



2024:KER:68941

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 10TH DAY OF SEPTEMBER 2024 / 19TH BHADRA, 1946

CRL.MC NO. 6800 OF 2024

CRIME NO.390/2024 OF Fort Kochi Police Station, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.462 OF 2024

OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MATTANCHERY

PETITIONER/ACCUSED:

ZARA MICHELE SHILANSKY,
AGED 38 YEARS
D/O. CYRIL JEFFEY SHILANSKY, U 103/2, ULMARRA PI,
EAST LIND FIELD, NSW AUSTRALIA 2070, PASSPORT NO.
AUS PE0395031

BY ADVS.
BLAZE K.JOSE
NIKHIL SANJAY
TREESA ROSE
AIRINE JOBY

RESPONDENTS/COMPLAINANT AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM. SUB INSPECTOR OF
POLICE, FORT KOCHI POLICE STATION,, PIN - 682031
- 2 SUB INSPECTOR OF POLICE
FORT KOCHI POLICE STATION, KOCHI,, PIN - 682001
- 3 MUHAMMED AZEEM K. S.
S/O. SHAMSUDEEN, HOUSE NO. 6/1522,
MARTHANDAMPARAMBU, MATTANCHERRY, FORT KOCHI,
ERNAKULAM, PIN - 682001



OTHER PRESENT:

SMT. SREEJA V (PP)

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
10.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**



“C.R.”

BECHU KURIAN THOMAS, J

.....
Crl.M.C.No. 6800 of 2024
.....

Dated this the 10th day of September, 2024

ORDER

Amidst the large number of tourists that flock to Kerala - “God’s own country”, petitioner was unfortunate to have faced the traumatic incident of being arrested alleging the commission of an offence under Section 153 of the Indian Penal Code, 1860. Further, after obtaining bail in the said crime, while she was about to leave the country, she was detained at the Kochi International Airport pursuant to a lookout notice issued at the behest of the police that too, for a bailable offence. In the meantime, the final report was filed and cognizance has been taken by the Judicial First Class Magistrate's Court, Mattanchery as C.C. No.462/2024. Petitioner challenges the said criminal proceedings through this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.



2. The incident that led to the registration of Crime No.390/2024 of Fort Kochi Police Station against the petitioner revolves around two banners kept at Fort Kochi - a tourist destination in Kerala. The two posters kept by some unknown organization contained the slogan "SILENCE IS VIOLENCE, STAND UP FOR HUMANITY". Perturbed by the two posters, petitioner, a lady of Jewish descent but an Australian citizen and her friend, after being unsuccessful in their attempt to get it removed through the tourism office, felt it necessary to remove them. The banners apparently generated in her mind, impressions about the ongoing war between Palestine and Israel. Petitioner thereafter, allegedly tore the two banners. The 3rd respondent who is purported to be the Area Secretary of the Students Islamic Organization (SIO), a student wing of the Jamaat-e-Islami, filed a complaint alleging that the posters put up in front of the boat jetty at Fort Kochi were destroyed by two tourists inappropriately, and requested the Police to register a crime.

3. Pursuant to the above complaint, FIR No.390/2024 of Fort Kochi Police Station was registered, and a final report was filed, alleging an offence punishable under Section 153 IPC.



Subsequently, the Judicial First Class Magistrate, Mattancheri, took cognizance of the offence as C.C.No.462/2024. The petitioner, who is the sole accused in the above crime, seeks to quash the said proceedings.

4. Sri.Blaze K Jose, the learned counsel for the petitioner, contended that, the uncontroverted allegations in the final report do not make out the offence alleged and therefore the prosecution is liable to be quashed. The learned counsel further submitted that the two posters that were allegedly destroyed by the petitioner were admittedly not legally permissible posters and hence even if it is assumed that they were destroyed by the petitioner, the same could not have been termed to be a malignant or wanton act which was illegal. The learned counsel submitted that as a tourist, the petitioner had to undergo tremendous anguish pursuant to the registration of the crime and its continuance will be further disquieting.

5. Though notice to the 3rd respondent was sent by special messenger which was served on him on 21.08.2024. Till date, none has chosen to appear on his behalf.



6. Smt.Sreeja.V, the learned Public Prosecutor, contended that the allegations are required to be tested in a trial and therefore, resort to the inherent powers of this Court ought not to be permitted.

7. While considering the rival contentions, it is necessary to bear in mind the provisions of Section 153 of IPC, which is extracted as below:

“S.153 - “Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

8. A perusal of the above provision indicates that the primary ingredients required to be satisfied to attract the offence under Section 153 IPC are:

- “1) The accused did an illegal act.*
- 2) The act was done malignantly or wantonly.*
- 3) The act was done with the intention to provoke or knowing that it will provoke a person to cause the offence of rioting.”*

9. A reading of the statement of the defacto complainant itself reveals that no permission was obtained by any organization to



put up a poster of the nature that was allegedly torn by the petitioner. If a poster has been put up without authority, it is irrefutably an illegal act. Removal of an illegal poster cannot be said to be an illegal act done malignantly or wantonly, even if it is done by a private individual, though ideally, petitioner ought to have approached the law enforcement agencies, instead of tearing it by herself. Since tearing down a poster kept without any legal authority cannot strictly fall within the term illegal act, the main ingredient of Section 153 is lacking in the final report.

10. In the decision in **Sanjeev S. v. State of Kerala** [2023 (2) KLT 767], this Court has held that even if an act was done wantonly or malignantly unless the act itself is illegal, the offence under Section 153 IPC cannot be attracted. Similarly, in **Raju Thomas @ John Thomas v. State of Kerala** [2012 (4) KLT 499], a learned Single Judge of this Court had observed that tearing down a notice containing a defamatory statement against that person himself, cannot be viewed as an unlawful act done by him out of extreme malevolence or enmity or recklessness. This Court observed as follows:



“None has a right to exhibit such a notice board in a public place cannot also be lost sight of. Even assuming that the complainant should have approached the law enforcing agency rather than taking action by himself, in the given facts and circumstances presented, it cannot be stated that tearing of the notice board containing defamatory statement against him and that too exhibited in a public place was an act done by him with intent to provoke any person to commit the offence of rioting. Where the exhibiting of such a board against him at a public place itself is shown to be illegal, tearing away that notice board, even if such allegation is accepted as true, cannot be considered as an act intentionally done to provoke any other person to commit rioting. At best, it was an act of removing a notice board affecting his self respect and dignity when it was exhibited by some miscreants at a public place.”

11. Apart from the above, the final report does not even allege that the posters were torn with the intention to provoke or knowing that it will provoke a person to commit the offence of rioting. The final report is totally silent as to whether the petitioner was aware that the tearing of the poster will cause the offence of rioting or provoke people to indulge in rioting. The absence of such an allegation assumes significance in the light of the statement of the defacto complainant himself that the posters never carried the name of any organization. In the absence of the name of any organization



or any group, the petitioner could not have even imagined that it would result in rioting or provoke the commission of any offence.

12. Since, the posters were concededly put up without any legal authority and also since it did not contain the name of any organisation that had put it up, the act of removing the posters or tearing down the posters cannot be said to be an illegal act or as one capable of provoking the commission of riot. Hence, the prosecution of the petitioner for an offence under section 153 IPC is an abuse of the process of law and the proceedings are liable to be quashed.

13. Accordingly, all further proceedings in C.C. No.462 of 2024 on the files of the Judicial First Class Magistrate's Court, Mattanchery, arising out of Crime No.390 of 2024 of Fort Kochi Police Station, are hereby quashed.

The Crl.M.C. is allowed as above.

Sd/-
BECHU KURIAN THOMAS
JUDGE

Mms



APPENDIX OF CRL.MC 6800/2024

PETITIONER'S ANNEXURES

- ANNEXURE 1** **A TRUE COPY OF THE FINAL REPORT FILED
IN CRIME NO. 390 OF 2024 OF FORT KOCHI
POLICE STATION NOW PENDING BEFORE THE
JFCM, MATTANCHERRY AS C.C. NO. 462 OF
2024**
- ANNEXURE 2** **A TRUE COPY OF THE ORDER IN W.P. (C).
NO. 6061 OF 2024 DATED 1.8.2024 OF THE
HON'BLE HIGH COURT OF DELHI**
- ANNEXURE 3** **A TRUE COPY OF THE PHOTOGRAPH OF THE
ALLEGED POSTER IN THE CRIME**