



2023/KER/63462

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

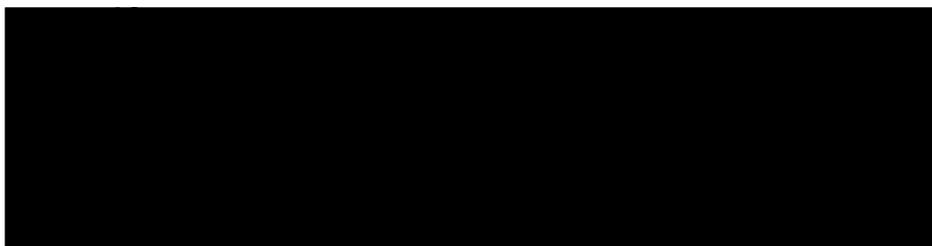
THURSDAY, THE 19<sup>TH</sup> DAY OF OCTOBER 2023/27TH ASWINA, 1945

CRL.REV.PET NO. 266 OF 2023

AGAINST THE ORDER IN CMP.760/2022 OF ADDITIONAL CHIEF  
JUDICIAL MAGISTRATE, ERNAKULAM

REVISION PETITIONER:

AYUB H.H



BY ADVS.  
D.FEROZE  
C.J.JIYAS  
T.S.KRISHNENDU  
PREETI S.

RESPONDENTS:

1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM  
PIN - 682031  
(CMP NO.760/2022 OF CHIEF JUDICIAL MAGISTRATE  
ERNAKULAM) .

2 VANDANA SHIVADAS



BY ADVS.  
SRI.N.R.SANGEETH RAJ, PUBLIC PROSECUTOR  
PARVATHY VIJAYAN  
S.SIBHA(K/477/2004)  
AMEER SALIM(K/1024/2020)

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 19.10.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



**N. NAGARESH, J.**

.....

Crl.R.P. No.266 of 2023

.....

*Dated this the 19<sup>th</sup> day of October, 2023*

**ORDER**

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The petitioner, who is the complainant in CMP No.760/2022 on the files of the Additional Chief Judicial Magistrate, Ernakulam, is aggrieved by the order dated 19.12.2022 passed by the Court of the Additional Chief Judicial Magistrate, Ernakulam.

2. The petitioner states that he filed a private complaint stating that on 22.02.2022, a defamatory content has been posted by the 2<sup>nd</sup> respondent on the Facebook page named Alias @ Queen on Wheels, which is defamatory to the petitioner. The defamatory post was made with the intention to tarnish the reputation and goodwill of the Firm run by the petitioner. The 2<sup>nd</sup> respondent has thereby



committed the offence punishable under Sections 500, 501 and 502 IPC.

3. The petitioner examined PWs 1 to 4. The Court of the Additional Chief Judicial Magistrate, after going through the contents of the matter alleged to be defamatory, came to a conclusion that there is nothing to show that the 2<sup>nd</sup> respondent had published any imputation concerning the complainant with intention to harm him. The Additional CJM took note of the judgment of this Court in 2018 KHC 160 and held that there is no sufficient ground for proceeding with the complaint. The complaint was hence dismissed under Section 203 Cr.P.C. It is aggrieved by the dismissal of the complaint that the revision petitioner is before this Court invoking Sections 397 and 401 Cr.P.C.

4. The counsel for the petitioner argued that Section 499 IPC is regarding the harm to the reputation of any person, which necessarily means that the said provision deals with individuals. The petitioner and his witnesses had clearly established the case against the 2<sup>nd</sup> respondent. The



learned Magistrate did not consider the evidence on record properly.

5. The counsel for the petitioner further argued that the 2<sup>nd</sup> respondent had caused damage to the brand of the petitioner and his business. The content of the Facebook post tarnished the reputation of the brand of the complainant and has adversely affected the sale of the product of the complainant's Firm.

6. The counsel for the petitioner further argued that the Magistrate committed an error in relying on the dictum in 2018 KHC 160. The content in the body of Section 499 IPC is regarding the harm to the reputation of any person, which necessarily means that the Section deals with individuals. The reasoning of the Magistrate is unsustainable.

7. I have heard the learned counsel for the petitioner, the learned Public Prosecutor representing the 1<sup>st</sup> respondent and the learned counsel appearing for the 2<sup>nd</sup> respondent. I have also perused the certified copies of the depositions of PWs 1 to 4 made available by the counsel for



the petitioner.

8. The statements of the witnesses would show that the content of the Facebook post is regarding the product of the Firm of the petitioner. The 2<sup>nd</sup> respondent has criticised the product. Criticism of any product/service made by a citizen cannot be treated as defamatory though such criticism may not be of the liking of the manufacturers/producers.

9. Section 499 IPC defines defamation as “Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. This Court in the judgment in ***Malayala Manorama Company Limited and others v. Deepak J. M. and others*** [2018 KHC 160] has held that what is the content in the body of Section 499 IPC is regarding the harm to the reputation of any person. Any criticism or loss of reputation of any product



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therefore cannot be treated as defamatory.

In the afore circumstances, I do not find any reason to interfere with the order dated 19.12.2022 of the Court of Additional Chief Judicial Magistrate, Ernakulam in CMP No.760/2022. The Criminal Revision Petition is therefore dismissed.

Sd/-

**N. NAGARESH, JUDGE**

aks/17.10.2023