

Omkar vs State of Kerala

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/6579/2016

Appellant : OMKAR

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946
CRL.MC NO. 6579 OF 2016 CRIME NO.49/2013 OF Alappuzha South
Police Station, Alappuzha AGAINST THE ORDER 03.08.2015 IN CC
NO.1639 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,
RAMANKARI PETITIONER/RESPONDENT: OMKAR, AGED 38 YEARS,
S/O RADHAKRISHNAN, KRISHNAVIJAYA MANDIRAM HOUSE,
MARUTHORVATTOM PO, THANNEERUMUKKOM PANCHAYATH,
CHERTHALA, ALAPPUZHA DISTRICT. BY ADV SRI.K.RAMANADHAN
RESPONDENT/STATE AND DEFACTO COMPLAINANT: 1 STATE OF
KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM-682091. 2 T.N. SHYLAJA AGED ABOUT 47 YEARS, D/O BHUVANACHANDRAN, SHYLAJA NIVAS, KAVUNKAL, MANNANCERRY PO, PONNAD, ALAPPUZHA -688538. BY ADVS. SRI.R.S.HARI KUMAR SRI.SIJI ANTONY SRI.P.S.SAJEEV CHIRAYIL OTHER PRESENT: SRI.RENJITH.T.R, SR.PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. V. KUNHIKRISHNAN, J.

----- Crl.M.C.No.6579 of 2016
----- Dated this the 31st day of July, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C.No.1639/2014 on the file of the Judicial First Class Magistrate Court, Ramankary. The above case is charge sheeted against the petitioner alleging offences under Section 294(b) and Section 119(1) of the Kerala Police Act.

2. The petitioner filed a discharge petition before the trial

court. The learned Magistrate discharged the petitioner under Section 119(1) of the Kerala Police Act but it is observed that the offence under Section 294(b) IPC is made out. Annexure-A8 is the order. Aggrieved by the same, this Criminal Miscellaneous Case is filed.

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

4. Admittedly, the trial court discharged the petitioner

under Section 119(1) of the Kerala Police Act. What remains is only Section 294(b) of the Indian Penal Code. The allegation against the petitioner in the final report and also in the first information report is that the petitioner used the following words against the petitioner: ' , , , . The same is repeated in the final

report also. To attract the offence under Section 294(b) IPC, certain ingredients are necessary. This Court in *Latheef v. State of Kerala* [2014 (2) KHC 604] considered the ingredients of Sec.294(b) IPC. It will be better to extract the relevant portion of the above judgment.

5. Abusive words or humiliating words or 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 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.

5. In the light of the above dictum, I am of the considered

opinion that, even if the entire allegations in the first information report and the final report filed against the petitioner are accepted, the offence under Section 294(b) IPC is not attracted. If that is the case, the continuation of the prosecution against the petitioner is not necessary. Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings in C.C.No.1639/2014 on the file of the Judicial First Class Magistrate Court, Ramankary arising from Crime No.49/2013 of Alappuzha South Police Station are quashed. Sd/- P. V. KUNHIKRISHNAN
JUDGE Sbna/31.07.24

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