

Pushkaran Vs. the State of Kerala

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Court : Kerala

Decided On : Jul-11-2014

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Pushkaran

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW FRIDAY, THE 11TH DAY OF JULY 2014 20TH ASHADHA, 1936 Bail Appl..No. 4873 of 2014 (D) ----- AGAINST THE

ORDER

IN Bail Appl. 3129/2014 of HIGH COURT OF KERALA DATED 10-06-2014 CRIME NO. 199/2014 OF NORTH PARUR POLICE STATION , ERNAKULAM PETITIONER(S)/ACCUSED NO.3: ----- PUSHKARAN AGED 65 YEARS S/O. VELAYUDHAN, ACHENCHERIL HOUSE, NANDYATTUKUNNAM NORTH PARAVUR. BY ADVS.SRI.S.RAJEEV SRI.K.K.DHEERENDRAKRISHNAN RESPONDENT(S)/STATE : ----- 1. THE STATE OF KERALA REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM-682 031. (CRIME NO.199/2014 OF NORTH PARAVUR POLICE STATION ERNAKULAM DISTRICT).

2. STATION HOUSE OFFICER NORTH PARAVUR POLICE STATION ERNAKULAM-683 513. (CRIME NO.199/2014 OF NORTH PARAVUR POLICE STATION ERNAKULAM DISTRICT). BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 11-07-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: JJJ K. ABRAHAM MATHEW, J.

----- B.A. No. 4873 of 2014
----- Dated this the 11th day of July, 2014

ORDER

Petition filed under Section 438 Cr.P.C.

2. The petitioner is the 3rd accused in Crime No. 199/2014 of North Paravur Police Station. The case was registered for the offences under section 509 IPC, section 67 of Information Technology Act and section 119(b) of Kerala Police Act. Later, sections 354A(iv) and 109 IPC and section 66A(a)(b), 66D and 67A of Information Technology Act and section 118(d) of Kerala Police Act also were incorporated.

3. A message was posted in the facebook casting aspersions on the character of the mother of the 1st informant. According to the prosecution, there was enmity between the family of the 1st informant and of the petitioner. He had threatened that he would publish 'her conduct' for the information of the public. Later, his son (2nd accused) B.A. No. 4873 of 2014 -2- posted the message in the facebook. It is defamatory and scandalous. This, in brief, is the prosecution case.

4. According to the learned counsel for the petitioner, the allegations are false and even if all the allegations are true, section 67A of Information Technology Act is not attracted.

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

6. When the case was registered, it was not known who the offender was. Later, the 1st informant gave a statement to the Police under section 161 Cr.P.C. that one Vichithran (brother of the 3rd accused) who is in Nigeria talked to the brother

of the 1st informant on phone and he disclosed that it was the 2nd accused who posted the message. Vichithran also requested him to settle the matter and withdraw the complaint. Thereafter, Vichithran asked the 1st informant also to settle the matter. B.A. No. 4873 of 2014 -3- 7. All the offences except the one falling under section 67A of Information Technology Act are bailable. It is doubtful whether the facts alleged against the petitioner would attract section 67A of Information Technology Act. There is no specific allegation that the message contained any sexually explicit act or conduct of the victim.

8. Having regard to all these facts, I am inclined to grant the prayer of the petitioner. In the result, this application is allowed. i. The petitioner shall be released on bail on his executing a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum if he is arrested by the Police in connection with this case. ii. He shall appear before the Investigating Officer between 10.30 am and 11.30 am on every first and last Saturdays for two months or till the final report is filed, whichever is earlier. B.A. No. 4873 of 2014 -4- iii. He shall not get himself involved in any other criminal case while he is on bail. iv. He shall not harass the 1st informant or the members of his family, nor shall he threaten the witnesses or attempt to influence them. v. He shall co-operate with the investigation. This order is not applicable if the petitioner chooses to surrender before the Magistrate concerned and in such case the learned Magistrate may take appropriate action in accordance with the law. Sd/- K. ABRAHAM MATHEW, JUDGE //True Copy// P.A. to Judge jjj

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