



2024/KER/61039

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 31<sup>ST</sup> DAY OF JULY 2024 / 9TH SRAVANA, 1946

CRL.MC NO. 11320 OF 2023

CC NO.270 OF 2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ALUVA  
PETITIONERS/ACCUSED 1,2,3:

- 1 MALAYALA MANORAMA CO.LTD  
REPRESENTED BY ITS MANAGING EDITOR, SRI.JACOB MATHEW, PB  
NO.427, PANAMPILLY NAGAR, KOCHI, PIN - 682036
- 2 SRI.PHILIP MATHEW  
AGED 53 YEARS  
EDITOR, MALAYALA MANORAMA CO.LTD, PB NO.427, PANAMPILLY  
NAGAR, KOCHI-682 036, PIN - 682036
- 3 SRI.M.B.JOSEPH  
AGED 40 YEARS  
REPORTER, MALAYALA MANORAMA, ALUVA BUREAU, 1ST FLOOR  
ROYAL PLAZA, BRIDGE ROAD, ALUVA, KOCHI, PIN - 683103  
  
BY ADV.MILLU DANDAPANI

RESPONDENTS/DE FACTO COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682031
- 2 SMT.K.V.SARALA  
AGED 64 YEARS  
D/O.VISWAMBARAN NAIR, MUNICIPAL COUNCILLOR, WARD NO.9  
RESIDING AT KUNDALA HOUSE, THOTTAKKATTUKARA P.O., ALUVA,  
PIN - 683108  
  
R1 BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE  
  
R2 BY ADVS.  
MANOJ RAMASWAMY  
JOLIMA GEORGE (K/916-E/2000)  
APARNA G. (K/000567/2016)  
C.B.SABEELA (K/856/2016)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**CR****ORDER**

Dated this the 31<sup>st</sup> day of July, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the petitioners, who are accused Nos.1 to 3 in C.C.No.270/2022 on the files of the Judicial First Class Magistrate Court-1, Aluva and the prayer herein is as under:

*To call for the records leading to quash Annexure A1 complaint and all further proceedings in C.C.No.270/2022 on the file of the Hon'ble Judicial First Class Magistrate Court-1, Aluva as against the petitioners for the ends of justice.*

2. Heard the learned counsel for the petitioners as well as the learned counsel appearing for the 2<sup>nd</sup> respondent/complainant in this case. The learned Public prosecutor also was heard. Perused the relevant records.

3. Here, the 2<sup>nd</sup> respondent/complainant lodged Annexure



A1 complaint before the Judicial First Class Magistrate Court-1, Aluva, alleging that, accused Nos.1 to 13 committed offence under Section 499 of the Indian Penal Code (for short, 'the IPC' hereinafter) punishable under Section 500 of the IPC. In the complaint, the publication made by Malayala Manorama Daily and other newspapers were detailed. The trial court recorded statement of the complainant and took cognizance in the matter and proceeded further.

4. The learned counsel for the petitioners would submit that, the only allegation against the petitioners herein is that, they have published a news item, as stated in paragraph No.5 of Annexure A1 and the same, in no way, would constitute an offence under Section 499 of the IPC r/w Section 34 of the IPC. Therefore, unwanted prosecution against the petitioners herein, who are media people, to be quashed.

5. Zealously opposing quashment of the case as against the petitioners herein, the learned counsel appearing for the 2<sup>nd</sup> respondent/complainant read out paragraph Nos.2 and 3 of the complaint and submitted that, in paragraph Nos.2 and 3, the



background facts, which led to publication of the news item which is defamatory has been illustrated and therefore, offence under Section 499 of the IPC punishable under Section 500 of the IPC, specifically made out, prima facie. Therefore, the trial court rightly took cognizance in the matter and the same need not be interfered.

6. Insofar as the ingredients to attract offence under Section 499 of IPC punishable under Section 500 of the IPC, the legal position is well settled. In the decision in **Abdul Rahiman v. State of Kerala** reported in [2024 KLT OnLine 1835], this Court extensively considered the same and summarized in paragraph No.10, as under:

*10. Summarizing the legal position as regard the ingredients to attract an offence under Section 499 of IPC punishable under Section 500 of IPC in Mohd. Abdulla Khan v. Prakash K. (2017 (4) KLT OnLine 2135 (SC) = (2018) 1 SCC 615 : (2018) 1 SCC (Cri) 255 : AIR 2017 SC 5608 : (2018) 181 AIC 5 : (2018) 1 Cal LJ 117 : 2018 Cri LJ 924 : (2018) 1 KCCR 321 : (2018) 1 ECrN 171), it is held that in order to constitute offence of defamation, the ingredients are; (i) a person to make some imputation concerning any other person; (ii) such*



*imputation must be made either (a) with intention, or (b) knowledge, or (c) having a reason to believe that such an imputation will harm the reputation of the person against whom the imputation is made. (iii) imputation could be, by (a) words, either spoken or written, or (b) by making signs, or (c) visible representations (iv) imputation could be either made or published. Under the said provision, the lawgiver has made the making or publishing of any imputation with a requisite intention or knowledge or reason to believe, as provided therein, that the imputation will harm the reputation of any person, the essential ingredients of the offence of defamation.*

7. Keeping the legal principles, as extracted hereinabove, the publication made by accused Nos.1 to 3, who are the petitioners herein, is as stated in paragraph No.5 of the complaint, as under:

5. *The accused Nos.1 to 3 published a news item on 20-02-2017 in Malayala Manorama Daily stating that “അദ്വൈതശാസ്ത്രം വളർത്തിയേക്കു മാലിന്യം കോരിയിട്ടു വിവാദമായി. മാലിന്യം കൗൺസിലർ സ്വന്തം നിലയിൽ നീക്കി.”*



8. On reading the publication, it would appear that, some waste materials put on the compound of Advythasramam and the Municipal Councillor, who is the 2<sup>nd</sup> respondent/complainant, removed the same, by herself. Reading the said text, on no stretch of imagination, it could be held that, the editor and publisher who published the news, published the same, with a requisite intention or knowledge or reason to believe that the imputation would harm the reputation of the 2<sup>nd</sup> respondent/complainant, in any manner and as such, no offence under Section 499 of the IPC, prima facie, made out against the petitioners herein. Therefore, Annexure A1 complaint is liable to be quashed.

9. Before parting, it is not possible to be unmindful of the unwanted prosecutions launched against news papers and media persons, alleging commission of offence under Section 499 punishable under Section 500 of the IPC. The cases of such nature are in abundance and this Court came across many such cases.

10. The term **Fourth Estate** or **fourth power** refers to the Press and news media both in explicit capacity of advocacy and



implicit ability to frame political issues. The derivation of the term arises from the traditional European concept of the three estates of the realm; the clergy, the nobility, and the commoners. The equivalent term “fourth power” is somewhat common in English, but it is used in many European languages, including German (*Vierte Gewalt*), Italian (*quarto potere*), Spanish (*Cuarto poder*), French (*Quatrieme pouvoir*), Swedish (*tredje statsmakten*) [Third Estate], Polish (*Czwarta Wladza*), and Russian, to refer to a government’s separation of powers into legislative, executive, and judicial branches.

11. It is the usual practice that news papers devote some space to report regarding registration of cases, filing of case in courts, arrest of persons in connection with crimes, progress of investigation, certain inputs regarding the genesis of the cases, etc. In the same way, important developments in the country in every nook and cranny, are the news items usually found in newspapers, to which people have enthusiasm and anxiety to know. Indubitably, freedom of the Press to give news and the right of the people to know the important developments in the country shall go



hand in hand in a democratic country, to maintain the equilibrium of democratic principles. Hurdle on freedom of the Press is not democracy and the same leads to mobocracy. No doubt, freedom of the Press and the right of people to know the news shall be subject to restrictions imposed by law. If accurate reportage of the news is encircled as defamatory, without having the essentials to constitute the said offence, the same will stand in the way of freedom of the Press. Therefore, the trial court, while taking cognizance for the offence of defamation, should ensure that, there are sufficient materials to take cognizance, otherwise, the said course of action may lead to dangerous ramifications and the same would infringe the freedom of Press and people's right to know, guaranteed by the Constitution of India. Thus, it is high time to alert the criminal courts in the District Judiciary in this regard. Accordingly, the judicial officers presiding criminal courts in the District Judiciary, are specifically directed to be more vigilant in future, while taking cognizance, alleging commission of offence of defamation against news papers and media persons, so as to ensure that, cognizance shall be taken only when the ingredients





discussed hereinabove, are made out and such exercise shall not be in a callous and mechanical manner.

In view of the above discussion, this Criminal Miscellaneous Case stands allowed. Annexure A1 complaint and all further proceedings in C.C.No.270/2022 on the files of the Judicial First Class Magistrate Court-1, Aluva, as against the petitioners herein, stand quashed.

Registry is directed to forward a copy of this order to the criminal courts in the District judiciary, for information and compliance.

Sd/-

**A. BADHARUDEEN  
JUDGE**

Bb

APPENDIX OF CRL.MC 11320/2023

## PETITIONERS' ANNEXURES

- ANNEXURE A1 CERTIFIED COPY OF THE COMPLAINT PREFERRED BY THE 2ND RESPONDENT WHICH IS PENDING AS C.C.NO.270/2022 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT- 1, ALUVA, DATED 20.05.2017
- ANNEXURE A2 (a) THE CERTIFIED COPY OF NEWSPAPER PUBLICATION IN MALAYALA MANORAMA DAILY DATED 20.02.2017 PRODUCED BY THE DE FACTO COMPLAINANT BEFORE THE COURT BELOW
- ANNEXURE A2 (b) THE CERTIFIED COPY OF NEWSPAPER PUBLICATION IN MALAYALA MANORAMA DAILY DATED 21.02.2017 PRODUCED BY THE DE FACTO COMPLAINANT BEFORE THE COURT BELOW
- ANNEXURE A2 (c) THE CERTIFIED COPY OF OF NEWSPAPER PUBLICATION IN MALAYALA MANORAMA DAILY DATED 22.02.2017 PRODUCED BY THE DE FACTO COMPLAINANT BEFORE THE COURT BELOW
- ANNEXURE A2 (d) THE CERTIFIED COPY OF NEWSPAPER PUBLICATION IN MALAYALA MANORAMA DAILY DATED 23.02.2017 PRODUCED BY THE DE FACTO COMPLAINANT BEFORE THE COURT BELOW

RESPONDENTS' ANNEXURES : NIL