



2024:KER:81922

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

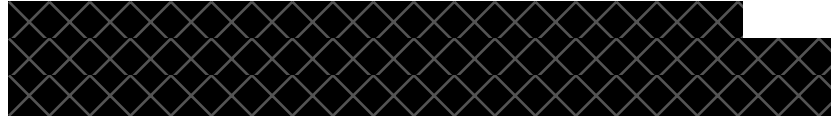
MONDAY, THE 4TH DAY OF NOVEMBER 2024 / 13TH KARTHIKA, 1946

CRL.MC NO. 8552 OF 2017

AGAINST CC NO.165 OF 2017 OF THE CHIEF JUDICIAL
MAGISTRATE COURT, ERNAKULAM

PETITIONERS/ACCUSED NOS.4 TO 6:

1 MALAYALAM COMMUNICATIONS LTD.,



2 JOHN BRITTAS,
MANAGING DIRECTOR, MALAYALAM COMMUNICATIONS
LTD.,



3 N.P.CHANDRASHEKHARAN
DIRECTOR (NEWS), MALAYALAM COMMUNICATIONS
LTD.,



BY ADVS.
SRI.P.M.RAFIQ
SRI.AJEESH K.SASI
SRI.C.JAYAKIRAN
SMT.MITHA SUDHINDRAN
SRI.M.REVIKRISHNAN
SRI.V.C.SARATH
SRI.VIPIN NARAYAN

RESPONDENT/COMPLAINANT & STATE:

1 K.C. VENUGOPAL





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2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682031.

BY ADVS.
SRI.P.MARTIN JOSE - R1
SRI.P.PRIJITH
SRI.S.SREEKUMAR (SENIOR) - R1
SRI.THOMAS P.KURUVILLA
SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 04.11.2024, ALONG WITH Crl.MC.355/2019,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

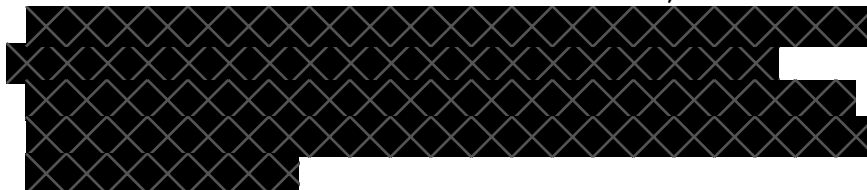
MONDAY, THE 4TH DAY OF NOVEMBER 2024 / 13TH KARTHIKA, 1946

CRL.MC NO. 355 OF 2019

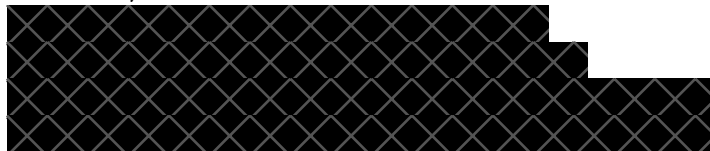
AGAINST CC NO.165 OF 2017 OF THE CHIEF JUDICIAL
MAGISTRATE COURT, ERNAKULAM

PETITIONERS/ACCUSED NO.1 TO 3:

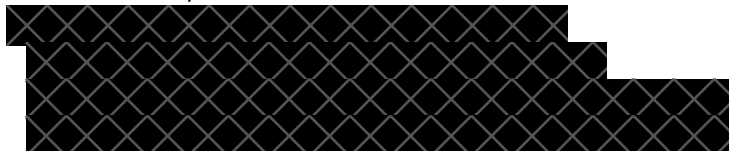
1 ASIANET NEWS NETWORK PRIVATE LTD.,



2 SRI. M.G.RADHAKRISHNAN
EDITOR, ASIANET NEWS NETWORK PRIVATE LTD,



3 SRI. JOSHI KURIAN
REPORTER, ASIANET NEWS NETWORK PRIVATE LTD,



BY ADV. V.V.NANDAGOPAL NAMBIAR

RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH



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COURT OF KERALA, ERNAKULAM, PIN-682031.

2 K.C.VENUGOPAL,



BY ADVS.
SRI.SUMAN CHAKRAVARTHY
SRI.P.MARTIN JOSE - R2
SRI.THOMAS P.KURUVILLA
SRI.S.SREEKUMAR (SENIOR) - R2
SRI.RENJITH T.R., SENIOR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 04.11.2024, ALONG WITH Cr1.MC.8552/2017,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J.

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Crl.M.C. Nos.8552 of 2017 & 355 of 2019
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Dated this the 04th day of November, 2024

ORDER

These two Criminal Miscellaneous Cases are connected and therefore I am disposing of these two cases by a common order.

2. The petitioners in Crl.M.C No.355/2019 are accused No.1 to 3 in C.C No.165/2017 on the file of the Chief Judicial Magistrate Court, Ernakulam. Petitioners in Crl.M.C No.8552/2017 are accused Nos.4 to 6 in C.C No.165/2017 on the file of the Chief Judicial Magistrate Court, Ernakulam. It is a prosecution initiated against the petitioners and another by the 1st respondent in Crl.M.C No.8552/2017 (2nd respondent in Crl.M.C No.355/2019) alleging offences punishable under



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Sections 499 and 500 of IPC. Annexure-A produced in Crl.M.C. No.8552/2017 & Annexure-1 produced in Crl.M.C. No.355/2019 are copies of the complaint in C.C No.165/2017 on the file of the Chief Judicial Magistrate Court, Ernakulam.

3. The allegation in the complaint is as follows:

On 03.04.2016 and 04.04.2016, Smt. [REDACTED], the 7th accused in the complaint in an interview with the 1st petitioner in Crl.M.C No.355/2019, had shown a letter containing a defamatory statement to the effect that [REDACTED] [REDACTED] was sexually assaulted by the complainant, who is a Member of Parliament and a Member of the Indian National Congress (I) Party at the residence of a Minister of the State of Kerala. It is the case of the complainant that the accused in pursuance to the criminal conspiracy to defame the complainant and



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also topple the ruling United Democratic Front in the State of Kerala at that time, has played nasty games through the visual media owned and operated by the petitioners.

4. The 7th accused is an accused in 32 criminal cases, registered in various Police stations throughout the State of Kerala and facing prosecution *inter alia* for offence punishable under Section 420 IPC. The 7th accused, who was produced before the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam, in connection with one of the crimes in which she was the accused, sought permission to make some statement before the court in in-camera proceedings. It is further stated that the 7th accused was permitted to give her statement in writing and submit it before the court. According to the complainant, as per media reports, the 7th accused submitted a letter to the Additional Chief Judicial



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Magistrate Court(E.O) on 29.07.2013, which did not contain any allegation against the complainant. In the interview of the 7th accused conducted by Asianet (News Hour programme) on 07.04.2015, the 7th accused denied having written any letter implicating the complainant or others. In the above interview, the 7th accused definitely declared that she knew the complainant but she had not received any help or assistance from the complainant and she totally denied the suggestion of sexual harassment by the complainant.

5. On 03.04.2016, accused Nos.1 to 3 and 7, in furtherance of their conspiracy to defame the complainant and to tarnish his image and reputation forged and fabricated a letter which was shown by accused Nos.1 to 3 in their programme telecasted on at 4.16 PM., which was a letter alleged to be written by the 7th accused to the Judicial Magistrate. The



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letter contains a defamatory statement to the effect that the complainant sexually assaulted the 7th accused at the residence of a Minister of the State of Kerala. That letter is a newly drafted one in connivance with accused Nos.1 to 3 and telecasted through Asianet on 03.04.2016 at 4.16 PM with the sinister motive to defame the complainant before the public, is the submission. The above letter and the consequent telecasting of the same by accused Nos.1 to 3 in pursuance of the common object with the 7th accused is to defame and splash mud on the face of the complainant. Accused Nos.1 to 3 telecasted the very same interview on 04.04.2016 as well, to make it appear that the complainant has committed sexual assault on the 7th accused. Accused Nos.4 to 6 telecasted the very same interview on those days itself is the submission. Accused Nos.1 to 6 telecasted the said interview and the alleged letter



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knowing fully well that the contents of the letter are false and deliberately manipulated and fabricated to defame the complainant. It is also alleged that, when the 7th accused produced the letter before the other accused, they knew very well that the above letter was a subsequent creation and it is only to defame the complainant among the public.

6. It is the case of the complainant that the 7th accused issued a number of statements after her arrest and she is a character who does not speak in one voice. According to the complainant, she would say one statement today and the next day she would change it. The statements of the 7th accused are always full of contradictions and inconsistencies, is the further submission. Therefore, it is submitted that, it is evident that the 7th accused conspired with accused Nos.1 to 6 to malign and tarnish the image of the complainant with criminal intention. The



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complainant also submitted that the action of the petitioners amounts to a violation of Rule 6(1)(i) of the Cable Television Network Rules, 1994, which prohibits telecasting news items or interviews which criticizes, maligns or slanders any individual in person. Hence, it is submitted that the petitioners committed the offences under Sections 499 and 500 of IPC. According to the petitioners, even if the entire allegations are accepted, no offences under Sections 499 and 500 IPC are made out against the petitioners. Hence, these Criminal Miscellaneous Cases are filed.

7. Heard the learned counsel appearing for the petitioners and the counsel appearing for the complainant.

8. Accused Nos.1 to 6 are before this Court to quash C.C. No.165/2017 on the file of the Chief Judicial Magistrate Court, Ernakulam. The 7th



accused has not approached this Court to quash the proceedings. The main grievance of the complainant is about the statement of the 7th accused based on a letter which according to the complainant is a forged document. It is an admitted fact that based on the same allegation, a judicial enquiry was ordered by the Government and the alleged forged letter was marked as an exhibit before the judicial commission. It is also an admitted fact that the judicial commission ordered criminal investigation against the person mentioned by the 7th accused in this case. It is also a fact that criminal cases were registered against the persons named by the 7th accused. It is also a fact that almost all cases were referred by the investigating authority stating that there is no basis in it.

9. It is a fact that the 7th accused convened a press conference and revealed certain statements



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and the media published the same. Consequently, as I mentioned earlier, a judicial commission was appointed, and the commission made certain recommendations including to register criminal cases. In such circumstances, I am of the considered opinion that the petitioners cannot be blamed by the complainant. The media is only doing their duty. Except for the bold statement in the complaint that there is collusion between the media and the 7th accused, there is absolutely no material produced by the complainant to prove the same. When no malice or bias, much less *mens rea* can be attributed on the part of the petitioners in telecasting a news item, the prosecution for the defamation initiated is liable to be prematurely terminated for want of *mens rea*. In **Mammen Mathew v. M. N. Radhakrishnan and Another** [2007 (4) KHC 502] considered this point in detail. The relevant portion of the same is extracted



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hereunder:

“9. The offence of defamation consists of three essential ingredients, namely,--

(1) making or publishing an imputation concerning a person

(2) such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations and

(3) the said imputation must have been made with the intention to harming or with knowledge or having reason to believe that it will harm the reputation of the person concerned.

(Vide -- Sunilakhya Chowdhury v. H. M. Jadwet and Another, AIR 1968 Calcutta 266). Thus, the mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned. By no stretch of imagination could it be said that Annexure B news item was published with the intention of harming the reputation of the complainant. If it were so, then as soon as the complainant voiced his protest, the first accused would not have published Annexure C news item faithfully conveying to the public what the complainant had represented to the Malayala



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Manorama Daily. Merely because in the reply to the lawyer notice the first accused had informed the complainant that the correspondent of Malayala Manorama was present when the agitating employees gave the information to Malayala Manorama, it cannot be said that a case has been made out for evidence. The important aspect is to be examined is as to whether Annexure A complaint together with the news item prima facie makes out the offence under S.499 IPC. A reading of Annexure B news item does not give the impression that it was actuated by any malevolent motive or a desire to calumniate or cast aspersions on the complainant or to expose him to public ridicule or to inflict even the slightest injury to his reputation. If so, it will be an abuse of the process of Court to drag the first accused to face the ordeal of a trial.”

10. Moreover, it is an admitted fact that the 7th accused convened a press conference and made certain statements. That shows that the news is in the public domain. In **Prakash and Another v. Vandana and Another** [2024 SCC Online Ker 4361],



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this Court observed that when a book is published by an author through a publication agency and the same is in the public domain, it is the duty of the media persons to discuss the same and they cannot be kept mum by filing complaint against them alone alleging defamation, without arraigning the author of the book or the publisher of the book. It is true that, in this case the 7th accused is also in the accused array. The media only published the statements given by the 7th accused in a press conference. It cannot be said that the same amounts to defamation and media people should be prosecuted for the same. Therefore, for that simple reason, the prosecution against the petitioners is to be set aside.

11. In addition, in **Madhavi Amma v. Sherief** [1985 KHC 68], this Court observed that the absence of necessary allegations in the complaint cannot be made good by the evidence adduced during the trial.



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This Court observed that, from the complaint itself the accused is entitled to know what are the accusations which formed the basis of the complaint. It will be better to extract the relevant portion of the above judgment:

"12. In a defamation case, the only paper containing the accusation of offences given to the accused is the complaint. What he is called upon to answer are the accusations in the complaint. Absence of necessary allegations in the complaint cannot be made good by the evidence adduced during trial. Cause of action is the allegation in the complaint alone. What is required further is only adducing evidence in support of those allegations. Accused is entitled to know what are the allegations against him. Then only he will be able to answer the allegations and shape his defence. For that purpose, he cannot be asked to look into the evidence, oral or documentary. Such evidence is intended only as proof of accusations. Defect in the complaint cannot be allowed to be made good by evidence adduced during trial. In this case by going through Exts. P1 to P3, the accused may be aware of the imputations. Even otherwise, he may be aware of



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them because the publications came in his paper. But that is not the question. From the complaint itself, he is entitled to know what are the accusations which formed the basis of the complaint.

13. According to the decided English cases dealing with libel the actual words alleged to be used must be stated in the indictment. In our country such a strict standard is not insisted while dealing with cases of defamation by spoken words. That may be because spoken words are difficult to be understood and remembered for reproduction in first person. But we are dealing with a case of written accusation that came in the papers and not spoken words. Even according to the law followed in country it is desirable to reproduce the defamatory words in first person to the extent possible. When the defamatory statements are not unreasonably lengthy so as to make them impossible or difficult of reproduction in first person, law insist such reproduction. The object is to enable the accused to understand and answer the allegations against him. Even in cases of impossibility of reproduction in first person, law insists on a substantial account of the accusations being included in the complaint.



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Otherwise the complaint is considered defective.

[underline supplied]"

12. A perusal of the complaint filed by the complainant would not show that the actual words stated by the 7th accused and telecasted by the petitioners are specifically averred in the complaint which according to the complainant are defamatory to him. For that reason also, the complaint against the petitioners is to be quashed.

13. Upshot of the above discussion is that the continuation of the prosecution against the petitioners is liable to be quashed. But I make it clear that the complainant is free to proceed against the 7th accused and the trial court will consider the case against the 7th accused untrammelled by any observation in this order.

With the above observations, these Criminal Miscellaneous Cases are allowed. All further



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proceedings against the petitioners in
Crl.M.C.No.8552/2017 & 355/2019 pending before
the Chief Judicial Magistrate Court, Ernakulam as
C.C.No.165/2017 are quashed.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

nvj/DM



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APPENDIX OF CRL.MC 355/2019

PETITIONER ANNEXURES

ANNEXURE 1 **CERTIFIED COPY OF C.C.NO.165/2017
ON THE FILES OF CHIEF JUDICIAL
MAGISTRATE COURT, ERNAKULAM.**

ANNEXURE 2 **TRUE COPY OF THE FIR IN CRIME
NO.42/2018 OF CBCID PS,
THIRUVANANTHAPURAM.**



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APPENDIX OF CRL.MC 8552/2017

PETITIONER ANNEXURES

ANNEXURE A TRUE COPY OF THE COMPLAINT
C.M.P.NO.1313/2016 FILED BY THE 1ST
RESPONDENT BEFORE THE COURT OF
CHIEF JUDICIAL MAGISTRATE,
ERNAKULAM.

ANNEXURE B TRUE COPY OF THE ORDER IN
C.M.P.NO.1313/2016 ON THE FILE OF
THE COURT OF CHIEF JUDICIAL
MAGISTRATE, ERNAKULAM DATED 12-10-
2017.

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE