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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 8TH DAY OF NOVEMBER 2024 / 17TH KARTHIKA, 1946

CRL.MC NO. 7573 OF 2018

CRIME NO.600/2018 OF KASABA POLICE STATION,

KOZHIKODE

**AGAINST THE ORDER/JUDGMENT DATED 08.11.2018 IN
CMP NO.3806 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST
CLASS - III, KOZHIKODE**

PETITIONER/ACCUSED:

**P.S.SREEDHARAN PILLAI
AGED 64 YEARS, S/O V.G.SUKUMARAN NAIR,
PRANAVAM, THIRUTHIYAD, KOZHIKODE - 673 004.**

**BY ADVS.
B.RAMAN PILLAI (SR.)
SRI.SUJESH MENON V.B.
SRI.T.K.SANDEEP**

RESPONDENTS/COMPLAINANT & STATE:

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



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HIGH COURT OF KERALA, ERNAKULAM - 31

**2 SHYBIN K. NANMANADA
AGE NOT KNOWN, S/O. BHASKARAN, KUNNATH
HOUSE, NANMINDA P.O., KOZHIKODE - 673 613**

BY ADV.:

SRI.SANGEETHARAJ.N.R, PP

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 08.11.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**



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P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.7573 of 2018

Dated this the 08th day of November, 2024

ORDER

The petitioner was the President of the Kerala State Unit of Bharatiya Janatha Party (BJP). He is now discharging his duties as the Governor of the State of Goa. While the petitioner was serving as the Kerala State President of BJP, he was arraigned as an accused in Crime No.600/2018 of Kasaba Police Station, Kozhikode. The above case was registered alleging an offence punishable under Section 505(1)(b) of IPC.

2. The allegation against the petitioner is as follows:-

In a speech delivered by the petitioner on 04.11.2018 at the "Bharathiya Yuva Morcha State Council



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Closure Meeting”, he stated that closure of “Sabarimala Nada” by the “Thanthri” in case of the entry by “yuvathi” (adolescent women) will not amount to contempt of court and that the “Thanthri” is not alone and we all are behind the “Thanthri”. It is further alleged that, this statement which was broadcast through the media induced the Ayyappa Bhakthas to commit criminal offences. Hence, it is alleged that the petitioner committed the offence under Section 505(1)(b) of IPC.

3. The 2nd respondent, submitted a complaint before the Station House Officer, Kozhikode Kasaba Police Station on 05.11.2018 as evident by Annexure-I. Based on the same, an application was filed before the Judicial First Class Magistrate Court-III, Kozhikode for getting orders under Section 155(2) Cr.P.C for registering a case. As per Annexure-II order, the learned Magistrate granted sanction. Accordingly, Annexure-III FIR was registered. According to the petitioner, even if the entire allegations are accepted, no offence is made out against the



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petitioner. Hence, this Criminal Miscellaneous Case is filed.

4. Heard the learned Senior Counsel Adv. Sri. B. Raman Pillai instructed by his retaining counsel for the petitioner. I also heard the learned Public Prosecutor Adv. Sri. Sangeetharaj N.R., who appeared for the State.

5. The Senior Counsel Adv. B. Raman Pillai takes me through the Annexure-I complaint and submitted that, even if the entire allegations are accepted, the offence under Section 505(1)(b) IPC is not made out. The learned Senior Counsel also submitted that, the FIR is registered based on a portion of the speech made by the petitioner. The Senior Counsel takes me through the manuscript of the speech which is produced as Annexure-V, and submitted that there is nothing to attract Section 505(1) (b) of IPC, when viewed in its entirety. The Senior Counsel submitted that, at that time, the petitioner was also practicing as a lawyer and a fair criticism of a judgment of the Apex Court will not attract a criminal offence.



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6. The learned Public Prosecutor takes me through the statement filed by the Inspector of Police, Nadakkavu Police Station, Kozhikode and submitted that the case is at the investigation stage and this Court may not interfere with the investigation. The police will thoroughly investigate the matter and thereafter do the needful, in accordance with the law. The Public Prosecutor takes me through some of the statements made by the petitioner in his speech and submitted that the same is alarming to the public and could induce individuals to commit an offence against the State or against the Public tranquillity. Therefore, the offence under Section 505(1) (b) IPC is made out, is the submission of the Public Prosecutor.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. The offence alleged in the First Information Statement is under Section 505(1) (b) IPC. It will be better to extract Section 505(1)(b) of IPC:



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“505. Statements conducing to public

mischief. (1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

(underline supplied)

8. A perusal of the above-mentioned Section would show that the ingredients to attract Section



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505(1)(b) are the following:

- “(a) the accused made, published, or circulated, a statement, rumour, or report;*
- (b) he did so with intent to cause, or which was likely to cause, fear or alarm to the public or to a section of the public; and*
- (c) thereby a person may be induced to commit an offence against the*
 - (i) State, or*
 - (ii) public tranquillity”*

9. From the above, it is clear that, if the accused made, published or circulated a statement, rumour or report with the intent to cause or which was likely to cause fear or alarm to the public or to a section of the public and thereby a person may be induced to commit an offence against the State or public tranquillity, the offence is made out.

10. It is an admitted fact that, the petitioner was making a speech in a conference hall of Alakapuri Restaurant at Kozhikode. It is also an admitted fact that,



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he was inaugurating a meeting of “Yuva Morcha Samsthana Samithi”, which is a youth wing of BJP. To attract the offence under Section 505(1)(b) IPC, the accused should make a speech with intent to cause, or which was likely to cause “fear or alarm” to the public or a section of the public. “Fear or alarm” to the public refers to causing concern, anxiety or apprehension among the general public or purportedly disrupting the social order or stability. The other words used in the section are “public or to a section of public”. The term “public” has various meanings depending on the context where it is used. The general definition of “public” is relating to the people as a whole, especially citizens of a country or a community. It also includes the people who are accessible by everyone, but not private or exclusive group of people. The question to be decided is that, when the petitioner was inaugurating a meeting held in the conference hall of a hotel and that also the meeting of the youth wing of BJP, can it be said that the accused made, published or



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circulated a statement, rumour or report with intent to cause, or which was likely to cause, fear or alarm to the public or to a section of the public?

11. I am of the considered opinion that, the same will not attract the offence under Section 505(1)(b) IPC. If the meeting had been held in a public place accessible to all, and the petitioner had made a speech that met the other ingredients of Section 505(1)(b), the offence may attract. But, here is a case where the petitioner was only making a speech in a conference hall and that also in a meeting of the youth wing of BJP. In such circumstances, it cannot be said that the petitioner made a speech which is likely to cause fear or alarm to the “public”. It is true that the Section 505(1)(b) says “fear or alarm to the public or to any section of the public”. Then the question is whether the members of the meeting can be termed as a “section of the public”?. On a literal word meaning, it may be correct. But it is to be noted that the petitioner was inaugurating a meeting of “Yuva Morcha Samsthana



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Samithi”, which is a youth wing of BJP. Nobody has access to that meeting, except the members of “Yuvajana Morcha”. It happened in a conference hall of a hotel. As I mentioned earlier, the general definition of “public” relates to the people as a whole, especially citizens of a country or a community. It also includes the people who are accessible by everyone, but not private or exclusive group of people. So the participants of a meeting of the youth wing of BJP in a conference hall of a hotel cannot be termed as a “section of the public” used in the context of Section 505(1)(b) IPC. The participants of such meetings may be a “section of the public”, but they will not come within the meaning “section of the public” used in the context of Section 505(1)(b) IPC.

12. It is the case of the police that the above speech of the petitioner was telecast by the news channels and circulated through social media. The police have no case that the petitioner invited the press to cover the speech. Simply because the speech, made by the



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Petitioner in a hotel, was published by the news channels and media, the petitioner cannot be held liable for the offences punishable under Section 505(1)(b) IPC. Media has got a right to publish news and therefore media also cannot be blamed.

13. This Court also perused the speech made by the petitioner, which is produced in a manuscript as evident by Annexure-V. The Apex Court declared that women can enter Sabarimala without any restriction regarding their age. The petitioner stated in his speech that every effort should be made to prevent women between the age of 10 and 50 from going to Sabarimala. However, it is clearly stated by the petitioner in the speech itself as evident by Annexure-V that it should not be treated as a war, and that in war, there will be a fight, and people may die. He stated that this fight shall not escalate to that extent, and that this was his personal opinion. It was also stated by him that the Sabarimala “Thanthri” contacted him over phone and asked whether,



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if a woman between the age of 10 and 50 came to Sannidhanam, and at that stage, if the doors of the temple were closed, would it amount to contempt. Admittedly, the petitioner is a lawyer which may be the reason why the Thanthri contacted him. In his speech, the petitioner stated that he informed the Thanthri that it would not amount to contempt of Court and even if it is contempt, it would not be just the Thanthri, but several others as well will be behind him. In the speech, he also stated that all religions are in support of the BJP's stance. He further stated that he is going to meet with the Christian priests and the Muslim community and will fight to protect the beliefs of Sabarimala with the support of all. Therefore, there are statements in the speech which would show that the attempt is to unite all communities to protect the interests of Hindus. Therefore it cannot be said that the speech made by the petitioner, that also in a conference hall, to the youth wing of BJP will cause fear or alarm to the public or to a section of the public.



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14. While assessing a speech, the Court cannot take isolated specific phrases or words. The Court has to assess a speech in the totality of the circumstances. The Court has to consider the meaning, intent and impact of the speech, instead of isolating one or two sentences. The Court has to assess the speech as a whole, rather than taking fragmented parts of it. “The art of public speaking is the art of forgetting yourself in the presence of others” is one of the famous quoting about speeches. Nowadays there is a trend to sensationalise speeches by taking isolated sentences in it, which is to be deprecated. Coming back to the speech of the petitioner, I am of the considered opinion that, when the speech as a whole is taken, the ingredients of Section 505(1)(b) are not attracted. Citizens may disagree with the views expressed by the petitioner. However, disagreement with the views presented in a speech is not a ground for initiating prosecution under Section 505(1)(b) IPC.



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15. Moreover, one of the ingredients to attract Section 505(1)(b) is that the statement made by the accused must be likely to cause fear or alarm to the public or to a section of the public and thereby induce a person to commit an offence against the State or public tranquillity. A perusal of the Annexure-I complaint would not show that there is any such instance where a person was induced to commit an offence against the State or public tranquillity because of the speech alone. In such circumstances, I am of the considered opinion that basic ingredients of Section 505(1)(b) IPC are not attracted.

16. Admittedly, the petitioner and his party was not agreeing with the judgment of the Apex Court on the entry of adolescent women to the Sabarimala Sannidhanam. A fair and reasonable criticism of a judgment, which is a public document, would not constitute contempt or attract criminal offences. The Apex Court in ***Hari Singh Nagra and Others v. Kapil Sibal and Others*** [2010 KHC 4511] observed that:



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“9. There is no manner of doubt that Judges are accountable to the society and their accountability must be judged by their conscience and oath of their office. Any criticism about the judicial system or the judges which hampers the administration of justice or brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. National interest requires that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being colored by any partisan spirit or tactics. There is no manner of doubt that freedom of expression as contemplated by Art. 19(1)(a) of the Constitution is available to the Press and to criticize a judgment fairly albeit fiercely is no crime but a necessary right. A fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. In fact, such fair and



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reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. The Message examined the evils prevailing in the judicial system and was written with an object to achieve maintenance of purity in the administration of justice. The message was exposition of Mr. Sibal's ideology and he had shown the corrective measures to be adopted to get the institution rid of the shortcomings mentioned by him."

17. The Apex Court observed that there is no manner of doubt that freedom of expression, as contemplated by Article 19(1)(a) of the Constitution, is available to the press and to criticize a judgment fairly is not a crime but a necessary right. A fair and reasonable criticism of a judgment, which is a public document or which is a public act of a judge concerned with the administration of justice, could not constitute contempt. The Apex Court also observed that such fair and reasonable criticism must be encouraged because after



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all, no one, much less judges can claim infallibility. In such circumstances, I am of the considered opinion that, even if the entire allegations in Annexure III FIR are accepted in toto, no offence under Section 505(1)(b) IPC is made out against the petitioner.

18. In addition to all above, the petitioner is now discharging his duty as a Governor of the State of Goa. Article 361 of the Constitution says that the President or the Governor or Rajpramukh of a State shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. Article 361 (2) says that no criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any Court during his term of office. Therefore, the petitioner is entitled to immunity under Article 361 of the Constitution as long as he remains the Governor of Goa.



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19. The upshot of the above discussion is that the continuation of further proceedings in Annexure-III FIR registered against the petitioner is not necessary.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings in Annexure-III FIR are quashed.

nvj/sjb

Sd/-
P.V.KUNHIKRISHNAN
JUDGE



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APPENDIX OF CRL.MC 7573/2018

PETITIONER ANNEXURES

- ANNEXURE - I** **A TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE SHO, KOZHIKODE CUSBA STATION DATED 05.11.2018**
- ANNEXURE - II** **A TRUE COPY OF HE ORDER IN C.M.P.NO.3806/2018 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, KOZHIKODE DATED 08.11.2018**
- ANNEXURE - III** **A TRUE COPY OF THE F.I.R. IN CRIME 600/2018 OF KOZHIKODE CUSBA POLICE STATION DATED 08.11.2018**
- ANNEXURE - IV** **A TRUE COPY OF THE C.D CONTAINING THE VIDEO OF THE SPEECH MADE BY THE PETITIONER AT THE MEETING ON 04.11.2018**
- ANNEXURE - V** **RELEVANT PORTIONS OF THE TRANSCRIPT OF ANNEXURE-IV VIDEOS**

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE