

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 10<sup>TH</sup> DAY OF MARCH 2023 / 19TH PHALGUNA, 1944

CRL.MC NO. 7245 OF 2022

CRIME NO.942/2022 OF PARAVOOR POLICE STATION, KOLLAM

PETITIONER/ ACCUSED :

SANJEEV S.,  
AGED 45 YEARS, S/O. SASIDHARAN PILLAI,  
NETTARA VEEDU, KOTTAPPURAM,  
PARAVOOR, KOLLAM DISTRICT, PIN - 691 301

BY ADVS.  
V.JOHN SEBASTIAN RALPH  
ROSHAN SHAH S.  
VISHNUMAYA M.B.  
SHIFNA MUHAMMED SHUKKUR

RESPONDENT :

STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682 031

BY SRI.NOUSHAD K.A., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
10.03.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**'C.R.'**

**BECHU KURIAN THOMAS, J.**

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**Crl.M.C.No.7245 of 2022**  
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Dated this the 10<sup>th</sup> day of March, 2023

**ORDER**

The scope and extent of the penal provision of Section 153 of the Indian Penal Code, 1860 (for short 'IPC') is required to be considered in the present case. Accused is facing an indictment for the offence under Section 153 IPC and Section 120(o) of Kerala Police Act, 2011 (for short 'Police Act') on the basis of a post in a WhatsApp group, consisting of members of a local Municipal ward.

2. The former Home Minister of Kerala Sri.Kodiyeri Balakrishnan died on 1<sup>st</sup> of October, 2022\*. In a board kept by a branch committee of the Communist Party of India – Marxist, in front of a temple at Puthiyadam along with the photograph of the departed soul, it was written as 'പ്രിയ സഖാവിനു വീട്'. The prosecution alleges that with an intention to defame the accused had edited the words in the photograph as 'പ്രിയ സഖാവിനു വാട്' and circulated it amongst the WhatsApp group and thereby committed the offences under Section 153 IPC and Section 120(o) of the Police Act.

3. Adv. John Sebastian Ralph and Adv.Vishnumaya M.B. appearing on behalf of the petitioner contended that the offences alleged are not

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\*date corrected as per order dated 05/04/2023

made out and therefore the FIR itself is an abuse of the process of the court. According to the counsel, even if the allegations in the FIR are admitted, it does not make out an offence done malignantly or wantonly or anything which is illegal or to give provocation to the extent of causing a riot and hence the prosecution is liable to be quashed.

4. Sri.Noushad K.A., the learned Public Prosecutor submitted that the matter is under investigation and hence this Court ought not to interfere in the present circumstances. It is also submitted that the FIR reveals that the statement edited by the petitioner amounts to defamation and as ingredients of the offences alleged are satisfied and therefore the inherent power under Section 482 Cr.P.C. ought not to be invoked.

5. To appreciate the contentions advanced, a reading of Section 153 of the IPC is essential and is extracted as below :-

*"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."*

6. The essential ingredients to constitute the offence under Section 153 IPC are as follows :-

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.*

7. The word malignantly and wantonly are not used synonymously in the Section. The word malignantly is used for the purpose of expressing a higher degree of intensity or illwill. While the word wantonly means causing harm or damage deliberately. The Oxford Advanced Learners Dictionary defines the word malignantly as "having or showing a strong desire to harm somebody." Similarly, the word wantonly is explained as "in a way that causes harm or damage deliberately and for no acceptable reason."

8. Both these terms convey that the two expressions 'malignantly' or 'wantonly' used in Sections 153 IPC indicate that there must be a higher degree of malice or evil that is projected or evident in the act alleged. The provision further requires that the act alleged to be done must be illegal. The word illegal is defined in Section 43 of IPC to mean everything which is an offence or which is prohibited by law, or which furnishes a ground for a civil action. As held in ***R.Venkatkrishnan v. Central Bureau of Investigation [(2009) 11 SCC 737]***, the word has to be given a wide meaning.

9. The prosecution allegation is that the word 'औस' when modified

as '**റൂസ്**' used by the accused has a tendency to defame the deceased in front of the public. If the act done by the accused is not *ex facie* illegal, however wanton or deplorable or undesirable or done with malice, unless the act by itself is an offence, it cannot be held to satisfy the penal provisions of Section 153 IPC. The word '**റൂസ്**' is not a defamatory term and the use of the said term in the context cannot be said to be defamatory. The word '**റൂസ്**' in the Malayalam language merely refers to a food article and cannot be termed as a defaming word even in combination with other words. Therefore the act alleged cannot be termed to be illegal.

10. Further, to bring home the guilt of the offence under Section 153 IPC, it is necessary that the act gives provocation to a person and also provoke or is likely to provoke a rioting. Though, for the offence to be attracted, actual rioting need not occur.

11. On a perusal of the allegations in the FIR, it is evident that the act done by the petitioner is neither malignant nor wanton nor is it illegal. The act is also not capable of giving provocation or knowing that the provocation will cause rioting. The word rioting is defined in Section 146 IPC as "*whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting*". From the nature of allegations stated in the FIR, it is not possible to come to a conclusion that the act of the accused would cause

a provocation and that provocation will result in an offence of rioting. Thus, in the peculiar circumstance of the case, the offence under Section 153 IPC is not attracted.

12. The remaining question is whether Section 120(o) of the Police Act, is attracted in the present case. The Section reads as "*if any person, causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, email or through a messenger shall be punished on conviction*". The essential ingredients of the offence under Section 120(o) of Police Act is that a person causes nuisance of himself to any other person through a means of communication. The allegations in the FIR do not indicate that petitioner caused a nuisance of himself by posting a modified word in the WhatsApp group. In this context, it is necessary to observe as mentioned earlier that the word '**QIS**' is not a defamatory word, nor is it a word which has a tendency to cause a nuisance. In the above circumstances, the offence under Section 120(o) of Police Act is also not made out.

13. In this context, reference to the decisions in ***Sajidh D. v. State of Kerala [2019 (4) KLT 808]*** and in ***Monish v. Jayaraj P.C. and Another [2020 SCC Online Ker. 13404]*** are also relevant.

14. Resultantly, this Court is of the view that even if the allegations in Crime No.942/2022 of Paravoor Police Station, Kollam are admitted, they do not make out an offence either under Section 153 IPC or under Section 120(o) of the Police Act. Consequently the registration of the

crime is an abuse of the process of the court. Hence, FIR No. 942/2022 of Paravoor Police Station is quashed.

The criminal miscellaneous case is allowed as above.

Sd/-  
**BECHU KURIAN THOMAS, JUDGE**

RKM

APPENDIX OF CRL.MC 7245/2022

PETITIONER'S ANNEXURES :

- Annexure 1                      CERTIFIED COPY OF THE FIR DATED 06.10.22  
IN CRIME NO 942/2022 OF PARAVOOR POLICE  
STATION, KOLLAM DISTRICT
- Annexure 2                      TRUE COPY OF THE COMPLAINT DATED  
05.10.2022 GIVEN BY THE DEFACTO  
COMPLAINANT
- A3                                      CERTIFIED COPY OF THE ORDER DATED 29.11.22  
IN CMP 692/2022 BY THE JFCM COURT, SOUTH  
PARAVOOR, KOLLAM.