmed and the petitioner has to surrender before the jurisdictional court to face trial in accordance with law.
2. The order taking cognizance by the Judicial First Class Magistrate Court-II, Ernakulam under Sections 500 and 501 IPC is set aside.



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3. The petitioner is free to raise all his contentions before the trial Court at the appropriate stage in accordance with law.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

JV



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APPENDIX OF CRL.MC 8647/2017

PETITIONER ANNEXURES

**ANNEXURE I TRUE COPY OF THE FIRST INFORMATION
REPORT IN CRIME NO. 831/2016 OF
ERNAKULAM CENTRAL POLICE STATION**

**ANNEXURE II CERTIFIED COPY OF THE FINAL REPORT IN
CRIME NO.831/2016 OF ERNAKULAM.**