

**BEFORE THE HON'BLE HIGH COURT OF KERALA,
AT ERNAKULAM**

CrI. MC. No /2021

Ayshommabi A.M @ Aysha Sulthana : Petitioner

Vs

Union Territory of Lakshadweep & Anr : Respondents

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Dated this the 26th day of July 2021

Counsel for the Petitioner

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Crl. MC. No: 2912 /2021

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Vs

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**REPLY SUBMITTED BY THE COUNSEL FOR THE PETITIONER IN
THE AFOREMENTIONED CASE**

1. I am the counsel for the petitioner in the above case. On 2.7.2021 this Hon'ble Court had directed the respondents to submit the progress of the investigation. On perusal of statement submitted by the respondents, the chronological dates of the events submitted by them are correct.
2. The allegation in paragraph 3 of the statement that the petitioner was looking into the mobile phone and reading something when the petitioner appeared in channel debate. Her mobile phone was switched off during that relevant hour 7 to 8 pm of debate day. She used 'in-the-ear system' provided by the cameramen of Media One channel in the lobby of the Reporter channel from where she participated in the Media One channel debate on 7.6.2021. All parts of the hearing aid are contained in a shell that fills the outer part of the ear. They are the smallest hearing aids available and offer cosmetic and some listening advantages. However, their small size may make them difficult to handle and adjust for some people. The

petitioner's hearing aid had clarity problems so the petitioner automatically looked to the in-the-ear device connected to the Media One newsroom. Small mobile phones with long-lasting batteries are also used for the in-the-ear hearing usage. The allegation that the investigating officer noticed, ie., reading of something, during the time of channel debate by the petitioner is a totally baseless allegation.

3. The allegation that on scrutiny of the mobile phone of the petitioner, some media files and chat history of social media platforms were found deleted is utter falsehood. It can't be revealed on mere scrutiny. The petitioner has not deleted any chats from her social media or any other internet-based platforms. The allegation that text messages were deleted is false. The investigator started interrogation on 20.6.2021 as scheduled. Subsequently, the petitioner was interrogated for 3 more days. On 24.6.2021, she was interrogated for 6 hours with only a small break, but it is not mentioned in the chronological dates mentioned in the statement filed by the respondents. On that day the investigating officer told that the interrogation was over and that the petitioner can leave Lakshadweep. No transportation facility was available on that day to leave Lakshadweep. Without any information or specific directions to surrender the petitioner's mobile phone, the petitioner went to the Police station, to comply with the notice served for interrogation on that day. The I.O. seized the mobile phone of the petitioner. The case is with regard to the applicability of sec.124A and 153B IPC; the mobile phones and the petitioner's brother's laptop have nothing to do with the investigation. Even though the

mobile phone was seized on 25.6.2021, the same was not produced before the concerned Court in Lakshadweep until 15.7.2021. The petitioner is unaware where the mobile phones are kept and, in whose custody the same is. The non-production of the mobile phone taken as per the seizure mehzar with witnesses hampered the interest of the petitioner. By circumventing the procedure established by law, it is evident that the non-production of M.O. is to insert false evidence against the petitioner. In an electronic device like a smartphone, it is possible to install predated media files with the help of skilled persons. There are so many information technology experts working under respondents or they can use the service of private hackers' services against the petitioner to create false charges. Since the chain of custody is lost, the prosecution's intention is very clear. They will tamper with the mobile phone and thus, no value can be taken for the seized mobile phone and laptop which has no connection with the channel debate discussion and on-the-spot usage of the word 'bioweapon' to communicate the rapid growth of COVID-19 after the SOP for COVID-19 was relaxed. The scope of the investigation is only with regard to the applicability of sections 124A and 153B. The chain of custody is altered, and the mobile phone of the petitioner was examined by the police after the seizure, and the same was in the switched-on state for several days, which is not at all acceptable by the procedure.

4. The seized laptop had no connection to the petitioner. It was used by the petitioner's brother who just completed plus two education and was using it for online education. The laptop was seized from the residence of the petitioner even after informing them that the

laptop is that of the brother's. The same was not produced before the concerned court which is the JFCM Court, Kakkanad. The investigating officer left Kerala only after four days of seizure. It is unknown where he kept the Laptop. It was not produced before any court in Lakshadweep until 15.7.2021 and was directly sent to a Gujarat forensic lab with a special messenger while there were so many other labs in Kerala and other states. Normally, before this case, all forensic analysis from Lakshadweep was done by Hyderabad, Chennai and Kerala forensic labs. **The prosecution deliberately circumvented the chain of custody of both electronic devices seized in this case** which provided an opportunity for them to install any material according to their whims and fancies which is prejudicial to the interest of the petitioner/accused creating a path to a long-pending investigation or a false charge after the fanaticized lab reports, if any, are furnished to them according to the prosecution's fantasy.

5. It is reliably learnt that so far in the history of Lakshadweep, no electronic devices were sent for forensic or any other analysis to the Gujarat lab. The petitioner's mobile phone and her brother's laptop were kept somewhere else for nearly a month without producing them to the Courts, and it is reliably learnt that they were sent to Gujarat. This event is not mentioned in the events list. The statement does not reveal if it was produced in Court or not. The petitioner enquired in both Courts in Amini and Andrott in Lakshadweep and JFCM Court in Kakkanad whether the M.O. (Petitioner's mobile phone and brother's laptop) seized were present or forwarded to labs in connection with Crime No. 21/2021 of

Kavaratti Police Station, and it was learned that the same was not produced before any of the jurisdictional courts. The imputation made by the petitioner in the channel debate was against the SOP relaxation by the new Administrator, who is an influential politician and was the Home Minister in Gujarat some years before. The petitioner apprehends that the seizure of her mobile phone and her brother's laptop are to implant false and dangerous materials which is a high-handed activity from the part of the investigation. Normally, all forensic examinations from Lakshadweep are held in CFSL, Hyderabad only, and to Kerala and Madras sometimes. The Administrator post is given to mid-level IAS officers who were in terms with the local people and local administration. But this influential politician's interference is visible in every step of the investigation. This is why the mobile and the laptop were not produced in court and were instead sent to Gujarat via a special messenger to do something against the petitioner and to commit severe harassment in order to bifurcate the real issue in the islands in a wave of new unpopular administrative reforms done by the new Administrator and to threaten those who protest it. **Since the chain of custody is lost, they can alter the entire software/hardware of the mobile and laptop keeping the shell of the same to keep the manufacturer's number intact, to make the courts believe that the original device seized from the petitioner is the same one analysed and produced in court.** After many years of trial, there will be no trace of evidence of tampering. This is a new challenge faced by the innocent citizens against the mighty prosecution under the almighty State which is

bound to protect its citizens who are actually on the footing of the complainant in a democracy, who just asked what was being done by an Administrator in a channel debate. No purpose will be served from the forensic examination except harassment to the petitioner or examining the prosecution's scope for framing the petitioner in some other cases. There is nothing to do with the mobile phone of the petitioner or that of the petitioner's brother's laptop in this case. The analysis report based on a custody-compromised material object cannot be considered in any stage of the prosecution. Hence, the question arises before this Honourable Court only with regard to the applicability of section 124A, 153B IPC. The investigation teams attempt by bringing irrelevant material objects like mobile phones and laptops, some bonafide financial transactions are to confuse this Hon'ble Court to cast a shadow of a doubt. The petitioner is not indulging in any kind of anti-social, anti-national or any other criminal or civil activities. The petitioner is not having any civil case or property dispute and the petitioner does not own anything except two small houses in Chethlath Island as the legal heir to her deceased father along with a younger brother and mother.

6. The petitioner's mother was available in Mangalore in connection with her brother's treatment and she was ready to come at any time for interrogation. The investigation officer never gave a 41 CrPC notice before the I.O. came for interrogation. As a woman, she is entitled to be interrogated as per 41 CrPC proviso (2) at her place of abode. But that never happened and it was alleged that the petitioner's mother needed to be interrogated in the statement. The

mother of the petitioner is a widow, and her source of income is her late husband Mr Kunji Koya's pension from the Lakshadweep Government. The bank statement of the petitioner's mother was demanded by the I.O. and the same was taken. The petitioner's brother's bank statement was also taken. The mother has no source of income other than the pension and the retirement benefits received after the demise of the petitioner's beloved father. The family is living with the pension and from the income received by the petitioner. The whole family including the mother and brother of the petitioner is residing in a rented flat for 16,000 rupees per month in a two-bedroom apartment.

7. The allegation that the petitioner tried to dissuade the police by indulging in a malicious campaign through the media is false. Petitioner told all the channels that the Lakshadweep police were very cooperative in the investigation. The way they conducted a raid in the very small apartment with more than 10 police officials was a violation of Covid protocol. There was no social distancing in the raid. It was just to verify the petitioner's identity cards and to seize her brother's laptop.
8. The direction of the I.O., which was sent by email only, was to surrender the passport, Aadhar, Voter id, SSLC book etc., before 30.06.2021 to their Willington Island office in Kochi, but the petitioner's e-mail was not accessible because her mobile phone was seized and the password for the same was forgotten by the petitioner. After retrieving the password, the petitioner submitted to the I.O., all requested identity cards via email, and told the I.O. that

the original copies were needed for day-to-day activities. In the huge apartment complex where the petitioner resides as a tenant, it is always necessary for the petitioner to show Aadhar/Voter ID while entering the premises as the security guards are rotated daily. The entry into the apartments is strictly monitored due to COVID concerns. This Hon'ble Court has not directed the petitioner to surrender the original passport to the I.O. The petitioner has given scanned colour copies and photocopies of all documents the I.O. demanded. Hence the allegation that the petitioner has not cooperated with the investigation is false and is intended to mislead this Honourable Court.

9. The I.O. just looked into the petitioner's ID proof and returned it during the raid. Without any hassle to the I.O., the petitioner's brother gave his laptop to them. All the nooks and corners of the apartment were examined by them. For the usage of a word, this type of investigation is just a misuse of the State's power against its citizen who commented on a channel debate that is not seditious at all.
10. There is no conspiracy in this case for the comments made in the channel debate. The petitioner said a 'single' word for the entire COVID spreading and the cause for the same in a debate. The human tendency is to express the consequences of foolish actions by the opposite party, which in this case is the Lakshadweep administration and its relaxation of Covid protocol. The petitioner used a single English word as a spontaneous thought. There are no conspirators for her channel debate. After and before the case, the

petitioner has been a philanthropist and a committed person to society. She helped the Lakshadweep people to reach Lakshadweep using her contacts in Kerala. So many people were isolated during the lockdown. So many people from the islands contacted the petitioner, including the Lakshadweep Police personnel for evacuating their children to respective islands and giving aid to critically ill Lakshadweep persons who were admitted in hospitals in Kerala during the early days of the Covid pandemic and presently.

11. As a film director, the petitioner has been in regular contact with many cinema superstars and celebrities for five years to the present date. This is related to the petitioner's profession and has nothing to do with this case. As a director, the petitioner's Facebook page has 1.1 million followers and 5 Lakh Instagram followers. With the unwanted seizure of the petitioner's mobile phone, the petitioner was unable to open the Instagram account which is password-protected by an application and can only be accessed via the seized mobile. The petitioner faced untold hardships because of the sudden seizure of her mobile on 25.6.2021. All the contact details and phone numbers and passwords for accessing different social media accounts were lost. This is to shut the petitioner's mouth and to harass the petitioner.

12. The petitioner has been facing this kind of harassment and trauma, raids, long hour interrogations for several days, only because the petitioner criticized the Administrator who was not observing any quarantine rules himself or his staff. The first reported case of Covid 19 in Lakshadweep was of the IRB

Commandant and Port Director who always accompanies the Administrator. Thereafter, Covid was rapidly increasing in the islands and spreading to its native population, whose immunity is very low compared to the mainland people.

13. Another allegation is that financial transactions and contact with NRI and media persons are baseless. Petitioner was working as a host in various channels before her film industry work. It is quite natural to have contact with media persons. It is highly absurd to state in a Court statement filed, based on the instructions of a senior police superintendent who is an IPS officer, that a citizen of India contacted media persons, who are also Indian citizens, or that of NRI. The NRI's are also Indians from Kerala. The petitioner, along with like-minded people, had helped some of the residents of Chellanam whose houses were destroyed in a storm and rough sea in 2020. For that purpose, a friend of the petitioner and nurse working in the USA sent 4 lakh rupees to reconstruct their destroyed home and to give food to the residents affected by famine after the rough sea at Chellanam beaches.

14. The Inspector of Police approached the petitioner through Asharaf and Suresh to help the residents, and money was given to them by the petitioner using the funds sent by the petitioner's friend in the USA, named Daisy Kalapura, a native Piravom, Ernakulam district, who is working as a staff nurse in Chicago and residing at 1864 Harvest Lane, Glendale Heights, IL 60139, USA. This NRI nurse is a friend of the petitioner and a common friend of Dr Haroon who is a neurologist in the Medical Trust Hospital, Ernakulam.

15. The comment of the Senior Superintendent of Police in the fourth paragraph of the statement, based on the financial transactions of the petitioner is false. The comment was that the motive behind the philanthropic activity of petitioners and friends who supported the poor in their hour of need, where the government was not doing it on time, was anti-national activity. It is very absurd to state before this Hon'ble Court about national integration at this time. Our nation is already integrated, and we are under one Constitution irrespective of locality, language and religion. National integration happened during the time of Independence, and we are integrated. The philanthropic activity done by them was in support of the nation and not done against National integration. The philanthropic activity done by the petitioner was published by the Inspector of Police on his Facebook page even though the publication was not promoted by the petitioner at the relevant time. But to prove the innocence and mens rea of the petitioner, the petition is compelled to produce the same before this Hon'ble Court. A true copy of the Facebook post dated 14.11.2020 published by the Inspector of Police/SHO, Kannamaly Police Station is produced herewith and marked as **Annexure-VI**.
16. All these facts were mentioned by the petitioner during the time of interrogation with each message in WhatsApp and with the bank statement of the petitioner, for their questions regarding financial transactions. A true copy of the bank statement of the petitioner is produced herewith and marked as **Annexure-VII**.

17. Even after disclosing all these facts based on the financial transaction revealed in the bank statement and the withdrawal and spending of money for philanthropic activity and the name of the witnesses involved in the philanthropic activity, the I.O. never questioned them and baselessly alleged the involvement of media persons, NRI's, and in paragraph 3 of the statement, said that some celebrities had frequent contacts with the petitioner. Some of the celebrities made some fair comments about the Lakshadweep people, about their simple lives and love and their cooperation during the filming of celebrated movies in Lakshadweep, and sympathized with their cause, long before the registration of this case. Dragging all persons and celebrities, contacted via phone by the petitioner, to this investigation is to create media attention for the case and thereby to threaten the citizens to not protest in the future against the actions taken by the Government whether it is good or bad.

18. After the registration of the said case, or after the channel debate, no disorder, disturbance or violence was recorded in any part of Lakshadweep or anywhere else in India or abroad. No disaffection among the people towards the government of India based on the petitioner's debate was seen. The prosecution's allegation in this regard is absolutely false. The vexatious intention of the investigation can be revealed after the registration of the case. The continuation of this investigation is not justified. With the filing of the statement, the ulterior motive of the investigation can be revealed through the distortion of facts and unwanted doubts about celebrities and other citizens who are doing philanthropic

activities with the petitioner, who are a nurse and doctor, doing the most essential things for poor citizens who were displaced by an act of nature.

19. Even after disclosing the persons behind the philanthropic activity and the services done by the petitioner with the help of friends through local police officials, this investigation never looked into such aspects and is making the petitioner's position as an anti-national who received money to make seditious comments before this Honourable Court before the same comment is declared by a court of law as sedition. The prosecution is in a hurry to make the petitioner seem like an anti-national. Only the ruling class and its supporters are nationalists and all others who democratically protest and use their freedom guaranteed under the sacred Constitution are painted as antinationals.

From these facts and the ratio decidendi derived from the decisions relied on the petitioner along with this CrI.M.C, this investigation is not justifiable as per the statute and decision laid down in **State of Haryana V. Bhajanlal 1992 Supp.SCC.335.**, and hence it is humbly prayed that this Hon'ble Court may be pleased to quash Annexure-I FIR and all further proceedings to secure the ends of justice.

Counsel for the petitioner

