

**John Vijayakumar vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1342315](https://sooperkanoon.com/1342315)

**Court :** Kerala

**Decided On :** Sep-15-2023

**Judge :** Honourable Mr. Justice Gopinath P.

**Appeal No. :** Crl.MC/1799/2015

**Appellant :** John Vijayakumar

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY,  
THE 15TH DAY OF SEPTEMBER 2023 / 24TH BHADRA, 1945 CRL.MC  
NO. 1799 OF 2015 AGAINST THE ORDER/JUDGMENT CC 4101/2013  
OF JUDICIAL MAGISTRATE OF FIRST CLASS -  
II, THIRUVANANTHAPURAM PETITIONER/ACCUSED: JOHN  
VIJAYAKUMAR FOOD SAFETY OFFICER, THIRUVANANTHAPURAM  
CORPORATION, RESIDING AT T.C 8/72(14), THIRUMALA,  
THIRUVANANTHAPURAM. BY ADV SRI.M.SREEKUMAR  
RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. 2

SAJINIMOL ASSISTANT GRADE-III, FOOD CORPORATION OF INDIA, VALIATHURA, RESIDING AT THAINIYIL VEEDU, PAKKANAM, ERUMELY, KOTTAYAM DISTRICT. BY ADVS. SRI.U.K.DEVIDAS SRI.U.K.DEVIDAS SMT.P.M.SHAHIDA SRI. NOUSHAD K A (SR PP) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15.09.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 1799 OF 2015 2

## **ORDER**

Petitioner (who is the accused in C.C. No.4101/2013 on the file of the Judicial First Class Magistrate Court-II, Thiruvananthapuram) faces prosecution alleging commission of offences under Sections 509 and 506 (I) of the Indian Penal Code.

2. The petitioner, while working as a Food Safety

Officer in the Thiruvananthapuram Corporation, caused inspection of the godown of the Food Corporation of India, at Valiathura, on 01.08.2013 at 11 am. The de facto complainant, who was working as the Depot Manager, alleged that the petitioner has committed offences under Sections 506(1) and 509 of the Indian Penal Code, by uttering words as . . . ' '

3. Learned counsel appearing for the petitioner would

submit that the petitioner was working as Food Safety Officer of Thiruvananthapuram Corporation by virtue of Gazette notification dated 06.03.2012 issued by Commissioner of Food Safety, Kerala. It is submitted that going by the provisions of Sections 87 and 88 of the Food Safety and Standards Act, 2006 CRL.MC NO. 1799 OF 2015 3 (hereinafter referred to as the 2006 Act), the petitioner is a public servant, whose acts, while in discharge of official functions is protected in terms of the provisions contained in the 2006 Act. It is submitted that the utterance of the above words by the petitioner, cannot attract the offence under Section 509 IPC going by the decision rendered by this Court in Rev. Fr.Mathew Pulimoottil Episcopa V. State of Kerala and Another [2014(2) KHC 96]. It is submitted that the decision of this Court in Jacob Job I.P.S and Another

V. State of Kerala and Another [2022 KHC 146] is authority for the proposition that the petitioner is also entitled to Protection provided for in Section 88 of the 2006 Act. It is submitted that since the petitioner is a public servant as defined in Section 21 of the Indian Penal Code, the prosecution under Section 506 IPC could be initiated only after obtaining sanction under Section 197 Cr.P.C. It is, however, conceded that, in respect of the offence alleged under Section 509 IPC, such sanction may not be required , after the amendment of 197 Cr.P.C (by Act 13 of 2013 w.e.f 03.02.2013).

4. Learned counsel appearing for the 2nd respondent

would submit that the question as to whether the utterance of words as above by the petitioner would amount to the CRL.MC NO. 1799 OF 2015 4 commission of an offence under Section 509 IPC, is a matter for evidence. It is submitted that, even if the petitioner can be prosecuted under Section 506 IPC, only after obtaining sanction under Section 197 Cr.P.C, the offence under Section 509 IPC is clearly attracted and the proceedings initiated against the petitioner cannot be quashed in exercise of the jurisdiction vested in this Court under Section 482 Cr.P.C. It is also submitted that the protection given under Section 88 of the 2006 Act is only in respect of action taken in good faith and the petitioner cannot be said to have been acting in good faith when he uttered the words above to the petitioner, who is also a Government Servant working with the Food Corporation of India.

5. Heard the learned Public Prosecutor also.

6. Having heard the learned counsel appearing for the

petitioner , learned Public Prosecutor and the learned counsel appearing for the 2nd respondent, I am of the view that the petitioner is entitled to succeed. The decision of this Court in Rev. Fr. Mathew Pulimoottil Episcopa (supra) is authority for the proposition that merely because the complainant thinks that the words uttered by the accused carry some other meaning, the same would not attract the offence under Section CRL.MC NO. 1799 OF 2015 5 509 IPC. This Court in Rev. Fr. Mathew Pulimoottil Episcopa (supra) held as follows:-

5. I fail to comprehend how the substance of the charge-sheet quoted earlier would amount to words or gestures intended to insult the modesty of the complainant or that it was intended to intrude upon the privacy of the complainant. In Annexure - I which is the complaint given by the complainant it was stated that when she went to the Chapel for prayers, the accused herein insulted her in public, stating Daisy what are you peeping through, why are you standing here; for peeping I am not doing anything else here. It is not known how the aforesaid words would attract Sec. 509 I.P.C. The learned counsel for the complainant would submit that the accused made those comments in front of the believers who came to the chapel for prayers and it was calculated to defame the complainant.

In the facts of the case at hand, the petitioner is alleged to have uttered to the de facto complainant, the words in malayalam extracted above. In my view, those words, do not, by themselves, indicate that the offence under Section 509 IPC was attracted. Coming to the allegation of commission of offence under Section 506 IPC, it is clear that the petitioner could have been prosecuted for an offence under Section 506 IPC, only after obtaining sanction under Section 197 Cr.P.C. Section 197(1) Cr.P.C reads as follows:-

197. Prosecution of Judges and Public Servants.- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013)-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may

be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article section 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression State Government occurring therein, the expression Central Government were substituted. Explanation - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166-A, section 166-B, section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 370, section 375, section 376, [section 376-A, section 376-AB, section 376-C, section 376-D, section 376-DA, section 376-DB] or section 509 of the Indian Penal Code (45 of 1860)

Under Section 87 of the Food Safety and Standards Act, 2006, the Commissioner of Food Safety and his officers shall be deemed to be public servants while discharging their official duties. Section 87 of the Food Safety and Standards Act, 2006 reads as under:-

87. Members, officers of Food Authority and Commissioner of Food Safety to be public servants.- The Members, officers of the Food Authority and the Commissioners of Food Safety and their officers shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning section 21 of the Indian Penal Code (45 of 1860). Therefore, it is clear that for the offence under Section 506 IPC,

the petitioner could have been proceeded against only after obtaining sanction under Section 197 Cr.P.C. No such sanction has been obtained in the matter. Therefore, I am of the view CRL.MC NO. 1799 OF 2015 7 that the proceedings

against the petitioner in C.C. No.4101/2013 pending before the Judicial First Class Magistrate Court-II, Thiruvananthapuram is liable to be quashed in exercise of the jurisdiction vested in this Court under Section 482 Cr.P.C. Accordingly, the Crl.M.C is allowed. The proceedings against the petitioner in C.C. No.4101/2013 pending before the Judicial First Class Magistrate Court-II, Thiruvananthapuram will stand quashed. Sd/- GOPINATH P. JUDGE ajt CRL.MC NO. 1799 OF 2015 8  
APPENDIX

ANNEXURE A - CERTIFIED COPY OF FINAL REPORT IN FIR NO.984/13 OF VALIATHURA POLICE STATION. ANNEXURE B - TRUE COPY COPY OF THE ORDER NO.A-2615/13/CFS DATED 31.07.2013 OF THE COMMISSIONER OF FOOD SAFETY, KERALA. ANNEXURE C - TRUE COPY OF THE PROCEEDINGS OF DESIGNATED OFFICER OF THIRUVANANTHAPURAM DISTRICT (ORDER NO.1781/2013/DFI) DATED 31.07.2013 ANNEXURE D - CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.965/13 OF VALIATHURA POLICE STATION ANNEXURE E - TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM DATED 25.10.2013 ANNEXURE F - CERTIFIED COPY OF THE FIR IN CRIME NO.984/13 OF VALIATHURA POLICE STATION DATED 6.8.2013

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