IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

Crl.MC.No.7756 OF 2015 (F)

AGAINST CC NO.1596/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, OTTAPPALAM

CRIME NO.624/2014 OF SHORNUR POLICE STATION, PALAKKAD

PETITIONER:

K.VALSALA
AGED 50 YEARS, W/O RAJAN V.P, SREEVALSAM,
MANISSERI P.O., OTTAPPALAM, PALAKKAD DISTRICT.

BY ADVS.
SRI.ABDUL JAWAD K.
SMT.V.K.ANJU
SMT.P.M.CIGY
SRI.U.MUHAMMED MUSTHAFA
SRI.NEBU P.JOSEPH

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2 **THE SUB INSPECTOR OF POLICE**
SHORNUR POLICE STATION, PALAKKAD DISTRICT.

*ADDL. R3 **MOHANDAS.P.,**
AGED 40 YEARS, S/O KUTTIKRISHNAN,
PUTHENVEETTIL, KOONATHARA.P.O, SHORNUR,
PALAKKAD DISTRICT-678001

***(ADDL. R3 IS IMPLEADED AS PER ORDER DATED 03.03.2016 IN CRL.M.A. NO.1854/2016 IN CRL. M.C. NO.7756/2015)**

OTHER PRESENT:

SRI.SAIGI JACOB PALATTY, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30.10.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

Crl.M.C. No.7756 of 2015

Dated this the 30th day of October, 2020

O R D E R

The prayer in the aforecaptioned Criminal Miscellaneous Case filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.), is as follows:-

> *".....to quash the entire proceedings in C.C. No.1596/2014 on the file of Judicial First Class Magistrate Court, Ottappalam, pursuant to Annexure-B final report."*

2. Herad Sri.K.Abdul Jawad, learned counsel appearing for the petitioner, Sri.Saigi Jacob Palatty, learned Public Prosecutor, appearing for 1st & 2nd respondents. The Registry has endorsed on 18.03.2016 that notice has been duly sent to additional R3 (*de-facto* complainant*)* by speed post with hearing date 04.04.2016. Later, the Registry has endorsed on 30.05.2016 that notice to additional R3 has been duly served. In spite of that, additional R3 has not entered appearance before this Court, till date.

3. The petitioner herein has been arrayed as the sole

accused in Annexure-A FIR in Crime No.624/2014 of Shornur Police Station, which has now led to the pendency of calendar case C.C. No.1596/2014, on the file of the Judicial First Class Magistrate Court, Ottappalam, for offences punishable under Sections 193, 201 & 506(i) of the I.P.C, read with Section 23 of the Juvenile Justice (Care And Protection of Children) Act, 2000, on the basis of the First Information Statement given by the 3rd respondent (*de-facto* complainant) on 30.07.2014 in respect of the alleged incidents, which happened on 20.06.2014. The police, after investigation has filed the impugned Annexure-B final report/charge sheet in Crime No.624/2014 of Shornur Police Station, which has now led to the pendency of calendar case C.C. No.1596/2014 on the file of the Judicial First Class Magistrate Court, Ottappalam, in which the petitioner herein has been arrayed as the sole accused for the abovesaid offences.

4. The case of the prosecution is that while departmental enquiry was being conducted against the male teacher for sexual abuse of minor female students, the petitioner, who is a teacher in the said institution had insisted

the victims to give favourable statement supporting the accused teacher therein. It is alleged that the petitioner, who was a malayalam teacher of the students at the relevant time, had told them that it is learnt that the male teacher in question is likely to commit suicide presumably on account of the allegations registered against him and that he is having a daughter of the age of these victims and that the abovesaid victim children may bear in mind those aspects as well.

5. The case of the petitioner is that the impugned Annexure-A FIR and Annexure-B Final Report will not disclose any of the offences alleged against the petitioner. That, the petitioner was subsequently promoted to the post of Headmistress and that she was a teacher of great repute and that she has already retired from service and that the impugned criminal proceedings is nothing but an abuse of the process of the court.

6. The gist of the prosecution allegation is that on 20.062014 at about 3.45pm., while the departmental enquiry is going on against one accused male teacher on the allegation of sexual abuse against minor female students, the

petitioner/accused, who is a teacher of the same institution, has persuaded and pressurised the said minor victims to make statements favourable to the accused male teacher before the departmental enquiry officer and that thereby she has committed the abovesaid offences in question.

7. Section 193 of the I.P.C. deals with punishment for giving false evidence. Section 191 of the I.P.C. deals with the substantive offence of giving false evidence and the same reads as follows:-

> *"**191. Giving false evidence.**—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."*

As per Section 191 of the I.P.C., a person is said to give false evidence when a person who is legally bound by oath, or by an express provision of law to state the truth, or is being bound by law to make a declaration upon any subject, makes a false statement, which he/she either knows or believes to be false or does not believe to be true. Section 193 of the I.P.C. reads as follows:-

> *"**193. Punishment for false evidence.**—Whoever intentionally gives false evidence in any stage of a judicial*

> *proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
> *and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."*

Section 193 would stipulate that--(a) the person should intentionally give false evidence or fabricated evidence at any stage of a judicial proceedings. In the instant case, the admitted case of the prosecution is that the proceedings in question is only with a departmental enquiry and not a judicial proceedings. The prosecution has no case that the petitioner/accused had given any statement much less a false statement during the process of departmental enquiry, even on a judicial proceedings. Further it is not the case of the prosecution that the petitioner/accused who was bound by oath to state truth or to make any declaration and was bound by law to make any declaration and to that extent she has given any false statement. Moreover, it is trite that a departmental enquiry, as the one alleged in the impugned prosecution proceedings is not a judicial proceedings as understood in Section 193 of the I.P.C. Hence, it is only to be held that the

admitted allegations of the prosecution in Annexure-A & Annexure-B will not disclose the necessary ingredients of Section 193 & 191 of the I.P.C., in the instant case. Further it is elementary that in view of the mandatory provisions contained in Section 195 of the Cr.P.C., cognizance of the offence as per Section 193 of the I.P.C. can be taken only on the basis of the complaint of the officer who is authorised by the court concerned in terms of Section 340 of the Cr.P.C. So cognizance of the offence as per Section 193 of the I.P.C. taken on the basis of Annexure-B final report of the Police is illegal and ultravires.

8. The next offence alleged against the petitioner is the one as per Section 201 of the I.P.C., which deals with causing disappearance of evidence or giving false information to screen offender. Section 201 of the I.P.C. reads as follows:-

> *"**201. Causing disappearance of evidence of offence, or giving false information to screen offender**.— Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.*"

From a reading of Section 201 it can be seen that a person is said to commit the offence as per Section 201 of the I.P.C.

causing disappearance of evidence of offence or giving false information to screen offender when,

(a) the accused knows or has reasons to believe that an offence has been committed,

(b) and intentionally causes any evidence of the commission of offence to screen the offender from legal punishment.

9. In the instant case, a perusal of the impugned materials would show that the prosecution does not have any case that the petitioner had the knowledge or had reasons to believe that any offence has been committed by the male teacher (delinquent in question). Moreover, the proceedings in question is not by way of an investigation of a crime or an enquiry before a judicial forum like the competent Judicial Magistrate, as understood in the Cr.P.C. So also, it is not beyond any dispute that the proceedings in question was not a judicial proceedings. Even going by the case of the prosecution, it was a in house departmental enquiry conducted by the authorities concerned. In the light of these aspects and more particularly, on account of the indisputable factual aspect that the prosecution does not have a case that the petitioner had

knowledge or reasons to believe that any offence has been committed by the male teacher, it cannot be said that Section 201 of the I.P.C. can be pressed into service. In that regard it will be profitable to refer to the decisions of the Apex Court in cases as in ***Dr. Sr.Tessy Jose v. State of Kerala*** [2018(3) KLT 934(SC), para Nos.9 and 10], ***A.S. Krishnan & Ors. v. State of Kerala*** [(2004) 11 SCC 576, paras 8 to 10] to buttress her augments in that regard. In Dr.Sr.Tessy Jose's case (supra), the Apex Court has held in paras 9 and 10 thereof as follows:-

> *"9. The entire case set up against the appellants is on the basisthat when the victim was brought to the hospital her age was recorded as 18 years. On that basis appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor and, therefore, the appellants should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis of the aforesaid allegation is too far fetched. The provisions of S.19(1), reproduced above, put a legal obligation on a person to inform the relevant authorities, inter alia, when he / she has knowledge that an offence under the Act had been committed. The expression used is "knowledge" which means that some information received by such a person gives him / her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge. If at all, the appellants were not careful enough to find the cause of pregnancy as the victim was only 18 years of age at the time of delivery. But that would not be translated into criminality.*
>
> *10. The term "knowledge" has been interpreted by this Court in A. S. Krishnan and Others v. State of Kerala, 2004 KHC 776 : 2004 (11) SCC 576 : 2004 (2) KLT SN 40 : AIR 2004 SC 3229 : 2004 CriLJ 2833 to mean an awareness on the part of the person concerned indicating*

> *his state of mind. Further, a person can be supposed to know only where there is a direct appeal to his senses. We have gone through the medical records of the victim which were referred by Mr. Basant R., Senior Advocate for the appellants. The medical records, which are relied upon by the prosecution, only show that the victim was admitted in the hospital at 9.15 am and she immediately went into labour and at 9.25 am she gave birth to a baby. Therefore, appellant no. 1 attended to the victim for the first time between 9.15 am and 9.25 am on 7th February, 2017. The medical records of the victim state that she was 18 years' old as on 7th February, 2017. Appellant no. 1 did not know that the victim was a minor when she had sexual intercourse."*

10. Since the petitioner cannot be imputed with the knowledge that the male teacher in question has committed an offence or that the petitioner has reasons to believe that the offence has been committed, etc., invocation of Section 201 of the I.P.C. is misplaced. In that regard, it is by now well settled that a person can be imputed with the knowledge that another person has committed offence or has reasons to believe that the said person committed offence, etc., not merely on the basis of hear-say but on satisfaction of certain relevant parametrise as referred to in the above said rulings of the courts.

11. The next offence alleged against the petitioner is the one as per Section 506 of the I.P.C. which deals with punishment for criminal intimidation. Section 503 of the I.P.C.

deals with criminal intimidation, which reads as follows:-

> *"**503. Criminal intimidation.**—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.*"

The ingredients of the offence as per Section 503 of the I.P.C. are that--(a) the accused should threaten another person with injury to his person, reputation or property, (b) or should threaten another person with injury to the person or reputation of any one in whom the other person is interested, and (c) it should be such acts with the intention to cause alarm to that person or to cause that person to do any act which he is not legally bound to do.

12. A perusal of the impugned criminal proceedings will disclose that the prosecution does not have any allegation/materials that the petitioner has done any acts so as to fulfil the ingredients of giving any threat to the victims so as to cause injury to the reputation or to the injury of any person to whom they have interest, etc., as envisaged in Section 503 of the I.P.C. In other words, the offence as per Section 503 of the

I.P.C. is not made out and hence prosecution of the petitioner for punishment for criminal intimidation as per Section 506 of the I.P.C. will not lie.

13. The last offence alleged against the petitioner is as per Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Juvenile Justice Act), which reads as follows:-

> *"23. Punishment for cruelty to juvenile or child.- Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both."*

A reading of the said provision would make it clear that the ingredients to be satisfied for the said offence are -- (a) the accused person should be having actual charge or control over the child, (b) the accused should assault, abandon, expose or wilfully neglect the child, (c) should procure the child to be assaulted, abandoned, exposed or neglected and (d) causing the child unnecessary mental or physical suffering.

14. A reading of the prosecution materials would show that the prosecution does not have any specific or definite case

that the petitioner has done any act so as to assault, abandon, expose or wilfully neglect the children or has done any act so as to cause or procure to the child to be assaulted, abandoned, exposed or neglected; or that the petitioner/accused has done anything or to put the child to unnecessary mental or physical suffering. For these reasons, the offence as per Section 23 of the Juvenile Justice Act also will not lie in the facts and circumstances of this case. In particular, the allegations are to the effect that the petitioner, who was a Malayalam teacher of the students, at the relevant time, had told them that it is learnt that the male teacher in question is likely to commit suicide presumably on account of the allegations raised against him and that he is having a daughter of the age of these victims and that the abovesaid victim children may bear in mind those aspects as well.

15. Taking into account the abovesaid totality of the facts and circumstances of the case and the abovesaid aspects dealt with by this Court hereinabove, this Court is of the considered view that the continuance of the impugned criminal proceedings will be an abuse of process of court and is liable for

interdiction by resort to the inherent powers conferred under Section 482 of the Cr.P.C. So, in this view of the matter it is ordered that the impugned Annexure-B final report/charge sheet, filed in Crime No.624/2014 of Shornur Police Station, which has now led to the pendency of calendar case C.C. No.1596/2014, on the file of the Judicial First Class Magistrate Court, Ottappalam, and all further proceedings emanating therefrom as against the petitioner/accused will stand quashed and set aside.

The petitioner will produce certified copies of this order to the Investigating Officer, concerned, as well as before the Judicial First Class Magistrate Court, Ottappalam, who is dealing with C.C. No.1596/2014, for necessary information.

With these observations and directions, the above criminal miscellaneous case will stand disposed of.

Sd/-

ALEXANDER THOMAS,
JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A	**CERTIFIED COPY OF F.I.R NO.624/14 DT. 30/7/14 OF SHORNUR POLICE STATION ALONG WITH F.I.S**
ANNEXURE B	**CERTIFIED COPY OF FINAL REPORT IN F.I.R NO. 624/14**
ANNEXURE C	**TRUE COPY OF THE SCHEDULE OF WITNESSES**
ANNEXURE D	**TRUE COPIES OF THE STATEMTNS OF THE WITNESSES RECORDED BY THE POLICE**

RESPONDENTS' EXHIBITS: **NIL**