

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 10TH DAY OF MARCH 2021 / 19TH PHALGUNA, 1942

Crl.MC.No.534 OF 2016(F)

AGAINST THE ORDER IN ST 1877/2015 OF CHIEF JUDICIAL MAGISTRATE  
,THRISSUR

PETITIONER:

DR.JOY ANTO  
AGED 57 YEARS  
S/O.ANTONY, THARAKAN HOUSE, AYYANTHOLE, THRISSUR-  
680003.

BY ADVS.  
SRI.S.SREEKUMAR (SR.)  
SRI.P.MARTIN JOSE  
SRI.M.A.MOHAMMED SIRAJ  
SRI.P.PRIJITH  
SRI.THOMAS P.KURUVILLA

RESPONDENTS:

1 C.R.JAISON  
S/O.RAPPAI, CHALAKKAL HOUSE, OLARIKKARA, PULLAZHY  
P.O., THRISSUR-680012.

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

R1 BY ADV. SMT.MITHA SUDHINDRAN  
R1 BY ADV. SRI.V.C.SARATH  
R1 BY ADV. SRI.P.VIJAYA BHANU SR.

R2 BY SRI S SREEKUMAR SR ADV,SRI B JAYASURYA -SR  
PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
03.03.2021, THE COURT ON 10.03.2021 PASSED THE FOLLOWING:

**R. NARAYANA PISHARADI, J**

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**CrI.M.C.No.534 of 2016**  
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Dated this the 10<sup>th</sup> day of March, 2021

**ORDER**

The petitioner is the sole accused in the case S.T.No.1877/2015 pending in the Court of the Chief Judicial Magistrate, Thrissur.

2. The aforesaid case is one instituted upon the complaint (Annexure-K) filed by the first respondent (hereinafter referred to also as 'the complainant'). The offence alleged against the petitioner is punishable under Section 500 of the Indian Penal Code.

3. The petitioner was a Professor in the St.Thomas College, Thrissur. He was the Chairman of the company by name M/s. Cherupushpam Kuries (hereinafter referred to as 'the company'). The complainant was the Deputy Chairman and a Legal Advisor of the company.

4. The company had engaged the complainant to institute suits for realisation of money due from the subscribers to the kuries conducted by it. There was an allegation that he

did not institute the suits after receiving money from the company towards the expenses in that regard. Subsequently, the complainant resigned from the post of the Deputy Chairman of the company.

5. While so, one K.K.Ramadas, who is a lawyer, filed a writ petition (W.P(C) No. 5239/2013) before this Court against the University of Calicut and the petitioner and some other persons. Suffice it to state here that the writ petition was filed for issuing directions with regard to the domestic enquiry conducted against the petitioner on the allegation that while working as a Senior Lecturer in the St.Thomas College he had also engaged in the business activities of the company.

6. The allegation in Annexure-K complaint is that, in the counter affidavit filed by the petitioner in W.P.(C) No. 5239/2013, he had stated that the writ petitioner was an associate of Adv.C.R.Jaison (the complainant) who was the former Director and Legal Advisor of the company and he (Adv.C.R.Jaison) was removed from the company on proved misconduct and misappropriation of the funds of the company. It is also alleged in Annexure-K complaint that in the Directors' Report contained in the 30<sup>th</sup> annual report of the company it was

mentioned that the complainant resigned from the company on account of dereliction of duty in conducting the cases for and on behalf of the company.

7. This petition is filed under Section 482 Cr.P.C by the accused for quashing Annexure-K complaint and all proceedings against him pending in the Court of the Chief Judicial Magistrate, Thrissur based on the complaint.

8. Heard learned senior counsel who appeared for the petitioner and also the first respondent and the learned Public Prosecutor.

9. Learned senior counsel for the petitioner has raised the following contentions: (1) The statements made about the complainant in the annual report of the company and the counter affidavit filed by the petitioner in the writ petition are not defamatory in nature. (2) Making a statement in the counter affidavit filed in a writ petition before this Court does not amount to publication. (3) No criminal liability would arise on making any defamatory statement in a judicial proceeding before a court of law.(4) The petitioner is entitled to the benefit of the fifth and the eighth exceptions provided to Section 499 of

the Indian Penal Code.

10. The offence of defamation is defined under Section 499 and it is made punishable under Section 500 of the Indian Penal Code.

11. Section 499 of the Indian Penal Code provides that, whoever, by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in cases where the exceptions are provided, to defame that person.

12. Under Section 499 of the Indian Penal Code, in order that an offence of defamation may be committed, there must be making or publication of any imputation concerning any person by words, either spoken or intended to be read, or by signs or by visible representations, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. To constitute the offence of defamation, there must be making or publication of an imputation concerning any person and the making or publication must be with intent to harm, or knowing or having reason to

believe that such imputation will harm, the reputation of such person.

13. As per Annexure-K complaint, two statements made about the complainant are alleged to be defamatory to him. The first statement is the one made in the annual report of the company that the complainant resigned from the company on account of dereliction of duty. The second one is the statement made by the petitioner in the counter affidavit filed in the writ petition that the complainant is a person against whom misconduct was proved and that he is a person who has misappropriated the funds of the company.

14. As far as the first statement is concerned, the averments in the complaint, by themselves, would show that the complainant had omitted to file suits on behalf of the company. Further, there is no specific allegation that, it was the petitioner who made the statement in the annual report of the company and that he was the person who published it. In such circumstances, as far as the first statement is concerned, it is doubtful whether it would attract the ingredients of the offence defined under Section 499 of the Indian Penal Code as against the petitioner.

15. However, the statement that the complainant was removed from the company on proved misconduct and on misappropriation of the funds of the company, is prima facie, defamatory to him. The complainant is a lawyer. The statement that he is a person against whom misconduct has been proved would definitely harm his reputation as a lawyer. The petitioner has got no plea that any competent authority had found the complainant guilty of misconduct.

16. There is no basis for the plea raised by the learned senior counsel for the petitioner that making a statement in the counter affidavit filed before this Court in the writ petition does not amount to publication.

17. The essence of publication in the context of Section 499 of the Indian Penal Code is the communication of the defamatory imputation to persons other than the person against whom the imputation is made (See **Google India Private Limited v. M/s Visakha Industries : AIR 2020 SC 350**).

18. If the pleadings filed in the court contain defamatory statements, it amounts to publication (See **Thangavelu Chettiar v. Ponnammal : AIR 1966 Madras 363**). Once a statement is filed in a Court of law, it can be considered as

published (See **Prabhakaran v. Gangadharan : 2006 (2) KLT 122**).

19. There is also no merit in the contention of the learned senior counsel for the petitioner that the statement made by the petitioner in the counter affidavit filed before this Court in the writ petition enjoys absolute privilege and it excludes criminal liability. 20. After a survey of the decisions on the point, in **Varghese Cor Episcopa v. State of Kerala : 2020 (1) KHC 390**, this Court had occasion to hold that the privilege defined by the exceptions to Section 499 of the Indian Penal Code must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be had to the English Common Law to add new grounds of exception to those contained in the statute and in determining the criminality of an act under the Indian Penal Code, the Courts will not extend the scope of special exceptions by resorting to the rule peculiar to English common law.

21. Freedom of speech and expression is a fundamental right under the Constitution. But, all fundamental rights are subject to reasonable restrictions. Section 499 of the Indian Penal Code does not give absolute privilege to statements made



in a Court of law in the judicial proceedings. The privileges recognised under Section 499 of the Indian Penal Code are qualified. However, in a civil action for defamation, plea of absolute privilege is a valid defence.

22. Yet another plea raised by the petitioner is that he is entitled to the fifth and eighth exceptions provided to Section 499 of the Indian Penal Code. Whether the petitioner is entitled to get the benefit of any of the exceptions provided to Section 499 of the Indian Penal Code, whether he had made the statement in the counter affidavit filed in the writ petition in good faith for protection of his interest etc. are matters which cannot be decided by this Court in this petition filed under Section 482 Cr.P.C. 23. Ordinarily, the question as to whether the statement in a given case falls under any of the ten exceptions to Section 499 of the Indian Penal Code will have to be decided only after trial. They are matters of evidence. (See **Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi : (1996) 6 SCC 263**, **Balraj Khanna v. Moti Ram : AIR 1971 SC 1389** and **Jeffrey J. Diermeier v. State of West Bengal : (2010) 6 SCC 243**).

24. The result of the discussion above is that the prayer

made by the petitioner for quashing Annexure-K complaint and the criminal proceedings initiated against him by the complainant cannot be allowed.

Consequently, the petition is dismissed.

**Sd/-R. NARAYANA PISHARADI  
JUDGE**

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**APPENDIX**

**PETITIONER'S/S EXHIBITS**

- ANNEXURE-A TRUE COPY OF LETTER DATED 03.10.2009  
ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE-B TRUE COPY OF UNDERTAKING DATED  
23.03.2000 ISSUED BY THE 1ST RESPONDENT  
IN O.S.NO.1515/2009 OF MUNSIFF'S COURT,  
TRISSUR.
- ANNEXURE-C TRUE COPY OF UNDERTAKING DATED  
23.03.2000 ISSUED BY THE 1ST RESPONDENT  
IN O.S.NO.1539/2009 OF MUNSIFF'S COURT,  
THRISSUR.
- ANNEXURE-D TRUE COPY OF UNDERTAKING DATED  
23.03.2000 ISSUED BY THE 1ST RESPONDENT  
IN O.S.NO.1540/2009 OF MUNSIFF'S COURT,  
THRISSUR.
- ANNEXURE-E TRUE COPY OF LETTER DATED 24.10.2011  
ISSUED BY THE COMPANY TO THE 1ST  
RESPONDENT.
- ANNEXURE-F TRUE COPY OF C.C.NO.140 OF 2012 FILED  
BY THE COMPANY BEFORE THE CONSUMER  
DISPUTES REDRESSAL FORUM, THRISSUR  
AGAINST THE 1ST RESPONDENT ON  
23.02.2012.
- ANNEXURE-G TRUE COPY OF C.P.NO.45/2012 FILED BY  
THE COMPANY BEFORE THE BAR COUNCIL OF  
KERALA AGAINST THE 1ST RESPONDENT.
- ANNEXURE-H TRUE COPY OF WRIT PETITION NO.5239 OF  
2013 FILED BY THE 1ST RESPONDENT BEFORE  
THIS HON'BLE COURT.
- ANNEXURE-I TRUE COPY OF COUNTER AFFIDAVIT IN W.P.  
(C) NO.5239/2013 FILED BY THE  
PETITIONER BEFORE THIS HON'BLE COURT.
- ANNEXURE-J TRUE COPY OF JUDGMENT IN W.P. (C)  
NO.5239/2013 DATED 10.06.2013 OF THIS  
HON'BLE COURT.
- ANNEXURE-K TRUE COPY OF COMPLAINT AS

Cr1.MC.No.534 OF 2016(F)

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M.P.NO.2850/2015 FILED BY THE 1ST  
RESPONDENT BEFORE THE CHIEF JUDICIAL  
MAGISTRATE COURT, THRISSUR.

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

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