

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 27TH DAY OF MARCH 2023 / 6TH CHAITHRA, 1945

CRL.MC NO. 8035 OF 2017

(CC 165/2015 OF CHIEF JUDICIAL MAGISTRATE COURT,
PATHANAMTHITTA)

PETITIONERS:

- 1 VARGHESE ABRAHAM, AGED 52 YEARS
S/O M.C ABRAHAM, THAYYIL HOUSE, KOTTATHUR PO,
AYROOR, PATHANAMTHITTA DISTRICT.PIN.689614.
- 2 SIMON CHERIAN, AGED 52 YEARS, S/O N.S CHERIAN,
NEELAMPLAVIL PLANTHOTTATHIL HOUSE, THEKKUMKAL PO,
AYROOR,PATHANAMTHITTA DISTRICT. PIN.689614.
- 3 LAJI THOMAS, AGED 52 YEARS, S/O K.A THOMAS,
MANNAKUNNIL,KOTTATHUR PO, AYROOR VILLAGE,
PATHANAMTHITTA DISTRICT.PIN.689614.
- 4 VARGHESE MATHEW, AGED 62, S/O. THE LATE
M.G.MATHEW, MELEDATHU HOUSE, AYROOR SOUTH PO,
AYROOR , PATHANAMTHITTA DISTRICT.PIN.689611.
- 5 K.J JOHN, AGED 56 YEARS, S/O K.G JOHN, KUZHIVELI
KAVUNGAL HOUSE, THEKKUMKAL PO, AYROOR,
PATHANAMTHITTA DISTRICT.PIN.689614.
- 6 JESSY MATHEW, AGED 57 YEARS, W/O. THE LATE
MR.MATHEW JOHN,PERUMBETTETHU HOUSE, KOTTATHUR PO,
AYROOR, PATHANAMTHITTA, PIN.689614.
- 7 MOLLY VARGHESE, AGED 67 YEARS, W/O. THE LATE.M.G
VARGHESE,KADAMANPATHALIL MARUTHUVELIL HOUSE,
KOTTATHUR PO, AYROOR , PATHANAMTHITTA DISTRICT.
PIN.689614.

BY ADVS.SRI.GEORGE ABRAHAM PACHAYIL
SRI.AJEESH S.BRITE
SRI.ARUN PAUL KAPRASSERY
SMT.JEBI MATHER HISHAM

RESPONDENTS:

- 1 SHINU.P.VARGHESE, AGED 44 YEARS, S/O P.C VARGHESE,
PUTHETHU VADAKKETHIL HOUSE, THEKKUMKAL PO,
KOTTATHUR, AYROOR, PATHANAMTHITTA , PIN.689614
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, COCHIN.31.

R1 BY ADVS.SRI.S.NITHIN (ANCHAL)
SRI.VISHAK.K.JOHNSON

R2 BY PP SRI.G.SUDHEER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
27.03.2023, ALONG WITH Crl.MC.NOS.3446/2018, 6608/2018, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 27TH DAY OF MARCH 2023 / 6TH CHAITHRA, 1945

CRL.MC NO. 3446 OF 2018

(CC 164/2015 OF CHIEF JUDICIAL MAGISTRATE PATHANAMTHITTA)

PETITIONERS/RESPONDENTS (ACCUSED PERSONS) :

- 1 VARGHESE ABRAHAM, AGED 52 YEARS, S/O. M.C ABRAHAM,
THAYYIL HOUSE,KOTTATHUR P.O, AYROOR,
PATHANAMTHITTA DISTRICT,PIN 689 614.
- 2 SIMON CHERIAN,AGED 52 YEARS,
S/O N.S CHERIAN,NEELAMPLAVIL PLANTHOTTATHIL
HOUSE,THEKKUMKAL P.O,AYROOR,PATHANAMTHITTA
DISTRICT. PIN 689 614.
- 3 LAJI THOMAS, AGED 52 YEARS, S/O. K.A THOMAS,
MANNAKUNNIL,KOTTATHUR P.O, AYROOR
VILLAGE,PATHANAMTHITTA DISTRICT. PIN 689 614.
- 4 VARGHESE MATHEW, AGED 62, S/O. THE LATE M.G MATHEW
MELEDATHU HOUSE,AYROOR SOUTH P.O,
AYROOR,PATHANAMTHITTA DISTRICT PIN 689 611.
- 5 K.J JOHN, AGED 56 YEARS, S/O. K.G JOHN, KUZHIVELI
KAVUNGAL HOUSE,THEKKUMKAL P.O, AYROOR,
PATHANAMTHITTA. PIN 689 614.
- 6 JESSY MATHEW,AGED 57 YEARS, W/O. THE LATE MR.
MATHEW JOHN,PERUMBETTETHU HOUSE, KOTTATHUR
P.O,AYROOR, PATHANAMTHITTA, PIN 689 614.
- 7 MOLLY VARGHESE, AGED 67 YEARS, W/O. THE LATE M.G
VARGHESE,KADAMANPATHALIL MARUTHUVELIL HOUSE,
KOTTATHUR P.O,AYROOR, PATHANAMTHITTA, PIN 689 614.

BY ADVS.SRI.GEORGE ABRAHAM PACHAYIL
SRI.AJEESH S.BRITE
SRI.ARUN PAUL KAPRASSERY
SMT.JEBI MATHER HISHAM

RESPONDENTS/PETITIONER/DEFACTO COMPLAINANT:

- 1 ABRAHAM GEORGE
AGED 68 YEARS, S/O. GEEVARGHESE
GEORGE, PUTHETHUVADAKKETHIL HOUSE,
THEKKUMKAL P.O, KOTTATHOOR AYROOR,
PATHANAMTHITTA DISTRICT. PIN 689 614.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, COCHIN-31.

R1 BY ADVS.SMT.INDU SUSAN JACOB
SRI.LIJU.V.STEPHEN

R2 BY PP SRI.G.SUDHEER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
27.03.2023, ALONG WITH Crl.MC.NOS.8035/2017 & 6608/2018, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 27TH DAY OF MARCH 2023 / 6TH CHAITHRA, 1945

CRL.MC NO. 6608 OF 2018

CC 23/2016 OF CHIEF JUDICIAL MAGISTRATE PATHANAMTHITTA

PETITIONERS:

- 1 VARGHESE ABRAHAM, AGED 52 YEARS
S/O. M.C. ABRAHAM, THAYYIL HOUSE, KOTTATHUR P.O.,
AYROOR, PATHANAMTHITTA DISTRICT - 689 614
- 2 SIMON CHERIAN, AGED 52 YEARS, S/O.N.S.CHERIAN,
NEELAMPLAVIL PLANTHOTTATHIL HOUSE, THEKKUMKAL.P.O.,
AYROOR, PATHANAMTHITTA DISTRICT, PIN-689614.
- 3 LAJI THOMAS, AGED 52 YEARS, S/O.K.A.THOMAS,
MANNAKUNNIL, KOTTATHUR.P.O, AYROOR VILLAGE,
PATHANAMTHITTA DISTRICT, PIN-689614.
- 4 VARGHESE MATHEW, AGED 62, S/O.THE LATE M.G.MATHEW
MELEDATHU HOUSE, AYROOR SOUTH.P.O, AYROOR,
PATHANAMTHITTA DISTRICT, PIN-689611.
- 5 K.J.JOHN, AGED 56 YEARS, S/O.K.G.JOHN, KUZHIVELI
KAVUNGAL HOUSE, THEKKUMKAL.P.O, AYROOR,
PATHANAMTHITTA, PIN-689614.
- 6 JESSY MATHEW, AGED 57 YEARS, W/O.THE LATE
MR.MATHEW JOHN, PERUMBETTETHU HOUSE,
KOTTATHUR.P.O, AYROOR, PATHANAMTHITTA, PIN-689614.
- 7 MOLLY VARGHESE, AGED 67 YEARS, W/O. THE LATE
M.G.VARGHESE, KADAMANPATHALIL MARUTHUVELIL HOUSE,
KOTTATHUR.P.O, AYROOR, PATHANAMTHITTA, PIN-689614.

BY ADVS.GEORGE ABRAHAM PACHAYIL
TOMS MATHEW
JEBI MATHER HISHAM
ARUN PAUL (KAPRASSERY)
K.JYOTHY

RESPONDENTS:

- 1 PEELIPOSE MATHAI, AGED 67 YEARS
S/O. PEELIPOSE MATHAI, MANNAKUNNIL HOUSE,
THEKKUMKAL P.O., KOTTATHUR, AYROOR,
PATHANAMTHITTA - 689 614
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, COCHIN-31.
R1 BY ADVS.SRI.VISHAK.K.JOHNSON
SRI.S.NITHIN (ANCHAL)
SRI.NEBU P.JOSEPH
R2 BY PP SRI.G.SUDHEER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
27.03.2023, ALONG WITH Crl.MC.NOS.8035/2017 & 3446/2018, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

ORDER

The petitioners in these Crl.M.Cs are accused in C.C.Nos.164, 165 of 2015, and 23/2016 on the file of the Chief Judicial Magistrate Court, Pathanamthitta. They are alleged to have committed offences punishable under Sections 120-B and 500 of the Indian Penal Code. The Court below took cognizance of the offences based on the private complaints filed by the respective respondents in the Crl.M.Cs. These petitions have been filed seeking quashing of the proceedings against the petitioners.

2. The petitioners are elected members in the Parish governing committee of an Orthodox Church's Parish named St.Johns Salem Orthodox Church, Ayroor, under the ecclesiastical governance of the Metropolitan Bishop of Nilakkal diocese in Pathanamthitta District. The party respondents in the Crl.M.Cs are members of the Parish. There exist differences of opinion among two groups of members in the Church.

3. The party respondents had filed a representation dated 5.12.2014 before the Head of the Church, the Malankara Metropolitan

Catholicose, who referred the same to the Metropolitan Bishop of the Nilakkal Diocese for inquiry. The Parish governing committee prepared Annexure A2 statement signed by 32 members of the parish and submitted to the Metropolitan Bishop. The statement was also circulated among the public.

4. The party respondents alleged that Annexure A2 contains defamatory statements against them.

5. They filed the above-referred private complaints before the Court below. After conducting inquiry, the learned Magistrate issued process to the petitioners.

6. Heard the learned counsel for the petitioners, the learned counsel appearing for the party respondents, and the learned Public Prosecutor.

7. The learned counsel for the petitioners made the following submissions:-

There is no defamatory element in Annexure-A2 representation/statement. The petitioners signed Annexure A2, not in their interest or capacity, but they represented the entire Parish members. Annexure A2 representation/statement was addressed to the Head of the Church, the Malankara Metropolitan Catholicose, who is

the authority to hear the grievances of both factions.

8. The learned counsel for the petitioners submitted that Annexure-A2 representation/statement comes under the *Eighth Exception* of Section 499 IPC, hence they are not liable to be prosecuted based on it.

9. The learned counsel for the party respondents made the following submissions:-

Annexure-A2 contains severe defamatory statements against the party respondents. The Metropolitan Bishop to whom Annexure A2 was presented is not the lawful authority as referred to in the *Eighth Exception* of Section 499 IPC. Annexure A2, at any rate, cannot be treated as a reply to Annexure-A1 complaint filed by the party respondents. Annexure-A1 complaint was not filed before the Malankara Metropolitan Catholicose.

10. Annexure-A2 contains the following statements:-

Sri.Philipose Mathai Mannakunnil and Sri.Shiju P. Varghese (party respondents) are hated ones in the community. Sri.Philipose Mathai is immature. The Priest and other members of his family are malicious creatures.

11. Prima facie Annexure-A2 contains defamatory

statements against the party respondents. Now, the question to be considered is whether the petitioners are entitled to protection under the *Eighth Exception* of Section 499 IPC. The *Eighth Exception* of Section 499 IPC reads thus:-

"Eighth Exception-Accusation preferred in good faith to authorised person.- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation."

The *Eighth Exception* of Section 499 IPC is to be read along with Section 52 IPC. Section 52 reads thus:-

"52."Good faith.- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

The *Eighth Exception* of Section 499 IPC provides that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person concerning the subject matter of accusation. To obtain the protection given by this *Exception* (1) the accusation must be made to a person in authority over the party accused, and (2) the accusation must be preferred in good faith.

12. I shall first consider whether the Metropolitan Bishop is a lawful authority over the parties regarding the subject matter.

13. The subject matter centres around the temporal and religious issues touching the Parish and other members. The allegations levelled in Annexure A1 complaint preferred by the party respondents mainly refer to the religious discharge of duties by a Parish Priest. There were also some allegations touching the funds managed by the Priest and others. Annexure A2 statements were submitted in response to Annexure A1 complaint. The Metropolitan Bishop and the head of the Malankara Metropolitan and Catholicose are the spiritual superiors of the members of the Parish and, thus, the lawful authorities as far as the subject matter is concerned. In religious and temporal matters affecting a religious community, the religious head (the spiritual superior) is the lawful authority referred to in the *Eighth Exception* of Section 499 IPC.

14. The second issue is whether the alleged accusations were preferred in good faith. The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is different from saying that the person concerned has honestly believed the truth of what is said. As per Section 52 of IPC, nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention. The language of Section 52 starts in the negative tone

excluding all except what is allowed to be within its amplitude. The only thing included within the expression "good faith" is "due care and attention".

15. "Due care" indicates the degree of reasonableness in the care sought to be exercised. *Black's Law Dictionary* explains "reasonable care" as:

"such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act."

16. In **Subramanian Swamy v. Union of India [(2016) 7 SCC 221]**, on *Eighth Exception*, the Apex Court observed that a person making libellous statements in his complaint filed before the lawful authority is not absolutely protected in a criminal proceeding for defamation, for under the *Eighth Exception* and the illustration to Section 499 the statements are privileged only when they are made in good faith.

17. In **Chamanlal v. State of Punjab [(1970) 1 SCC 590]**, the Apex Court opined that good faith requires care and caution, and prudence in the background of context and circumstances.

18. In the present facts, prima facie, it is revealed that the

petitioners have not taken reasonable care in including the alleged statements in Annexure A2 representation before submitting it to the Metropolitan Bishop. The Apex Court in **Jeffrey J. Diermeter v. State of West Bengal [(2010) 6 SCC 243]** held that whether the publication was in good faith or for the public good is a question of fact that required evidence.

19. On the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 Cr.P.C. to quash a criminal proceeding, in **State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335)**, the Apex Court held thus:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a

Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection, and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever

reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. (Vide: Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Ors. (2021 (3) KHC 25), State of Maharashtra and Others v. Arun Gulab Gawali and Others [(2010) 9 SCC 701].

21. The facts of the present case do not come under any of the categories of cases enumerated in **State of Haryana** (supra). Therefore, the further proceedings in C.C.Nos.164, 165 of 2015, and 23/2016 on the file of the Chief Judicial Magistrate Court, Pathanamthitta are not liable to be quashed.

In the result, the Crl.M.Cs are dismissed.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF CRL.MC 8035/2017

PETITIONERS' ANNEXURES:

- ANNEXURE A1** COPY OF THE COMPLAINT SUBMITTED BY THE 1ST RESPONDENT AND OTHERS TO THE MALANKARA METROPOLITAN CATHOLICOSE OF THE MALANKARA ORTHODOX CHURCH DATED 15.12.2014
- ANNEXURE A2** COPY OF THE REPLY/MEMORANDUM SUBMITTED BY THE PARISH MEMBERS AND COMMITTEE TO THE DIOCESE METROPOLITAN BISHOP OF NILAKKAL, DATED 21.1.2015.
- ANNEXURE A3** COPY OF THE LETTER OF THE METROPOLITAN BISHOP NUMBERED K. NO.99A/2015 DATED 6.7.2015.
- ANNEXURE A4** COPY OF THE PRIVATE COMPLAINT C.C.165/15 FILED BY THE 1ST RESPONDENT DATED 7.7.15.
- ANNEXURE A5** COPY OF THE ORDER OF THE MAGISTRATE, RECORDING THE TAKING OF COGNIZANCE DATED 21.11.2015.
- ANNEXURE A6** COPY OF THE PRIVATE COMPLAINT IN CC 164/2015 IN THE FILES OF THE HON'BLE CHIEF MAGISTRATE COURT, PATHANAMTHITTA DATED 7.7.2015
- ANNEXURE A7** COPY OF PRIVATE COMPLAINT IN C.C NO.23/2016 IN THE FILES OF THE HON'BLE CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA DATED 7.7.2015

APPENDIX OF CRL.MC 3446/2018

PETITIONERS' ANNEXURES:

- ANNEXURE A 1** COPY OF THE COMPLAINT SUBMITTED BY THE 1ST RESPONDENT AND OTHERS TO THE MALANKARA METROPOLITAN-CATHOLICOSE OF THE MALANKARA ORTHODOX CHURCH, DATED 05/12/2014.
- ANNEXURE A 2** COPY OF THE REPLY/MEMORANDUM SUBMITTED BY THE PARISH MEMBERS AND COMMITTEE TO THE DIOCESE METROPOLITAN BISHOP OF NILAKKAL, DATED 21/01/2015
- ANNEXURE A 3** COPY OF THE LETTER OF THE METROPOLITAN BISHOP NUMBERED K NO. 99 A/2015,DATED 06/07/2015.
- ANNEXURE A 4** CERTIFIED COPY OF THE PRIVATE COMPLAINT FILED BY THE 1ST RESPONDENT, DATED 12/06/2015.
- ANNEXURE A5** CERTIFIED COPY OF THE ORDER OF THE MAGISTRATE, RECORDING THE TAKING OF COGNIZANCE, DATED 21/11/2015.
- ANNEXURE A6** COPY OF PRIVATE COMPLAINT IN CC 165/2015 IN THE FILES OF THE HON'BLE CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA, DATED 07/07/2015.
- ANNEXURE A 7** COPY OF PRIVATE COMPLAINT IN CC 23/2016 IN THE FILES OF THE HON'BLE CHEIF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA, DATED 07/07/2015.

APPENDIX OF CRL.MC 6608/2018

PETITIONERS' ANNEXURES:-

- ANNEXURE A1 COPY OF THE COMPLAINT SUBMITTED BY THE 1ST RESPONDENT AND OTHERS TO THE MALANKARA METROPOLITAN CATHOLICOSE OF THE MALANKARA ORTHODOX CHURCH, DATED 05/12/2014.
- ANNEXURE A2 COPY OF THE REPLY/MEMORANDUM SUBMITTED BY THE PARISH MEMBERS AND COMMITTEE TO THE DIOCESE METROPOLITAN BISHOP OF NILAKKAL, DATED 21/01/2015.
- ANNEXURE A3 COPY OF THE LETTER OF THE METROPOLITAN BISHOP NUMBERED K.NO.99A/2015, DATED 06/07/2015.
- ANNEXURE A4 COPY OF THE PRIVATE COMPLAINT FILED BY THE 1ST RESPONDENT, DATED 12/06/2015.
- ANNEXURE A5 COPY OF THE ORDER OF THE MAGISTRATE, RECORDING THE TAKING OF COGNIZANCE, DATED 11/11/2015.
- ANNEXURE A6 COPY OF PRIVATE COMPLAINT IN CC.164/2015 IN THE FILES OF THE HON'BLE CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA, DATED 07/07/2015.
- ANNEXURE P7 COPY OF PRIVATE COMPLAINT IN CC.165/2015 IN THE FILES OF THE HON'BLE CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA, DATED 07/07/2015.

TKS