



2024:KER:60525

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946

CRL.MC NO. 6238 OF 2017

CRIME NO.1252/2016 OF KOVALAM POLICE STATION

CC NO.3415 OF 2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS

COURT - VII, NEYYATTINKARA

PETITIONER/ACCUSED:

HARIDAS @ BOMMA BABU

AGED 49 YEARS

**S/O.GOPALAKRISHNAN, MEENA BHAVAN, NEARBY MILK
SOCIETY, K.S. ROAD, VETUUVILA, MUTTAKADU DESOM,
VENGANOOR VILLAGE.**

BY ADVS.

SRI.R.T.PRADEEP

SMT.M.BINDUDAS

RESPONDENTS/STATE & DE-FACTO COMPLAINANT:

**1 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA-682031**

**2 BIJU
S/O. SASIDHARAN, S.V.BHAVAN, OPPOSITE TO
SALVATION ARMY CHURCH, K.S.ROAD, MUTTAKADU
DESOM, VENGANOOR VILLAGE-695125**

**BY ADV. SRI. SANGEETHARAJ . N.R., PUBLIC
PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.08.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**



P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.6238 of 2017

Dated this the 08th day of August, 2024

O R D E R

Petitioner is the accused in C.C.No.3415/2016 on the file of the Temporary Judicial First Class Magistrate Court - VII, Neyyattinkara arising from Crime No. 1252/2016 of Kovalam Police Station. The above case was charge sheeted alleging offences punishable under Sections 294(b), 506(ii), 323 and 324 IPC.

2. The prosecution case is like this:

The de-facto complainant is the Secretary of Administrative Committee of Madan Thampuran Temple at K.S. Road. On 30.08.2016 at about 10 A.M., while the defacto complainant was taking out papers from his motorcycle at Kovalam Junction, the petitioner armed with a deadly stone smashed on the face of de-facto



2024:KER:60525

complainant by threatening that he will kill him. It is submitted that the above attack hit on the right cheek of the de-facto complainant and he fell down. Again the accused attacked with, the stone which was resisted by the de-facto complainant with his left hand which caused abrasions on left hand joint of the defacto complainant. When the de-facto complainant attempted to flee from the scene, he was pushed down by the accused whereupon his head hit on ground. When the de-facto complainant attempted to get up, the petitioner snatched away the gold chain worn by him. It is submitted that the petitioner left the scene with the gold chain worth of Rs.46,000/-. Hence it is alleged that the accused committed the offences. Annexure-I is the FIR and Annexure-II is the Mahazar. Even though the offence under Section 392 IPC was added in the FIR, subsequently it was deleted as per Annexure-III report. The Police, after investigation, filed Annexure-IV final report. Annexure-V is the summons received by the



2024 : KER : 60525

petitioner. According to the petitioner, even if the entire allegations are accepted, no offence is made out. Hence this criminal miscellaneous case.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. Different contentions are raised by the petitioner in this criminal miscellaneous case. The counsel for the petitioner also submitted that this is a false case foisted against the petitioner. I do not want to discuss all those contentions raised by the counsel for the petitioner in this order. Those are matter of evidence. The petitioner can prove the same before the trial court at the appropriate stage.

5. The offences alleged against the petitioner are under Sections 294(b), 506(ii), 323 and 324 IPC. It will be better to extract the relevant portion of the final report:

“ഒന്നാം സാക്ഷി സെക്രട്ടറി ആയി സേവനം ചെയ്യുന്ന ക്ഷേത്രത്തിലെ പണം വെട്ടിച്ചെന്നും മറ്റും പ്രതി ആരോപണം ഉന്നയിച്ചതിനെതിരെ പോലീസിൽ പരാതി കൊടുത്തതിലുള്ള വിരോധം നിമിത്തം ഒന്നാം സാക്ഷിയെ ചീത്ത വിളിച്ച് ഭീഷണിപ്പെടുത്തി കല്ലുകൊണ്ട് ഇടിച്ച് ദേഹോപദ്രവം ഏൽപ്പിക്കണമെന്നുള്ള ഉദ്ദേശത്തോടും കരുതലോടും കൂടി പ്രതി 30-8-16 തീയതി 10.00 മണിക്ക് തിരുവല്ലം വില്ലേജിൽ നെടുമം ദേശത്ത് കോവളം ജംഗ്ഷനിൽ നിന്നും നെടുമത്തേക്കും മറ്റും പോകുന്ന



പഴയ റോഡ് ആരംഭിക്കുന്ന ഭാഗത്ത് ടി റോഡിന് തെക്കുവശം സ്ഥാപിച്ചിരിക്കുന്ന V/KB-2C നമ്പർ കോൺക്രീറ്റ് ഇലക്ട്രിക് ലൈറ്റ് പോസ്റ്റിന്റെ ചുവട്ടിൽ നിന്നും 21 മീറ്റർ 95 സെന്റീമീറ്റർ വടക്ക് കിഴക്ക് മാറിയും ആയതിന് കിഴക്ക് ഭാഗത്തായി ടി റോഡിന് തെക്കുവശം സ്ഥാപിച്ചിരിക്കുന്ന V/KB-2B നമ്പർ കോൺക്രീറ്റ് ഇലക്ട്രിക് പോസ്റ്റിന്റെ ചുവട്ടിൽ നിന്നും 18 മീറ്റർ 52 സെന്റീമീറ്റർ വടക്ക് പടിഞ്ഞാറ് മാറിയും ടി റോഡിന്റെ ടാർ എന്ററിൽ നിന്നും 68 സെന്റീമീറ്റർ നേരെ തെക്ക് മാറിയ റോഡ് മാർജിൻ ഭാഗത്തും പരിസരത്തും വച്ച് ഒന്നാം സാക്ഷി സ്കൂട്ടറിൽ വന്നിറങ്ങി സ്കൂട്ടറിന്റെ സീറ്റ് പൊക്കി പേപ്പറുകൾ എടുത്തുകൊണ്ട് നിന്ന സമയം പ്രതി കൈയിൽ ഒരു കരിങ്കല്ലുമായി വന്ന് ചീത്തകൾ വിളിച്ചുകൊണ്ട് കൊന്നുകളയും എന്ന് പറഞ്ഞു ഭീഷണിപ്പെടുത്തി കല്ലുകൊണ്ട് ഒന്നാം സാക്ഷിയുടെ ഇടതു ചെങ്കിട്ടിൽ ഇടിച്ച് മുറിപ്പെടുത്തിയും വീണ്ടും കല്ലുകൊണ്ട് ഇടിച്ച് സമയം ഒന്നാം സാക്ഷി ഇടതു കൈകൊണ്ട് തടുത്തതിൽ വച്ച് ഇടതു കൈയിൽ ചതവ് സംഭവിപ്പിച്ചും കൈ മുറുക്കി വിലാപ്തം ഇടിച്ച് വേദനിപ്പിച്ചും പ്രതി സ്വമനസാലെ പ്രവർത്തിച്ചു മേൽ വകുപ്പുകൾ പ്രകാരമുള്ള കുറ്റകൃത്യം ചെയ്തിട്ടുള്ളതായി വ്യക്തമായി വെളിവാക്കിയിട്ടുള്ളതാകുന്നു "

6. The first offence alleged is under Section 294(b) IPC. This Court perused the First Information Statement launched against the petitioner also. It is only stated in the First Information Statement and in the final report that the accused used some filthy language. What exactly is the filthy language used is not mentioned by the petitioner. The ingredients of Section 294(b) IPC is considered by this Court in **Latheef v. State of Kerala** [2014 (2) KHC 604]. It will be better to extract the relevant portion of the above judgment.

"5. Abusive words or humiliating words or



2024 : KER : 60525

defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under S.294(b) IPC it must satisfy the definition of obscenity. S.294 IPC does not define obscenity. Being a continuation of the subject dealt with under S.292 IPC the definition of obscenity under 292(1) IPC can be applied in a prosecution under S.294 IPC also. To make punishable, the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. In P. T. Chacko v. Nainan Chacko reported in 1967 KHC 231 : 1967 KLT 799 this Court held that, "the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." In Sangeetha Lakshmana v. State of Kerala reported in 2008 (1) KHC 812 : 2008 (2) KLT 745 : 2008 (1) KLD 339 this Court held thus, "in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers." Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex



2024:KER:60525

appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code. I find that the conviction against the revision petitioner under S.294(b) IPC in this case, on the basis of the above words alleged to have been used by him, is liable to be set aside, and the revision petitioner is entitled to be acquitted. In the result, this revision petition is allowed. The conviction and sentence against the revision petitioner under S.294(b) IPC in ST No. 3810/1998 of the Judicial First Class Magistrate Court, Chittoor are set aside, on the finding in revision that the revision petitioner is not guilty of the offence punishable under S.294(b) IPC. The revision petitioner will stand released from prosecution on acquittal, and the bail bond executed by him will stand discharged.”

(underline supplied)

7. Even if the entire allegations in Annexure-I FIR and Annexure-IV final report are accepted in toto, I am of the considered opinion that the offence under Sec.294(b) IPC is not attracted.



8. The other offence alleged is under Section 506(ii) IPC. The ingredients to attract Section 506(ii) IPC is considered by the Apex Court in detail in **Manik Taneja and anr. v. State of Karnataka and anr.** [2015 KHC 4046]. The relevant portion of the above judgment is extracted hereunder :

"13. S.506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in S.503 IPC is as under:

"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.

Explanation.-- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

14. A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an



2024 : KER : 60525

injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

15. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of



2024 : KER : 60525

appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in S.503 IPC.” *(underline supplied)*

9. Even if the entire allegations in the final report and the statement accompanying the same are accepted, I am of the considered opinion that the offence under Section 506(ii) is not attracted.

10. But, as far as the offences under Sections 323 and 324 IPC are concerned, it is a matter of evidence and I do not want to make any observation about the same. The petitioner has to face trial for the same before the trial court. The petitioner can raise all the contentions raised in this criminal miscellaneous case before the trial court at the appropriate stage. But the offences alleged under Sections 294(b) and 506(ii) IPC can be set aside.

Therefore, this Crl.M.C. is allowed in part with following directions:

1. The offences alleged under Sections 294(b) and 506(ii) IPC in Annexure-IV final report



2024:KER:60525

are quashed.

2. The petitioner will face trial based on Annexure-IV final report as far as the offences under Sections 323 and 324 IPC are concerned.

DM/JV

sd/-
P.V.KUNHIKRISHNAN
JUDGE



2024:KFR:60525

APPENDIX OF CRL.MC 3796/2021

PETITIONER ANNEXURES

ANNEXURE I:- TRUE COPY OF F.I.R. DATED 31.8.2016 IN CRIME NO. 1252/2016 OF KOVALAM POLICE STATION.

ANNEXURE II:- TRUE COPY OF MAHAZAR DATED 1.9.2016 IN CRIME NO. 1252/2016 OF KOVALAM POLICE STATION.(

ANNEXURE III:- TRUE COPY OF REPORT DATED 5.10.2016 DELETING SECTION 392 OF I.P.C.

ANNEXURE IV:- COPY OF FINAL REPORT DATED 1.12.2016 IN CRIME NO.1252/2016 OF KOVALAM POLICE STATION WHICH IS NOW PENDING AS C.C. NO.3415/2016 BEFORE TEMPORARY JUDICIAL FIRST CLASS MAGISTRATE COURT, NEYYATTINKARA.

ANNEXURE V:- TRUE COPY OF SUMMONS TO PETITIONER DATED 22.6.2017.

ANNEXURE VI:- TRUE COPY OF ORDER DATED 14.10.2015 IN CRL.M.C. NO.6402/2015.

ANNEXURE VII:- TRUE COPY OF REPRESENTATION DATED 20.9.2016 BEFORE DIRECTOR GENERAL OF POLICE BY PETITIONER.

ANNEXURE VIII:- TRUE COPY OF F.I.R. DATED 31.8.2016 IN CRIME NO.1253/2016 OF KOVALAM POLICE STATION.

ANNEXURE IX:- TRUE COPY OF FINAL REPORT DATED 14.2.2017 IN CRIME NO. 1253/2016 OF KOVALAM POLICE STATION BEFORE TEMPORARY JUDICIAL FIRST CLASS MAGISTRATE COURT, NEYYATTINKARA.

ANNEXURE X:- TRUE COPY OF WOUND CERTIFICATE DATED 30.8.2016 OF COMMUNITY HEALTH CENTRE, VIZHINJAM.