



2024:KER:69392

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 10TH DAY OF SEPTEMBER 2024 / 19TH BHADRA,

1946

CRL.MC NO. 2370 OF 2023

CC NO.1576 OF 2018 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, ANGAMALY

PETITIONERS/ACCUSED:

- 1 FR.JOSEPH KUZHINJALIL
AGED 78 YEARS
PRINTER AND PUBLISHER, RASHTRA DEEPIKA
PUBLICATIONS, KOTTAYAM, PIN - 686001
- 2 FR.BOBY ALEX
AGED 51 YEARS
MANAMPLACKAL HOUSE, FORMER CHIEF EDITOR,
RASHTRA DEEPIKA PUBLICATIONS, KOTTAYAM, NOW
ACTING AS THE VICAR GENERAL OF DIOCESE OF
KANJIRAPPALLY, KANJIRAPPALLY P.O, KOTTAYAM
DISTRICT, PIN - 686001
BY ADVS.
JOMY GEORGE
R.PADMARAJ
DEEPAK MOHAN
CHITRA N. DAS
RISHAB S.
RONA ANN SIBY

RESPONDENT/STATE/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
BY SR.PUBLIC PROSECUTOR SRI.C.K.SURESH

OTHER PRESENT

ADV.SRI.GRASHIOUS KURIAKOSE, ADDL.DIRECTOR
GENERAL OF PROSECUTION

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 07.08.2024, THE COURT ON 10.9.2024, PASSED
THE FOLLOWING:



CR

ORDER

Dated this the 10th day of September, 2024

Accused Nos.1 and 2 in C.C.No.1576/2018 on the files of the Judicial First Class Magistrate Court, Angamaly, arose out of Crime No.2078/2017 of Nedumbassery police station, Ernakulam Rural, are the petitioners herein and they seek the following relief:

To quash Annexure - A5 final report in CC.1576/2018 on the file of Judicial First Class Magistrate Court, Angamaly.

2. Heard the learned counsel for the petitioners, the learned Additional Director General of Prosecution and the learned Public Prosecutor. Perused the relevant documents.

3. As per Annexure A5 - copy of the Final Report placed by the learned counsel for the petitioners, prosecution alleges commission of offence punishable under



Section 228A(1)(3) of the Indian Penal Code (for short, 'the IPC' hereinafter) and the allegation of the prosecution is that, the 1st accused, who is the printer and publisher of the Rashtra Deepika Publications, Kottayam and the 2nd accused, who is the Chief Editor of Rashtra Deepika Publications, Kottayam, published the statements of the witnesses in Crime No.297/2017 of Nedumbassery Police Station, alleging commission of offences punishable under Section 376 of the IPC, among other offences and thereby, disclosed the identity of the victim in the above crime, by printing and publishing the same in Rashtra Deepika Evening Daily, dated 20.12.2017.

4. The learned counsel for the petitioners read out the allegations and also placed the so called printed and published newspaper, with reference to page Nos.3 and 5 to contend that, the so called publication, either directly or by indirect means not disclosed anything so as to identify the victim in Crime No.297/2017 of Nedumbassery Police Station and therefore, the entire Final Report is *non-est* in the eye of law and the same is liable to be quashed. He also would



submit that, there was allegation against the complainant and the Investigating Officer in Crime No.297/2017 regarding disclosure of the identity of the victim and other details in the above crime and alleging the same, a petition was filed as C.M.P.No.985/2017, where the learned Magistrate passed an order, giving strict directions to him to take abundant caution to see that the materials which are the part of the final report, not to be leaked for the media trial which would eventually cause interference with administration of justice.

5. Opposing quashment, the learned Additional Director General of Prosecution pointed out the relevant texts in page Nos.3 and 5 of the Rashtra Deepika Evening Daily, dated 20.12.2017 and submitted that, even though the name of the victim not specifically disclosed, on reading the text together, the identity could be easily traced and therefore, offence under Section 228A(1)(3) of the IPC, would definitely attract in the facts of this case. Therefore, quashment is not liable to be allowed.

6. Coming to Section 228A of the IPC, the same provides as under:



228A. Disclosure of identity of the victim of certain offences, etc. —(1) *Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.*

7. Going by the specific wordings in Section 228A(1) of the IPC, the ingredients to bring home the said offence is, printing or publishing the name or any matter which may make known the identity of any person against whom one of the offences mentioned therein is alleged or found to have been committed.

8. The crucial question herein is, whether there are materials in the publication effected in page Nos.3 and 5 of Rashtra Deepika Evening Daily, dated 20.12.2017, which would make known the identity of the victim in Crime No.297/2017, so as to attract an offence under Section 228A(1) of the IPC?



9. On scanning the publication throughout, the following texts appear to be significant and the same are extracted as under:

xxxx

xxxx

xxxx

10. Going by the relevant portion of the publication, though the same, in no way, disclosed the name of the victim to the reader of the news, but necessary inputs to identify the victim, who acted in Honey Bee film, who is a native of Thrissur, her participation in the rehearsal camp in 2013 held at Hotel Abad Plaza, and forwarding of messages by the victim in the whats app group, would give indication to the identity of the victim.

11. In this connection, it is necessary to refer decision of the Apex Court in **Nipun Saxena & anr. v. Union of India & Ors.** reported in **[2019 (4) KLT 159]**, where the Apex Court issued directions in paragraph No.50 to ensure privacy of the victims of rape and PoCSO offences



as under:

“50. In view of the aforesaid discussion, we issue the following directions:

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POCSO shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in



which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2) (c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up at least one “One-Stop Centre” in every district within one year from today.”

12. Reading the ratio of the above decision, it is



emphatically clear that the identity of the victims of sexual offences including PoCSO Act cases is protected by the conditions laid down in **Nipun Saxena & anr. v. Union of India & Ors.**'s case (supra).

13. On reading the publication effected, which led to registration of this crime, as extracted hereinabove, it could be gathered that, necessary inputs to disclose the identity of the victim in Crime No.297/2017, alleging commission of offence under Section 376 of the IPC, were published. Since Section 228A of the IPC prohibits printing, publishing the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged and the same is an offence punishable for a term which may extend to two years and also liable to fine, the publication would attract offence under Section 228A(1) of the IPC.

14. In this matter, the 1st accused is the printer and publisher of the Rashtra Deepika Publications,



Kottayam, where the above news was published and 2nd accused is the Chief Editor of Rashtra Deepika Publications, Kottayam. In fact, the Chief Editor or the Editor and printer and publisher, are persons in the ordinary course responsible for selecting the news items, are alleged to have committed the offence. Since the ingredients to attract the offence alleged to be committed by the petitioners 1 and 2/accused Nos.1 and 2, are made out, prima facie, quashment sought for is liable to fail.

In view of the discussion, this Criminal Miscellaneous Case stands dismissed.

The interim order of stay granted by this Court, stands vacated.

Registry is directed to inform this matter to the trial court, for information and further steps. Registry is further directed to mask the texts form part of this order, which would disclose the identity of the victim, while dealing with the order, as per law.

Sd/-
A. BADHARUDEEN
JUDGE



APPENDIX OF CRL.MC NO. 2370 OF 2023

PETITIONERS' ANNEXURES

ANNEXURE A1	TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE OFFICIAL WEBSITE OF MANGALAM TV
ANNEXURE A2	THE TRUE COPY OF THE NEWS ITEM PUBLISHED ON 20-12-2017 IN THE MANGALAM DAILY NEWSPAPER
ANNEXURE A3	TRUE COPY OF THE RASHTRA DEEPIKA EVENING NEWSPAPER PUBLISHED ON 20-12-2017 FROM KOTTAYAM
ANNEXURE A4	TRUE COPY OF THE FIR REGISTERED AGAINST THE PETITIONERS
ANNEXURE A5	TRUE COPY OF THE FINAL REPORT DATED 05-11-2018

RESPONDENT'S ANNEXURES : NIL