



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

WP(CRL.) NO. 1042 OF 2024

CRIME NO.600/2022 OF Keezhvaipur Police Station,

Pathanamthitta

AGAINST THE ORDER DATED 15.05.2023 IN CMP NO.617 OF 2023

OF JUDICIAL MAGISTRATE OF FIRST CLASS, THIRUVALLA

PETITIONER:

ADV.M.BAIJU NOEL
AGED 45 YEARS, S/O M.BIPIN DAS,
LAWYER BY PROFESSION,
RESIDING AT ROSARIO CHAMBER,
FIRST FLOOR, NEDUMPILLY APARTMENT,
KALATHIL LANE, ST. BENADICT ROAD,
ERNAKULAM,, PIN - 682018

BY ADV. M.BAIJU NOEL (Party-In-Person)

RESPONDENTS:

- 1 ADDITIONAL CHIEF SECRETATRY
(HOME & VIGILANCE), SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 STATE POLICE CHIEF,
STATE POLICE HEAD QUARTERS,
VAZHUTHACADU,
THIRUVANANTHAPURAM, PIN - 695010
- 3 THE SUPERINTENDENT
CENTRAL BUREAU OF INVESTIGATION,
KATHRIKADAVU, KALOOR,
KOCHI, PIN - 682017



2024:KER:87228

- 4 THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION
6TH FLOOR, LODHI ROAD, PLOT NO.58,
JAWAHARLAL NEHRU STADIUM MARG,
CGO COMPLEX, NEW DELHI, PIN - 110003
- 5 STATION HOUSE OFFICER
KEEZHVAIPUR POLICE STATION,
POST KEEZHVAIPUR,
PATHANAMTHITTA DISTRICT, PIN - 689587

BY ADVS.

SRI.SREELAL WARRIAR, SC
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION
SRI.P.NARAYANAN, PUBLIC PROSECUTOR
SRI.SAJJU.S., SENIOR GOVT. PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 02.11.2024, THE COURT ON 21.11.2024 DELIVERED THE
FOLLOWING:



BECHU KURIAN THOMAS, J.

W.P.(Cri.) No.1042 of 2024

Dated this the 21st day of November, 2024

JUDGMENT

"Constitution is not a mere lawyers document, it is a vehicle of life and its spirit is always the spirit of age. If things go wrong in the new Constitution, the reason will not be that we had a bad Constitution, but what we will have to say is that Man was vile." B.R Ambedkar's above words of wisdom must ring in the mind of every Indian citizen who is bound to uphold the Constitution and its ideals. They have particular relevance while appreciating the controversy arising in the instant case.

2. Petitioner seeks for a direction to set aside the final report filed in Crime No. 600/2022 of Keezhvaipur Police Station. He also challenges an order dismissing his petition for further investigation into the above crime. A direction is also sought to entrust the re-investigation of the above crime with the Central Bureau of Investigation.

3. On 03.07.2022, Sri. Saji Cherian, the then Minister of Fisheries and Agriculture, Government of Kerala, while addressing a public function at Pathanamthitta made certain remarks which are alleged to be disrespectful and insulting to the Constitution of India. Several persons, including the petitioner, submitted written complaints to the police. However, when his complaint did not result in the registration of a crime,



petitioner approached the jurisdictional Magistrate. Pursuant to a reference under section 156(3) Cr.P.C, FIR No.600/2022 of Keezhvaipur Police Station was registered alleging the commission of an offence under section 2 of the Prevention of Insults to National Honour Act, 1971 (for short 'the Act').

4. According to the FIR, on 03.07.2022, the accused had, in a public function made a speech that “ഇന്ത്യയിൽ ഏറ്റവും കൂടുതൽ ജനങ്ങളെ കൊള്ളയടിക്കാൻ പറ്റിയ ഭരണഘടന ഇന്ത്യയുടേതായാണ്. ബ്രിട്ടീഷ് കാരൻ പറഞ്ഞു തയ്യാറാക്കി കൊടുത്ത ഒരു ഭരണഘടന ഇന്ത്യക്കാരൻ എഴുതിവെച്ച് അത് ഈ രാജ്യത്ത് 75 വർഷമായി നടപ്പാക്കുന്നു. ഇന്ത്യൻ ഭരണഘടനയിൽ മതേതരത്വം, ജനാതിപത്യം എന്നിവയുടെ കൂടെ കന്തം, കൊടച്ചക്രം എന്നിങ്ങനെയൊക്കെ എഴുതി ചേർത്തിട്ടുണ്ട്.” and thereby disrespected the Indian Constitution and thus committed an offence under section 2 of the Act.

(The literal translation of the above words is as follows: “*India has the ideal Constitution to loot the maximum number of people. The Constitution prepared by the British was only written by an Indian. It has been implemented in this country for 75 years. It is written in the Indian Constitution that there will be secularism, democracy 'Kuntham' 'Kodachakram'.*”).

5. After completing the investigation, a final report was filed 'dropping further proceedings' by concluding that the accused had no intention to disrespect the Constitution of India in his speech. On receipt



of notice of the final report, petitioner filed Crl.M.P No.617/2023 before the Judicial First Class Magistrate Court, Thiruvalla of to reject the report and to direct further investigation. The learned Magistrate by order dated 15.05.2023 dismissed the said petition after observing that though the pen drive and the CD containing the speech had been forwarded to the Forensic Laboratory, the investigating officer had recorded the statement of 39 witnesses and came to the conclusion that there was no disrespect shown to the Constitution and the circumstances do not warrant a further investigation into the said aspect. As mentioned earlier, the aforesaid order is also challenged.

6. Sri. M.Baiju Noel, the party-in-person, submitted that the words used by the accused in his speech amounted to absolute disrespect of the Constitution of India thereby violating the provisions of the Act. It was also submitted that the investigating officer did not have any material to conclude that the accused had no intention to disrespect the Constitution. The petitioner also questioned the hasty conclusion arrived at by the investigating officer. According to him, the final report was filed even before receiving the forensic report of the audio and video recordings of the speech. According to the petitioner, when a Minister of the State specifically alleges that the Constitution is ideal for looting or exploiting the public, there can be no more disrespect to the Constitution than that and further, the use of the word കണം, കൊടച്ചിത്രം along with secularism and democracy, indicate absolute disrespect shown to the provisions including the Preamble to the Constitution. It was also contended that the learned



Magistrate had failed to apply her mind to the provisions of the statute and therefore the order is liable to be set aside. He contended that since the accused is a Minister of the Government of Kerala, the police would never be able to carry out a fair and proper investigation and hence the investigation ought to be done by the CBI.

7. Sri.T.A. Shaji, the learned Director General of Prosecution, on the other hand, contended that the petition itself is not maintainable as the remedy of the petitioner is to file a revision petition. It was also submitted that there was no fault in the investigating officer concluding that the speaker had no intention to disrespect the Constitution of India and therefore a further investigation is unwarranted. The learned Director General of Prosecution further asserted that the controversial speech only indicated the difficulties faced by the public and the exploitation of the labour class and hence it cannot, under any circumstances, be regarded as an intentional insult. It was also argued that since the investigating officer had obtained the opinion of the District Public Prosecutor before filing the final report, he cannot be found fault with for arriving at such a conclusion.

8. In this context, it needs to be mentioned that the learned Director General of Prosecution made the case diary available for the court's perusal. Later, a pen drive containing the speech was also handed over. Both were perused and viewed by the Court.

9. The issues that arise for consideration are (i) Whether this writ petition under Article 226 of the Constitution of India is maintainable?, (ii)



Whether the order dismissing the petition for further investigation filed by the defacto complainant is liable to be set aside? and (iii) Whether further investigation or re-investigation is required to be directed and if so by whom? The above issues are dealt with below.

Issue No.(i). *Whether this writ petition under Article 226 of the Constitution of India is maintainable?*

10. The reliefs sought for in this writ petition are manifold. Apart from challenging an order dismissing an application for further investigation, petitioner has also sought a re-investigation by the CBI. Direction to re-investigate a case or to direct the CBI to conduct an investigation can be issued only by a Constitutional Court. Reference to the decision in **Vinay Tyagi v. Irshad Ali @ Deepak and Others** [(2013) 5 SCC 762] is relevant in this context. Hence this writ petition under Article 226 of the Constitution of India is maintainable.

11. The contention raised by the learned Director General of Prosecution is based on the nature of the order impugned and according to him it is a revisable order as observed in the decision in **Sindhu Gopalakrishnan v. Sebastian Attokkaran @ Sebastian and Another** (2011 KHC 11). However, a reading of the aforesaid judgment indicates that what was held therein was that since the order directing or refusing further investigation is neither a final order nor an interlocutory order, the revisional jurisdiction is not entirely barred. The said observation cannot mean that only a revision will lie against an order refusing further investigation.



12. Even otherwise, it is settled that the High Court can exercise its power of judicial review in criminal matters and the power conferred on the High Court under Article 226 and Article 227 of the Constitution of India and under S.482 of the Code of Criminal Procedure, 1973 has no limits except for the self-imposed restrictions. In the decision in **M/s. Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others** [(1998) 5 SCC 749] the Supreme Court had after elaborately considering various decisions including those in **State of Haryana and Others v. Bhajan Lal and Others** 1992 (1) SCC Supp 335, and **Nagendra Nath Bora and Another v. The Commissioner of Hills Division and Appeals, Assam and Others** [AIR 1958 SC 398] observed that the power of judicial interference under Art.227 of the Constitution with orders of judicial or quasi-judicial nature are not greater than the power under Art.226 of the Constitution. Under Art.226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. It was also observed that the nomenclature under which the petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which it otherwise possesses unless there is a special mandatory procedure prescribed. The Court went on to hold that if in a case the Court finds that the litigant could not invoke its jurisdiction under Art.226, the Court can certainly treat the petition as one under Art.227 or S.482 of the Code. Hence, the contention raised by the learned Director General of Prosecution regarding the non-maintainability of this writ



petition is rejected.

Issue No.(ii) *Whether the order dismissing the petition for further investigation filed by the defacto complainant is liable to be set aside?*

13. A defacto complainant, is entitled to notice of a final report referring the case and also to object to its acceptance. When a final report is filed before a learned Magistrate, stating that no offence is made out, the Magistrate has three options (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and proceed to take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police. Reference to the decision in **Bhagwant Singh v. Commissioner of Police and Another** [(1985) 2 SCC 537] is relevant in this context. While considering whether the final report is to be accepted or not, the Magistrate is bestowed with a duty to ensure that a fair and proper investigation has been carried out and the conclusions arrived at by the investigating officer are reasonable in the circumstances.

14. Concededly, in the instant case, though the investigating officer had forwarded the pen drive and compact disc containing the speech of the accused to the Forensic Science Laboratory, the final report dropping all further action was filed before receiving the report from the Laboratory.

15. While appreciating the conclusion of the learned Magistrate and that of the Investigating Officer it is essential to consider the scope of the Act and the nature of the offence alleged. Section 2 of the Act declares



insults to the Indian National Flag and the Constitution of India as a punishable offence with imprisonment for a term which can extend upto three years or with fine or with both. The provision reads as follows:

2. Insults to Indian National Flag and Constitution of India.—Whoever in any public place or in any other place within public view burns, mutilates, defaces, difiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1.—Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.

Explanation 2.—The expression “Indian National Flag” includes any picture, painting, drawing or photograph, or other visible representation of the Indian National Flag, or of any part or parts thereof, made of any substance or represented on any substance.

Explanation 3.—The expression “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

Explanation 4.—The disrespect to the Indian National Flag means and includes—

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in salute to any person or thing; or
- (c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or
- (e) using the Indian National Flag,—
 - (i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or
 - (ii) by embroidering or printing it on cushions,



handkerchiefs, napkins, undergarments or any dress material; or

(f) putting any kind of inscription upon the Indian National Flag; or

(g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence day; or

(h) using the Indian National Flag as covering for a statute or a monument or a speaker's desk or a speaker's platform; or

(i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or

(j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or

(k) using the Indian National Flag as a covering for a building; or

(l) intentionally displaying the Indian National Flag with the "saffron" down.

16. A perusal of the above provision indicates that the words "otherwise shows disrespect to" were not part of the statute initially. The provision contained only the words "otherwise brings into contempt the Constitution of India or any part thereof". Thus prior to 2003, what was made punishable under the Act was only burning, mutilation, defacement, difiling, disfiguring, destroying, trampling upon or bringing into contempt by words either spoken or written or by acts the National Flag or the Constitution or any part of it. However, by the amending Act 31 of 2003, a wider terminology was brought in. The words "shows disrespect" were added. The Statements of Objects and Reasons for the Amending Act 31 of 2003 do indicate that the intention of the amendment was "to widen the scope of the expression insult". The provision as it now stands indicates that even disrespect shown to the Constitution or to any part of it, by words either spoken or written or by acts can amount to a conduct



that falls foul of the statute. Of course, the explanation categorically excludes any criticism of the Constitution or disapprobation of the Constitution if it is for the purpose of obtaining an amendment of the Constitution by lawful means.

17. Though this Court enquired with the learned Director General of Prosecution as to the meaning of the term കുന്നു കോടച്ചക്രം, (*kuntham, Kudachakram*), the same could not be explained. Independently those words mean 'spear' and 'a type of firecracker'. However, it is a matter of common perception in the Malayalam language, that those words, when spoken in collocation with each other, cannot be stated to be used in a respectful manner. Thus the words used by the Minister in his speech, like "*ideal Constitution to loot the people*" or the words "*secularism, democracy 'Kuntham' 'Kudachakram'*" cannot be terms of respect generally. But the question that begs the answer is whether the context in which those terms were used shows disrespect to the Constitution. The statement that the Indian Constitution is ideal for looting the people does not leave much room for discussion. There cannot even be two views on that statement. However, the expression "*secularism, democracy 'Kuntham' 'Kudachakram'*" is obviously referring to the Preamble which is a part of the Constitution. The said expression cannot be stated to be used with respect and the answer to the question posed, as far as the latter of the contentious statement is concerned, lies in the context, the manner and the tone in which those expressions were used. That, in fact, is a matter of perception. However, the perception of the investigating officer



is not the determining factor. What is decisive is the perception of a reasonable man of common sense and prudence - a person who can approach the words and the context, independently, and in a fair and proper manner.

. 18. The prosecution has no case that the meeting held on 03.07.2022 was one intended to bring about a change or a debate on the Constitution. Hence the accused cannot claim the benefit of Explanation No.1 to the provision. The investigating officer referred the case stating that there was no intention behind the words to disrespect the Constitution. It is difficult to comprehend the said conclusion and the manner in which such a conclusion was arrived at. Intention must be gathered from the circumstances and contextually, the words used. In fact certain words by themselves can manifest the intention. When the statutory intention is explicit that no member of the public shall disrespect the Constitution, and when the words themselves can manifest the intention, the conclusion of the Investigating Officer is not legally tenable. Even otherwise, when the words used are not respectful, the surrounding circumstances are necessary to conclude whether they were used disrespectfully or not. The report of the forensic laboratory and the video and audio recording of the speech become relevant in this context.

19. The statutory amendment behind including the word 'disrespect' to the Constitution and the legislative intent ought to have been borne in mind by the investigating officer. Even without collecting the entire materials for connecting the accused with the nature of the



offence alleged and even before receiving the report of the Forensic Science Laboratory, it was not proper for the Investigating Officer to have come to a conclusion that no offence had been made out. In the decision in **Tomaso Bruno and Another v. State of Uttar Pradesh** [(2015) 7 SCC 178], the importance of the production of scientific and electronic evidence was explained. It was observed that the non-production of CCTV footage can amount to withholding the best evidence. It was also observed that courts in that case went wrong in believing the investigating agency's version that footage had been viewed but nothing relevant was found without bringing the footage on record. In the instant case, the pen drive and CD containing the footage were sent for forensic examination, yet the report has not been made available. Hence the CCTV footage was not even part of the final report and the Magistrate had no opportunity to even ascertain the correctness of the conclusion of the investigating officer.

20. The learned Magistrate also erred in accepting the final report without noticing that there were several witnesses like the media persons who had viewed or published the speech. Those persons were not questioned nor were their statements taken. Further, the investigating officer came to the conclusion solely on the basis of the statements given by persons who attended the meeting conducted by a political party. The statements of those witnesses who attended the meeting are likely to have been prejudiced due to their affiliation to the political party. Hence relying only on those statements would not amount to a fair investigation.



In this context also, the CCTV footage and the pen drive can become relevant. Thus the conclusion arrived at by the investigating officer was in haste and without proper appreciation. This Court is satisfied that the investigation conducted into Crime No.600/2022 was not proper and the learned Magistrate went wrong in accepting the final report. On a consideration of the entire circumstances, this Court is of the view that the final report ought to be set aside and a further investigation be conducted.

Issue No. (iii) *Whether further investigation or re-investigation is required to be directed and if so by whom?*

21. Re-investigation ought to be ordered only in exceptional cases as held in **Vinay Tyagi v.Irshad Ali @ Deepak and Others** [(2013) 5 SCC 762]. It wipes away the earlier investigation. No circumstance exists to order a re-investigation. However, this Court has already found that a further investigation is required, and since the accused is a Minister of the State, the investigation by the Station House Officer will not suffice and a superior agency is required. The further investigation hence ought to be conducted by the State Crime Branch.

22. Accordingly, the impugned order dated 15.05.2023 passed by the learned Judicial First Class Magistrate Court, Thiruvalla in Crl.M.P No.617 of 2023 is set aside, and a further investigation is ordered into Crime No.600/2022, which shall be conducted by the State Crime Branch. The State Police Chief shall immediately pass appropriate orders handing over further investigation of Crime No.600/2022 to the State Crime



Branch with an Officer of integrity to lead the investigation. Needless to mention, the investigation shall be completed without undue delay.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX OF WP(CRL.) 1042/2024

PETITIONER EXHIBITS

- Exhibit -P1 TRUE COPY OF THE COMPLAINT DT.5-7-2022
LODGED TO THE 5TH RESPONDENT
- Exhibit -P2 TRUE COPY OF THE COMPLAINT DT.5-7-2022
SENT TO THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA
- Exhibit -P3 TRUE COPY OF THE COMPLAINT DATED 6-7-2022
FILED BEFORE THE COURT OF JUDICIAL FIRST
CLASS MAGISTRATE, NO.1, THIRUVALLA
- Exhibit -P4 TRUE COPY OF FIR OF NO.0600/2022
KEEZHVAIPUR POLICE STATION DT.7-7-2022
- Exhibit -P5 TRUE COPY OF THE FINAL REPORT DATED
5-12-2022 FILED BEFORE THE COURT OF
JUDICIAL FIRST CLASS MAGISTRATE NO.1,
THIRUVALLA
- Exhibit -P6 TRUE COPY OF THE REPRESENTATION DATED
7-12-2022 GIVEN TO THE 1ST RESPONDENT BY
THE PETITIONER
- Exhibit -P7 TRUE COPY OF THE REPRESENTATION DATED
7-12-2022 TO THE HON'BLE CHIEF MINISTER OF
KERALA BY THE PETITIONER.
- Exhibit -P8 TRUE COPY OF THE JUDGMENT IN WP
(CRL).NO.1295 OF 2022 DATED 18.01.2023 OF
THE HIGH COURT OF KERALA
- Exhibit -P9 TRUE COPY OF THE OBJECTION AGAINST
EXHIBIT-P5 FILED BY THE PETITIONER BEFORE
JUDICIAL FIRST CLASS MAGISTRATE COURT-I
THIRUVALLA AS CRL.MP.NO.617/2023 DATED
03.02.2023
- Exhibit -P10 TRUE COPY OF THE ORDER OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-I THIRUVALLA
AS CRL.MP.NO.617/2023 DATED 15.05.2023