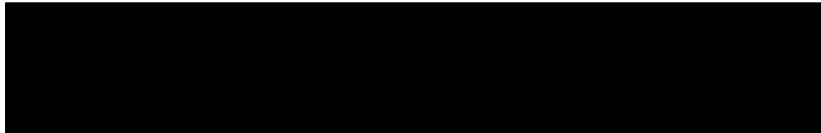




2024/KER/15951

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024 / 9TH PHALGUNA, 1945
CRL.MC NO. 7466 OF 2022
AGAINST THE ORDER/JUDGMENT ST 200/2022 OF JUDICIAL MAGISTRATE
OF FIRST CLASS - I, KARUNAGAPPALLY
PETITIONER/ACCUSED:

MANUJA MYTHRI



BY ADVS.
AKASH S.
GIRISH KUMAR M S
V.S.VARALEKSHMI
NEETHU S.

RESPONDENT/DEFACTO COMPLAINANT & STATE:

1 ADV.T.K.AJAN



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

R1 BY ADV.T.K.AJAN(Party-In-Person)

OTHER PRESENT:

SRI.VIPIN NARAYANAN, SENIOR PUBLIC
PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
28.02.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**C.R****ORDER**

This petition is at the instance of the accused in ST No.200 of 2022 on the file of Judicial First Class Magistrate Court-I, Karunagapally, invoking inherent jurisdiction of this Court to quash the proceedings in that case.

2. According to the petitioner, the 1st respondent filed a private complaint against her alleging an offence punishable under Section 500 of IPC, making false and untenable allegations of defamation. The petitioner is an award winning journalist. She posted a video in her YouTube Channel by name 'Kolambi' about Amritanandamayi and about the mysterious deaths occurred in her Ashram. That video was based on various books and publications by different authors, and she did not add anything more, on her own. She would say that, the allegations in the complaint or the statement of witnesses in the enquiry were not sufficient to bring home an offence punishable under Section 500 of IPC against her. The 1st respondent failed to show a prima facie case as to how he was defamed by that YouTube video posted by her. So, her prayer is to quash the proceedings in ST No.200 of 2022.

3. Heard learned counsel for the petitioner, learned Public Prosecutor and also the 1st respondent/complainant who appeared



as a party in person.

4. Learned Public Prosecutor submitted that, since the accused was residing at a place beyond the area in which the learned Magistrate was exercising his jurisdiction, an enquiry under Section 202(1) of Cr.P.C was mandatory. The petitioner/accused was staying at Kothamangalam outside the jurisdictional limits of JFCM-I, Karunagapally.

5. On going through the proceedings in CMP No.2950 of 2020, it could be seen that the complaint was presented before the Magistrate Court on 30.12.2020 and on that day, complainant or his witnesses were not examined and no cognizance was taken. So, the learned Magistrate postponed the issue of process, for conducting 202 enquiry. On 25.11.2021, complainant and two witnesses were present and enquiry was conducted. On 22.02.2022, another witness was present and enquiry was completed and the CMP was posted for hearing to 19.03.2022. So, obviously, enquiry under Section 202(1) of Cr.P.C was conducted by the learned Magistrate himself, without directing an investigation by a police officer or by such other person.

6. After hearing, learned Magistrate issued summons to the accused as per proceedings dated 19.03.2022, which reads as follows:



“Complainant present, heard. I am satisfied that there are prima facie case under Section 500 IPC. Case taken on file as ST 200/22. Issue summons by registered post”.

7. True that a detailed order is not warranted while taking cognizance and issuing summons under Section 204 of Cr.P.C. But the proceedings must show that, learned Magistrate applied his mind to the facts and the statements of the complainant and his witnesses, to find that there was sufficient ground for proceeding against the accused.

8. In **Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others** [2015 KHC 2763], the Apex Court observed that, the steps taken by the Magistrate under Section 190(1)(a) of Cr.P.C followed by Section 204 of Cr.P.C should reflect that the Magistrate has applied his mind to the facts and the statements.

9. Paragraph 23 of that judgment reads thus:

“23. The steps taken by the Magistrate under S.190(1)(a) of CrPC followed by S.204 of CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the Court. No doubt, no formal order or a speaking order is required to be passed at that



stage. The Code of Criminal Procedure requires speaking order to be passed under S.203 of CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under S.202 of CrPC, if any, the accused is answerable before the Criminal Court, there is ground for proceeding against the accused under S.204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under S.190/204 of CrPC, the High Court under S.482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the Criminal Court. To be called to appear before Criminal Court as an accused is serious matter affecting one's dignity, self - respect and image in society. Hence, the process of Criminal Court shall not be made a weapon of harassment".

10. In **Abhijit Pawar v. Hemant Madhukar Nimbalkar and another [2017 KHC 6029]**, the Apex Court held that, before issuing summons under Section 204 of Cr.P.C, Magistrate has to satisfy that an offence has been made out against the accused after reading the complaint, verifying the statement given by the complainant and his witnesses and on perusing the documents etc., and the steps taken by the Magistrate to issue summons under Section 204 of Cr.P.C should reflect that the Magistrate has applied his mind to the facts and statements.



11. In the case on hand, the accused was staying outside the jurisdictional limits of the Magistrate. So, he should have been all the more careful in analysing the facts and statements of the complainant and his witnesses. Learned Magistrate ought to have verified whether the YouTube video posted by the petitioner contained any defamatory imputations against the complainant, or it affected the reputation of the 1st respondent in any manner, after analysing the statement given by the complainant and his witnesses.

12. Learned Magistrate issued summons to the accused in a one line order stating that, he was satisfied that there are prima facie case under Section 500 IPC. That order will not show that, how the learned Magistrate arrived at that satisfaction. There is no mention about the statements given by the complainant and his witnesses to show that, the learned Magistrate went through the statements and satisfied himself with the offence alleged, so as to issue summons to the accused. How the learned Magistrate arrived at that satisfaction should reflect in the order taking cognizance so that a person who come across that order also must get the satisfaction, that the Magistrate has applied his mind to the facts and statements recorded during the enquiry.

13. Taking cognizance and issuing summons to a person as



accused in a criminal case is a serious matter affecting his dignity, self respect and image in the society. So, criminal courts have to be careful while taking cognizance and issuing summons to an accused, as we often see criminal proceedings are being resorted to as a weapon of harassment or retaliation.

14. Since no sufficient indication is there in the order issuing summons to the accused, to show that, the learned Magistrate was satisfied that the allegations in the complaint constituted an offence, when considered along with the statements recorded, it cannot be said that, the learned Magistrate applied his mind before issuing summons to the accused.

In the result, the proceedings of the learned Magistrate issuing summons to the accused, is set aside and the matter is remanded back for fresh consideration, as stated in paragraph 11 of this order, to pass appropriate orders on or before 25.03.2024, after applying his mind to the facts alleged in the complaint and the statements of the complainant and his witnesses recorded under Section 202(1) enquiry.

The Crl.M.C stands allowed to the extent as above.

Sd/-

**SOPHY THOMAS
JUDGE**

smp

APPENDIX OF CRL.MC 7466/2022

PETITIONER ANNEXURES

- Annexure I TRUE COPY OF THE COMPLAINT FILED BY THE DE-FACTO COMPLAINANT BEFORE THE JUDICIAL FIRST-CLASS MAGISTRATE COURT - I, KARUNAGAPPALLY, IN CMP NO. 2950/2020, WHICH SUBSEQUENTLY BECAME NUMBERED AS ST NO.200/2022.
- Annexure II TRUE COPY OF THE SCREENSHOT OF THE YOUTUBE PAGE OF THE VIDEO UPLOADED ON 29.09.2020, ALONG WITH THE DESCRIPTION.
- Annexure III TRUE COPY OF THE RELEVANT PAGES OF THE THIRD EDITION OF THE BOOK, ആതാനന്ദമയി ദിവ്യ അവതാരമോ? (MATA AMRITANANDAMAYI A DIVINE INCARNATION?) WRITTEN BY M.T RISHIKUMAR AND PUBLISHED BY MYTHRI BOOKS, THIRUVANANTHAPURAM.
- Annexure IV THE CERTIFIED COPY OF THE PROCEEDINGS SHEET IN CMP No.2950/2020, WHICH WAS SUBSEQUENTLY RENUMBERED IN THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KARUNAGAPPALLY, ST No.200/2022

RESPONDENT EXHIBITS

- Exhibit R1(a) The true copy of the Death Certificate of Sri.Dhurandar dated 15/06/1997 issued by the Registrar of Births and Death, Kollam Municipality dated 18/08/1997
- Exhibit R1(b) The true copy of the Sale Deed No:196/1997 dated 15/01/1997 of Eravipuram Sub Registry
- Exhibit-R1(c) The true copy of the Letter dated 28/06/1997 issued by Justice V.Bhaskaran Nambiar (Retired) to Sri.Krishnan Nambiar
- Exhibit-R1(d) The true copy of the Letter dated 30/07/1997 issued by Justice V.Bhaskaran Nambiar (Retired) to the Swamin
- Exhibit-R1(e) The true copy of the Letter dated 01/10/1997 issued by Justice V.Bhaskaran Nambiar (Retired) to Smt.Hyma



- Exhibit-R1 (f) The true copy of the Letter dated 23/02/1998 issued by Justice V.Bhaskaran Nambiar (Retired)
- Exhibit-R1 (g) The true copy of the Letter dated 23/03/1998 issued by Justice V.Bhaskaran Nambiar (Retired) to document writer Raju Pillai referring the name of this Respondent in it.
- Exhibit-R1 (h) The true copy of the Encumbrance Certificate dated 29/07/2008 of the property of deceased Sri.Dhurandar.
- Exhibit-R1 (i) The true copy of the corrected news published in Deshabhimani Daily dated 06/08/1997
- Exhibit R1 (j) true copy of the relevant column of the News item published in the Desabhimani Daily dated 24/09/2002
- Exhibit R1 (K) THE TRUE COPY OF THE SWORN STATEMENT OF THE COMPLAINANT ADV T.K AJAN IN CMP NO. 2950/2020 OF ST NO. 200/2022 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT KARUNAGAPPALLY ALONG WITH READABLE TYPED COPY
- Exhibit R1 (L) THE TRUE COPY OF THE DEPOSITION OF THE WITNESS UNNI IN CMP NO. 2950/2020 OF ST NO. 200/2Q22 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT KARUNAGAPALLY ALONG WITH READABLE TYPED COPY
- Exhibit R1 (M) THE TRUE COPY OF THE DEPOSITION OF THE WITNESS VIKRAMAN IN CMP NO. 2950/2020 OF ST NO. 200/2022 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT KARUNAGAPALLY ALONG WITH READABLE TYPED COPY
- Exhibit R1 (N) THE TRUE COPY OF THE DEPOSITION OF THE WITNESS PADMAKUMAR IN CMP NO.2950/2020 OF ST NO. 200/2022 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT KARUNAGAPALLY. ALONG WITH READABLE TYPED COPY

True Copy

P.S to Judge

smp