

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 9TH DAY OF OCTOBER 2023 / 17TH ASWINA, 1945

CRL.MC NO. 1196 OF 2021

AGAINST THE ORDER/JUDGMENT CC 1717/2020 OF JUDICIAL MAGISTRATE OF
FIRST CLASS -I, ALAPPUZHA

PETITIONER/ACCUSED:

RAMLA KABEER
AGED 51 YEARS

RAMLA KABEER (Party-In-Person)

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM

BY ADV.SRI.M.P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

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Dated this the 9th day of October, 2023

ORDER

Ramla Kabeer, the petitioner in this case argued her case, in person, with folded hands and tears in her eyes. First of all, no litigant or lawyer need to argue their case with folded hands before a court of law because it is their constitutional right to argue a case before a court of law. Usually the court of law is known as 'temple of justice'. But there is no god sitting in the bench. The judges are doing their constitutional duties and obligations. But the litigants and lawyers should keep the decorum of the court while arguing the case.

2. As far as the present case is concerned, I think the tears in the eyes of Ramla Kabeer is

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genuine. The petitioner is the sole accused in Crime No.545/2019 of Alappuzha North Police Station, which is now pending as C.C.No.1717/2020 on the files of the Judicial First Class Magistrate Court -I, Alappuzha. The above case is charge-sheeted against the petitioner alleging offences punishable under Sections 294(b), 506(i) of IPC and Section 120(o) of the Kerala Police Act. The defacto complainant in this case is the Inspector of Police, North Police Station, Alappuzha. It is the case of the prosecution that, on 07.04.2019, the defacto complainant was conducting patrol duty in the official vehicle along with constables and when the vehicle reached at Thathampally, the petitioner called him in his official mobile number and after identifying him as Circle Inspector of Police, North Police Station Alappuzha, threatened him by using abusive words. The defacto complainant disconnected the phone. Thereafter,

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again at 3.14 pm, the petitioner called him in the very same mobile number and abused him. Again he disconnected the phone. Thereafter, at 3.15 pm, he called the defacto complainant for identifying her and again she used abusive words. It is submitted that subsequently at 3.20 pm and 4.45 pm, the petitioner again abused and threatened the defacto complainant. As the petitioner abused and threatened the defacto complainant, it is submitted that the petitioner committed the aforesaid offences. Annexure A is the F.I.R and Annexure B is the final report. Aggrieved by the same, this CrI.MC is filed.

3. The petitioner, Ramla Kabeer, submitted that this is a false case foisted against the petitioner. According to her, she approached the Superintendent of Police, Alappuzha by filing a complaint on 25.03.2019 alleging that in the neighbouring property, a prayer hall of the Penta Costal Society is

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being conducted causing noise pollution in high decibel. The Superintendent of Police directed the defacto complainant herein to conduct an inspection. Thereafter on 07.04.2019, when the sound from the prayer hall became unbearable, it is submitted that, she called the defacto complainant in his official phone to know about the outcome of the complaint and at that time he abused the petitioner by making unnecessary and unwanted remarks. Hence the petitioner filed a complaint before the Superintendent of Police, Alappuzha against the defacto complainant as evident by Annexure - C. Annexure - D is the receipt showing the submission of Annexure - C complaint dated 08.04.2019. The petitioner also filed a complaint before the Police Complaints Authority as well as Inspector General of Police against the defacto complainant. Annexure - E is the complaint submitted to the Inspector General of Police and

Annexure – F is the receipt showing the submission of Annexure – E complaint. Annexure – G is the complaint submitted by the petitioner before the Police Complaints Authority and Annexure – H is the receipt showing the submission of Annexure – G complaint. It is submitted that, as a matter of fact the defacto complainant is not having any track record in the field and several complaints are pending against him at the instance of public. Annexure – I newspaper report dated 12.04.2019 and Annexure – J newspaper report dated 09.04.2019 were produced to show that the defacto complainant is a person continuously doing illegal activities. The Public Prosecutor supported the final report and submitted that, this is a matter of evidence and this Court may not pass any order quashing the proceedings. It is submitted by the Public Prosecutor that the petitioner has to prove the case before the trial court at the

time of evidence.

4. This Court considered the contentions of the petitioner and the Public Prosecutor. Ramla Kabeer, aged 51 years came directly before this Court and argued this case and stated that Annexure – A and Annexure – B are falsely foisted against her. The offence alleged in Annexure – B final report is under Section 294(b), 506(i) IPC and under Section 120(o) of the Police Act. The case of the defacto complainant as per the final report is extracted hereunder:

“പ്രതിയുടെ പരാതി ആലപ്പുഴ നോർത്ത് പോലീസ് സ്റ്റേഷനിലെ SHO ആയ ഒന്നാം സാക്ഷി ശരിയായ വിധം അന്വേഷണം നടത്തിയില്ല എന്നതിലുള്ള തെറ്റിദ്ധാരണമൂലം ഉണ്ടായ മുൻവിരോധം നിമിത്തം ടി 1-) 0 സാക്ഷിയെ അപമാനിക്കണമെന്നും ഭീഷണിപ്പെടുത്തണമെന്നും ഉള്ള ഉദ്ദേശത്തോടും കരുതലോടും കൂടി പ്രതി തന്റെ പേരിലുള്ള റിലയൻസ്

ജിയോ 8921328082 എന്ന നമ്പരുള്ള ഫോണിൽ നിന്നും രണ്ടാം സാക്ഷിയുടെ പേരിലുള്ള വൊഡാഫോൺ ഐഡിയ ലിമിറ്റഡ് കമ്പനി വക 9747383047 എന്ന നമ്പറിൽ നിന്നും 7.4.2019 തീയതി ഉച്ചകഴിഞ്ഞു 15.13 മണി മുതൽ 16.45 വരെയുള്ള സമയത്തു പല പ്രാവശ്യം ടി 1-)൦ സാക്ഷിയുടെ ഔദ്യോഗിക ഫോൺ നമ്പറായ 9497987058 ലേക്ക് വിളിച്ചു അസഭ്യവാക്കുകൾ പറഞ്ഞും ഭീഷണിപ്പെടുത്തിയും ടി സാക്ഷിയ്ക്ക് മനോവിഷമവും മാനഹാനിയും മരണഭീതിയും ഉളവാക്കിയും പ്രതി മേൽവകുപ്പുകൾ പ്രകാരമുള്ള ശിക്ഷാർഹമായ കുറ്റം ചെയ്തിരിക്കുന്നു എന്നുള്ളത്.”

5. The defacto complainant in this case is none other than the Station House Officer of Alappuzha North Police Station. *Prima facie*, I am of the considered opinion that the offence under Sections 294 (b), 506(i) IPC and under Section 120(o) of the Police Act is not made out in the facts and circumstances of this case. To attract the offence

under Section 294(b), certain ingredients are necessary. This Court in ***James Jose v. State of Kerala*** [2019 (3) KHC 531] considered this point in detail. The relevant portion is extracted hereunder:

"3. S.294(b) of IPC reads thus:

"294. Obscene acts and songs.--
Whoever, to the annoyance of others -
(b) sings, recites or utters any obscene song,
ballad or words, in or near any public place,
shall be punished with imprisonment of either
description for a term which may extend to
three months, or with fine, or with both."

4. In order to secure a conviction, the provisions of S.294 of IPC require two particulars to be proved by the prosecution, namely (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place; and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered in or near any public place or that it causes no annoyance to others, no offence is committed."

6. Admittedly the allegation is that the petitioner contacted the defacto complainant over phone and used abusive language. Even if the petitioner used abusive words over phone, that would not attract an offence under section 294(b) IPC in the light of the dictum laid down by this court in **James Jose case** (supra). Moreover, the abusive words mentioned in Annexure A complaint would not attract the ingredients of offence under section 294(b) IPC. As far as Section 506(i) IPC is concerned, the prosecution has to prove that the petitioner commits the offence of criminal intimidation. Criminal intimidation is defined in Section 503 IPC which says that 'whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not

legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation’.

7. Here the prosecution alleged that the petitioner, a 51-year-old citizen, used abusive language to the Station House Officer of Alappuzha North Police Station over phone. Even if the entire allegation in the final report is accepted, I am of the considered opinion that the offences under Section 294(b), Section 506(i) of IPC and Section 120(o) of the Police Act are not made out in this case.

8. Moreover, I am of the *prima facie* opinion that Annexure – A F.I.R itself is a counterblast to the complaint submitted by the petitioner as evident by Annexure – C which is received by the District Police Chief on 08.04.2019 at 10.42 A.M as evident by Annexure D. Even though Annexure – A F.I.R is

registered on 07.04.2019 at 6 P.M., a perusal of the court seal would show that Annexure – A F.I.R reached the Jurisdictional Magistrate court only on 09.04.2019 at 10.30 AM. That shows that the F.I.R reached the court only after Annexure – C complaint is received in the office of the District Police Chief. It will be better to extract the contents in Annexure – C.

“2 ആഴ്ച മുമ്പ് എന്റെ അയൽവാസിയുടെ ബന്ധു നടത്തുന്ന പ്രാർത്ഥനയുമായി ബന്ധപ്പെട്ടു സാറിന് ഞാൻ ഒരു പരാതി തന്നിരുന്നു. പിന്നീട് പ്രാർത്ഥന വളരെ sound കുറച്ചായിരുന്നു. പക്ഷേ ഇന്നലെ 7/4/09 അവർ വീണ്ടും വന്ന് മൈക്ക് വെച്ചു പ്രാർത്ഥിച്ചു. ആലപ്പുഴ നോർത്ത് CI (Rajkumar) എന്നെ വിളിച്ചു അവിടെ പ്രാർത്ഥന ഉണ്ടോ എന്ന് ചോദിച്ചു. ഉണ്ട് എന്ന് പറഞ്ഞപ്പോൾ abuse words വിളിച്ചിട്ട് നിന്റെ മുസ്ലിം പള്ളിയിൽ ബാങ്ക് വിളിക്കുന്നില്ലേ, നീ ഒരു criminal അല്ലെ എന്ന് ചോദിച്ചു. ഇവിടെ എഴുതാൻ പറ്റാത്ത ഭാഷ ഉപയോഗിച്ചു. കഷ്ടം ഞാൻ ഒത്തിരി പേർക്ക് counselling ചെയ്യുന്നു. Kolkatta യിൽ I.G, SP ഇവർ എന്റെ class കേൾക്കുന്നു. M.S.W പഠിച്ചു. ഇവിടെ

മോശമായ സാഹചര്യത്തിൽ നിന്നും വന്ന ഒരു Circle Inspector അസഭ്യ വാക്കുകൾ പറയുന്നു. ദയവായി സർ ഇയാളുടെ parents ഇയാളെ ഏത് സാഹചര്യത്തിലാണ് വളർത്തിയതെന്നും എങ്ങനെ CI എന്ന designation കിട്ടി എന്ന് അന്വേഷിക്കണമെന്ന് വിനീതമായി അഭ്യർത്ഥിക്കുന്നു. ഇയാൾക്കെതിരെ നടപടി എടുക്കണമെന്നഭ്യർത്ഥിക്കുന്നു.”

9. In Annexure - C, the petitioner clearly stated that the defacto complainant abused the petitioner on 07.04.2019. The same was received by the District Police Chief on 08.04.2019 at 10.42 A.M. Annexure - A F.I.R was received by the Jurisdictional court only on 09.04.2019 at 10.30 A.M. That itself shows that Anneuxre - A is registered by the Station House Officer, Alappuzha North Police Station at the instance of the defacto complainant to escape from Annexure - C complaint.

10. The petitioner is forced to approach this Court to redress her grievance and to quash the

proceedings. The defacto complainant should face the consequence, if the above facts are correct. A departmental enquiry is necessary against the defacto complainant, if he is still in service. As I mentioned earlier, it is very difficult to believe that the petitioner committed an offence under Section 294(b) and 506 (i) against the Inspector of Police by uttering certain words over phone. Moreover, the ingredients to attract Section 120(o) of the Kerala Police Act is also not made out. In the normal course, such an incident is unbelievable in our society. Citizens always respect the police authorities. Therefore, the District Police Chief should conduct an enquiry about the registration of this case against the petitioner and if there is any default on the part of the defacto complainant, appropriate steps should be taken in accordance with law.

Therefore, this Criminal Miscellaneous Case is

allowed in the following manner:

i) All further proceedings in C.C.No.1717/2020 on the file of the Judicial First Class Magistrate Court – I, Alappuzha arising from Crime No.545/2019 of Alappuzha North Police Station against the petitioner are quashed.

ii) The District Police Chief, Alappuzha will conduct an enquiry about the facts which lead to the registration of Annexure – A F.I.R and do the needful in accordance with law after giving sufficient opportunity of hearing to the affected parties. I make it clear that the District Police Chief is free to take appropriate decision untrammelled by any observation in this order.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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APPENDIX OF CRL.MC 1196/2021

PETITIONER ANNEXURES

- ANNEXURE A TRUE COPY OF THE FIR IN CRIME NO 545/2019 OF ALAPPUZHA NORTH POLICE STATION
- ANNEXURE B TRUE COPY OF THE FINAL REPORT IN CRIME NO 545/2019 OF ALAPPUZHA NORTH POLICE STATION
- ANNEXURE C TRUE COPY OF THE COMPLAINT DATED 8.4.2019 PREFERRED BEFORE SUPERINTENDENT OF POLICE ALAPPUZHA
- ANNEXURE D TRUE COPY OF THE RECEIPT DATED 8.4.2019 EVIDENCING THE SUBMISSION OF ANNEXURE C
- ANNEXURE E TRUE COPY OF THE COMPLAINT DATED NIL FILED BEFORE IF OF POLICE
- ANNEXURE F TRUE COPY OF THE RECEIPT DATED 4.5.2019 EVIDENCING THE SUBMISSION OF ANNEXURE E
- ANNEXURE G TRUE COPY OF THE COMPLAINT DATED NIL PREFERRED BEFORE POLICE COMPLAINTS AUTHORITY.
- ANNEXURE H TRUE COPY OF RECEIPT DATED 8.4.2019 EVIDENCING THE ACCEPTANCE OF ANNEXURE G
- ANNEXURE I TRUE COPY OF THE NEWS PAPER REPORT DATED 12.4.2019 THAT APPEARED IN MALAYALA MANORAMA DAILY

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ANNEXURE J TRUE COPY OF THE NEWSPAPER REPORT
DATED 9.4.2019 THAT APPEARED IN
MALAYALA MANORAMA DAILY

RESPONDENTS EXHIBITS :NIL

//TRUE COPY// PA TO JUDGE