



2024:KER:68207

Cr1.M.C.No.5999/2024-H

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 30TH DAY OF AUGUST 2024 / 8TH BHADRA, 1946

CRL.MC NO. 5999 OF 2024

CRIME NO.1106/2023 OF Edakkara Police Station, Malappuram

CC NO.2092 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS, NILAMBUR

PETITIONER/ACCUSED:

SATHEESHKUMAR B R
AGED 48 YEARS
S/O BALAKRISHNAN, RATHNALAYAM(H), EDAKKARA
AMSOM, EDAKKARA, (PO), MALAPPURAM DIST, PIN - 679331.

BY ADVS.
M.DEVESH
M.ANUROOP
MURSHID ALI M.

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 ARCHANA VARGHESE
AGED 30 YEARS
D/O VARGHESE, TANNILAL HOUSE, CHUNGATHARA (PO),
NILAMBUR TALUK, MALAPPURAM DIST., PIN - 679334.

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
26.07.2024, THE COURT ON 30.08.2024 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

Crl.M.C.No.5999 of 2024

*Dated this the 30th day of August, 2024****ORDER***

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the sole accused, seeking to quash Annexure-3 final report in C.C.No.2092/2023 on the files of Judicial First Class Magistrate, Nilambur, arose from Crime No.1106 of 2023 of Edakkara Police Station.

2. Heard the learned counsel for the petitioner and the learned counsel for the defacto complainant in detail. The learned Public Prosecutor also was heard. Perused Annexure-3 final report, which is under challenge.

3. The precise allegation is that in between 19.10.2023 and 29.10.2023, the accused, who had previous animosity towards the defacto complainant, published videos, scripts and messages with intention to insult the modesty of the defacto complainant. It is also specifically alleged that the



accused posted 2 post cards addressing the same to the father of the defacto complainant and the defacto complainant alleging that the defacto complainant became pregnant two times and the said pregnancies were aborted. That apart, the accused also published photos of the defacto complainant along with him in her Facebook post so as to defame her. Thus the prosecution allegation is that the accused committed offence punishable under Section 509 of IPC and under Section 120 of the K.P Act.

4. While pressing for quashment of this proceedings, the learned counsel for the petitioner vehemently argued that going by the allegations in the complaint filed as Annexure-1 or as Annexure-3 final report filed after investigation, the ingredients to attract the said offences are not made out. In support of this contention, he has placed Annexure-5 Facebook posts also.

5. Per contra, it is submitted by the learned counsel for the defacto complainant and the learned Public Prosecutor that the allegations are very serious. Apart from posting 2 post cards disclosing allegations intended to insult the modesty of the defacto complainant, the accused also published the said allegations through his Facebook posts also. Therefore, the matter would require trial, and the quashment prayed cannot be



considered.

6. While appreciating the rival contentions, it is necessary to address the essentials required to constitute offences punishable under Section 509 of IPC as well as under Section 120(o) of the K.P Act.

7. Coming to Section 509 of IPC, it is provided that whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman [shall be punished with simple imprisonment for a term which may extend to three years and also with fine].

8. In the decision reported in [2024 KHC OnLine 584 : 2024 KHC 584 : 2024 KER 49601 : 2024 KLT OnLine 1799 : 2024 SCC OnLine Ker. 3595], **XXXX . State of Kerala**, this Court considered the essentials to constitute an offence punishable under Section 509 of IPC and held in paragraph 11 as under:

*“11. In the decision in **Joseph M.V. v. State of Kerala** reported in [2024 KHC OnLine 440 : 2024 KER 36566], in paragraph Nos.11 to 13, this Court held as under:*



“11. In order to bring home an offence punishable under S.509 IPC, the ingredients are; utterance of any word, makes any sound or gesture, or exhibits any object, with an intention to insult the modesty of a woman, or with intention to intrude upon the privacy of such a woman.

12. Coming to the definition of the word 'modesty', the same has not been defined in the Indian Penal Code. So it is worth to look into its dictionary meaning. As per Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third new International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency' a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1993 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

9. Coming to Section 120(o) of K.P Act, in the decision reported in[2024 (5) KHC 22], ***Raveendran V.K v. State of Kerala & anr.***, this Court held in paragraphs 15 and 17 as under:

15. *The next point to be decided is; whether the petitioner herein committed offence under Section 120(o) of the K.P Act? Section 120*



of the K.P Act provides as under:

“120. Penalty for causing nuisance and violation of public order.—

If any person,—

xxxx xxxx xxxx xxxx xxxx

(o) 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;

xxxx xxxx xxxx”

16. xxxxxxxx

17. The question poses is, effecting publication or communication stating that a person, who is alive, as dead, would amount to a nuisance to the said person. On reading the definition of the term `nuisance`, the same means, a person or thing causing inconvenience or annoyance. Otherwise, the same is an act, which is harmful or offensive to the public or a member of it and for which there is a legal remedy. Coming to the term `annoyance`, the same is the feeling or state of being annoyed or irritated. It is difficult to say that once a communication is made so as to make a person a feeling or a state of being irritated, the same is not an annoyance or nuisance for the purpose of Section 120(o) of the K.P Act. If so, the publication effected by the petitioner herein would definitely attract an offence punishable under Section 120(o) of the Kerala Police Act, prima facie.

10. Going by the ratio in *Raveendran V.K v. State of Kerala*



& anr. (*supra*) and the ingredients of Section 120(o) of the K.P Act, if any person causing inconvenience or annoyance 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 an offence. Therefore, in the facts of this case, Section 120(o) of the K.P Act also squarely would apply.

11. Since the allegations in this case include publication of the photos of the defacto complainant through Facebook post so as to defame her, the learned counsel for the petitioner placed decisions of this Court reported in [2023 (4) KLJ 357 : 2023 (5) KLT 468 : 2023 (6) KHC 154 : ILR 2023 (4) Ker.45], ***Fr.Geevargese John @ Subin John v. State of Kerala & anr.*** to contend that in the said case, this Court quashed criminal proceedings where the prosecution alleged commission of offences punishable under Section 120(o) of the K.P Act. It is also submitted that in paragraph 13 of the above judgment, this Court held as under:

"13. *But, the defamatory Facebook posts continue to do the rounds on Facebook and other Social Media platforms. There is no proper punishment for such defamatory statements and posters on*



Facebook. The legislature must look into this aspect seriously, especially in the backdrop of this new era of technology and Social Media mania in existence in our society.”

12. I have gone through the judgment. In the said case, a learned Single Judge of this Court considered the question as to whether the allegations in the complaint dealt in the said case constituted offence punishable under Section 120(o) of the K.P Act after analysing its ingredients. Finally, it was found that going through the allegations, no offence under Section 120(o) of the K.P Act was made out. While discussing the case, the learned Single Judge observed in paragraph 13 as extracted herein above. Based on this observation, the learned counsel for the petitioner argued that since there is no punishment for defamatory statements and posted in Facebook, as observed in *Fr. Geevargese John @ Subin John* 's case (*supra*), this case registered merely alleging posters on Facebook, is liable to be quashed since none of the offences is made out. It is discernible that the learned Single Judge dealt with Facebook post while observing so. But in the instant case, the allegations are two fold; the main allegation is that the accused herein posted 2 postcards addressing the same to the father of the defacto complainant and the



defacto complainant, containing defamatory allegations against the defacto complainant stating that she became pregnant two times and the said pregnancies were aborted. So, excluding the Facebook posts itself, it has to be held that, *prima facie*, offence under Section 509 of the I.P.C is made out since the petitioner exhibited remarks intending to insult the modesty of the defacto complainant by writing the same in the postcards publicly. That apart, Section 120(o) of the K.P Act provides that if any person causing inconvenience or annoyance 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 an offence punishable under Section 120(o) of the K.P Act. Therefore, posting 2 postcards with derogative statements by itself is sufficient to attract offence punishable under Sections 509 of IPC as well as 120 of the K.P Act.

13. It is relevant to note in this context that though the learned Single Judge of this Court in *Fr.Geevargese John @ Subin John v. State of Kerala & anr.*'s case (*supra*) alerted the legislature to have an exhaustive legislation to deal with defamatory statements and posters on



Facebook and other social media platforms, to ensure proper punishment for the same, the learned Single Judge vigilantly not specifically observed anything to hold that IPC offence would not attract when defamatory statements being posted through social media or for cyber defamation. No doubt, Section 499 of IPC would apply to defamation through Facebook and social media platforms which would come under the caption “cyber defamation”, since it is provided under Section 499 of IPC that *whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person* as an offence inclusive of explanations 1 to 4 therein, subject to exceptions one to ten provided therein. True that offence under Section 499 of IPC is non-cognizable and thus an exhaustive law making the offence as cognizable providing more stringent punishment, as observed by the learned Single Judge of this Court in ***Subin John v. State of Kerala & anr.***’s case (*supra*) will be more effective to address the issue.



14. I have gone through the complaint lodged by the defacto complainant before the Inspector of Police, Edakkara, copy of which is produced as Annexure-1. The specific allegation is that the accused posted 2 post cards after writing insulting allegations against the defacto complainant in the name of the defacto complainant and his father stating that she was pregnant two times and the same were aborted. In addition to that, in between 19.10.2023 and 29.10.2023, the accused, who had previous animosity towards the defacto complainant, published videos, scripts and messages with intention to insult the modesty of the defacto complainant. It is discernible from the final report that during investigation, the Investigating Officer collected the pen drive and the document produced by the defacto complainant and also recorded statement of witnesses 4 to 6 to prove that he himself had sent the above messages containing materials intended to insult the modesty of the defacto complainant and caused a nuisance of himself to the defacto complainant justifying, *prima facie*, commission of the above offences. Even though it is submitted by the learned counsel for the petitioner that in this matter Section 65B certificate is not produced in support of the



materials collected, containing the insulting messages, the same cannot be considered by this Court as a ground to quash the proceedings since in the final report it has been specifically stated that the pen drive, in which the photos and screenshots of the Facebook posts and the video were copied, along with Section 65B certificate also were produced before the court. In such view of the matter, there is no reason to quash the proceedings in a case when the materials are in abundance, *prima facie*, warranting trial.

15. Accordingly this Crl.M.C stands dismissed.

16. Interim order granted stands vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



APPENDIX OF CRL.MC 5999/2024

PETITIONER'S ANNEXURES

- Annexure 1** **THE CERTIFIED COPY OF THE COMPLAINT DATED 30/10/2023.**
- Annexure 2** **THE CERTIFIED COPY OF FIR IN CRIME NO 1106/2023 ON THE FILES OF THE EDAKKARA POLICE STATION.**
- Annexure 3** **THE CERTIFIED COPY OF FINAL REPORT DATED 22/12/2023 IN CC 2092/2023 ON THE FILE OF THE FIRST CLASS JUDICIAL MAGISTRATE COURT NILAMBUR.**
- Annexure 4** **THE TRUE COPY OF SEIZURE MEHSAR IN CRIME NO 1106/2023 ON THE FILE OF THE EDAKKARA POLICE STATION.**
- Annexure 5** **THE TRUE COPY OF THE FACE BOOK POST.**
- Annexure 6** **THE TRUE COPY OF FINAL REPORT IN CC 1988/2023 ON THE FILES OF THE JFCM NILAMBUR.**