

Sandhya.K.V, vs State of Kerala,

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/5493/2022

Appellant : Sandhya.K.V,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946
CRL.MC NO. 5493 OF 2022 CRIME NO.151/2020 OF VIYYUR POLICE
STATION, THRISSUR AGAINST THE ORDER/JUDGMENT DATED IN
CC NO.119 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -
I,THRISSUR PETITIONER: SANDHYA.K.V AGED 45 YEARS F-
4,VRINDAVAN,NORTH FORT,THRIPOONITHURA,ERNAKULAM, PIN -
682301 BY ADVS. R.LEELA M.SREELAKSHMI ARUN SEBASTIAN
RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031 2 SUB INSPECTOR OF

POLICE VIYYOOR POLICE STATION THRISSUR CITY, PIN - 680010 3
SAILAJA AGED 54 YEARS W/O RAMKUMAR,IX13,PANIKKAVEETIL
HOUSE,POOVANI DESAM KOLAZHY,THRISSUR CITY., PIN - 680010
BY ADVS. S.RAJEEV S M.S.ANEER(K/644/2013) V.VINAY(K/355/2009)
SARATH K.P.(K/001467/2021) PRERITH PHILIP
JOSEPH(K/000736/2015) ANILKUMAR C.R.(K/001190/2020)

Crl.M.C No.5493 of 2022 2 OTHER PRESENT: PP M P PRASANTH THIS
CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31.07.2024, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.M.C No.5493 of
2022 3

ORDER

Dated this the 31st day of July, 2024 This Criminal Miscellaneous Case has been
filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all
further proceedings in Annexure A1 charge sheet against the petitioner in C.C
No.119/2021 on the files of the Judicial First Class Magistrate Court-I, Thrissur,
arose out of Crime No.151/2020 of Viyyoor Police Station, Thrissur. The petitioner
herein is the 2 nd accused in the above case.

2. Heard, the learned counsel for the petitioner, the learned counsel appearing for
the de facto complainant and the learned Public Prosecutor, in detail. Perused the
relevant materials available.

3. In this matter, initially offences punishable under Sections

294(b), 325, 506, 498A read with 34 of the Indian Penal Code, 1860 (in short IPC)
were alleged and accordingly FIR was registered. On completion of investigation,
final report filed alleging offences excluding Section 325 of the IPC, for which the
trial Court took cognizance. Crl.M.C No.5493 of 2022 4

4. The learned counsel for the 2 nd accused, who is the

petitioner herein, vehemently canvassed to establish that, none of the offences
would attract against the 2 nd accused. It is pointed out that, in order to attract an

offence under Section 294(b) of IPC, the overt acts referred in Section 294(b) of IPC shall be uttered in a public place or near a public place. Here, the place of occurrence is inside a flat, where public have no access and there was nobody to have annoyance in this regard. It is also argued that the offence under Section 498A read with 34 of IPC also would not attract against the petitioner, who is a total stranger, as far as the 1st accused, who is the husband of the de facto complainant is concerned.

5. The learned counsel for the de facto complainant would

submit that prima facie all the offences made out and for which trial is necessary. According to him, apart from the offences for which cognizance was taken, offence under Section 509 of the IPC is also made out.

6. Even though the learned counsel for the petitioner argued to substantiate that no offence under Section 506(1) of the IPC is also made out, as rightly pointed out by the learned counsel for the

Crl.M.C No.5493 of 2022 5 de facto complainant and the learned Public Prosecutor, allegation of threat at the instance of 1st and 2nd accused is prima facie made out.

7. On perusal of the records, it could be seen that, the offence

under Section 294(b) is not made out prima facie, since, the overt acts as to the utterance of obscene words were made inside a flat and the same is not either a public place or place near public place. Similarly, no offence under Section 498A would attract as against the petitioner who is a 3rd party, in view of the specific wording in the statutory provisions.

Holding so, this petition is allowed in part and cognizance taken by the Magistrate for the offences punishable under Section 294(b) of the IPC as well as Section 498A read with 34 of the IPC as against the petitioner/2nd accused is quashed, while allowing continuance of trial for the other offences, as per the prosecution allegations or

otherwise, in accordance with law. Since, it is submitted by the learned counsel for the petitioner that, as far as possible, the personal appearance of the petitioner may be ordered to be dispensed with, there shall be a direction to the Magistrate to grant exemption from the personal appearance of the petitioner as far as possible, though

Crl.M.C No.5493 of 2022 6 the Magistrate is at liberty to insist presence of the petitioner for the purpose of identity as well Section 313 examination and for pronouncing judgment. Sd/- A. BADHARUDEEN JUDGE AJ Crl.M.C No.5493 of 2022 7 APPENDIX OF CRL.MC 5493/2022 PETITIONER ANNEXURES ANNEXURE A1 THE ACCUSED COPY OF CHARGE SHEET NO.1074/2020 IN CRIME NO.151/2020 IN C.C.NO.119/2021 PENDING BEFORE THE JFCM-1 THRISSUR ALONG WITH FIR

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