

George vs State of Kerala

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Court : Kerala

Decided On : Nov-30-2021

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Crl.Rev.Pet/550/2021

Appellant : George

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH AGRAHAYANA, 1943 CRL.REV.PET NO. 550 OF 2021 AGAINST THE ORDER REJECTING THE PRAYER FOR DISCHARGE PASSED BY THE JUDICIAL MAGISTRATE OF FIRST CLASS INRINJALAKKUDA, IN CRMP REVISION PETITIONER/ACCUSED: GEORGE AGED 57 YEARS S/O DEVASSY, CHENGALOOKKARAN HOUSE, CHURCH ROAD, MAPRANAM DESOM, MADAYIKONAM, THRISSUR DISTRICT, KERALA, PIN-680712. BY ADV ABRAHAM MATHAN RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-

682031. SR.PP.SRI.RENJITH T.R THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
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ORDER

Petitioner is the accused in C.C. 257 of 2019 on the file of the

Judicial First Class Magistrate's Court, Irinjalakuda, where he faces allegations under Sections 341, 323 and 294(b) of the IPC. The crime was registered on the basis of the First Information Statement given by the defacto complainant; on conclusion of investigation, charge sheet has been laid. Then the petitioner moved an application for discharging him of the offence punishable under Section 294(b) IPC. According to him, necessary ingredients of offence are not made out, that in order to attract Section 294(b), abusive or humiliating or defamatory words amounting to obscenity as defined under the law should have been involved, lascivious elements arousing sexual thoughts or feelings, which are absent, and therefore basing on the decision reported in *Latheef v. State of Kerala* [2014 (2) KHC 604] he wanted to be discharged from the offence under Section 294(b) IPC.

2. The Public Prosecutor opposed the application.

3. By the impugned order dated 04.10.2021 the learned Magistrate dismissed the application and aggrieved by the same the petitioner has moved this Court with this revision petition.

4. The allegation against the petitioner is based on the Crl.R.P.550/2021 3

information given by Anthony, who is a person aged 83 years on the date of furnishing the First Information Statement on 16.01.2019. The accused, that is the petitioner, owed some amount to the daughter of the defacto complainant, Mareena. As that amount was not repaid, a complaint was given to the police and provoked by the same, it is alleged, on the bylane near the Mapranam Church road, on 15.01.2019 at 17:45 hours, the petitioner had wrongfully restrained the defacto complainant and abused him calling him 'eda pulayadi mone...' and caught

hold of his neck and punched on his chest and also twisted his hands that gave rise to the registration of the crime and on conclusion of investigation, charge sheet was laid. As noticed earlier, the petitioner has no case that offence under Sections 341 and 323 of the IPC will not lie but he has grievance only of offence under Section 294(b) of the IPC.

5. I heard the learned counsel for the petitioner and also the

learned Public Prosecutor. Learned counsel for the petitioner submits that in no stretch of imagination offence under Section 294(b) will be attracted for which he reiterated his arguments based on *Latheef v State of Kerala* (2014 (2) KHC 604) where the very same abuses were hurled against the defacto complainant and this Court held that such abuses of humiliating words or defamatory words will not as such amount to

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obscenity as defined under the Code; to make the words obscene, the words used must involve some serious elements arousing sexual thoughts or feelings or the words must have the effect of depriving persons and defiling morals by sex appeal or lustful desires. According to the learned counsel, no such impact will cause in the person who hears such abuses. He also relied on the decisions reported in *Sanjay Kumar Rai v. State of U.P. and another* (AIR 2021 SC 2351), *Sajan C.K. v State of Kerala and another* (2019 (2) KLD 172) etc. Relying on the decision in *Bhushan Kumar and another v State (NCT of Delhi)* and another [(2012) 5 SCC 424] which has been followed in *R.Narayanan v. State (Government of NCT of Delhi)* [2019 Cri LJ 1761] he said that even in a summons trial case, an application for discharge is maintainable. He also placed reliance on *S.K.Bhalla v. State and others* of the Delhi High Court reported in [180 (2011) DLT 219] and a Full Bench decision of the Madras High Court in *In Re : Nalla Baligadu and others* [AIR 1953 Mad 801].

6. It is not known as to how the latter decision can be applied in

the facts of the case. Whatever it may be, in the said decision in Bhushan Kumar, the Supreme Court has held that, if ingredients of offence are not made out, the Magistrate is bound to discharge the accused under Section CrI.R.P.550/2021 5 239 of the Cr.P.C. As stated earlier, this has been followed in the Delhi case cited supra.

7. All the same, offence alleged against the petitioner are summons trial case falling within chapter XX of the Cr.P.C. In fact in a summons trial case, there is no provision for discharging the accused. Here the question of framing charge does not arise. When the accused appears, after completing formalities, when particulars of offence are read

over and explained, he has to plead either guilty or not guilty. On the other hand, in a warrant trial case, falling under Chapter XIX of the Cr.P.C, a court charge has to be framed after hearing counsel on both sides. In fact an application under Section 239 of the Cr.P.C for discharge can be filed only in a warrant trial procedure falling under Chapter XIX of the Cr.P.C. Even though the Apex Court has held that in summons trial case a discharge under Section 239 is possible, it seems that such an observation was made without analysing the procedural differences in Chapters XIX and XX of the Cr.P.C. Whatever it may be, it is the law of the land and therefore, all the courts are liable to follow the same.

8. Here, even though there are three charges against the petitioner, under Section 341, under Section 323 and under Section 294(b) of the IPC, the petitioner has challenged the sustainability of offence under Section CrI.R.P.550/2021 6

294(b) of the Cr.P.C alone. So he moved an application for discharge which was dismissed by the Court. According to the learned Magistrate, the impact of the abuses hurled can be assessed only after taking evidence and that relying on the decision in Dhanisha v Rakhi N Raj and Another [2012 (2) KHC 111] it was pointed out that whether offences are attracted can be decided only with reference to the locality in which the words are uttered and that it is a matter that can be decided only in trial. In my opinion, such a view is very reasonable. In the decision reported in Devidas Ramachandra Thuljapurkar v State of Maharashtra and others [AIR 2015 SC 2612] the Hon'ble Supreme Court has laid down the test of

obscenity. Whatever it may be, it is not necessary for us to go into such aspects of the matter, at this stage.

9. It is very important that the test of obscenity is the tendency to evoke lascivious elements arousing lustful desires. In

order to be obscene the matter must tempt sexually impure thoughts.

This can be seen from the decisions reported in P.T.Chacko v Ninan Chacko [1967 KLT 799] and Chacko George v State of Kerala [1968 (2) KLT 219] etc. I do not think that uttering such words, even though it is highly defiling and only intended to defame the person against whom it is made, such abuses would arouse sexually impure thoughts in the mind of CrI.R.P.550/2021 7 the hearer. Therefore, prima facie an offence under Section 294(b) IPC cannot be attracted.

10. All the same, the learned counsel could not convince me why the petitioner is so insistent that he should be discharged of offence under

Section 294(b) of the IPC. It being a case following summons trial procedure, when particulars of offence are read over, that will take ingredients of this offence also and now what the petitioner canvasses is a partial discharge. Of course a partial discharge is not illegal since there is no law prohibiting it. All the same, what is the purpose in discharging him from the offence under Section 294(b) alone could not be stated or explained by the petitioner.

11. Even if he is discharged of the offence under Section 294(b) of

the IPC, the petitioner does not have a case that he will be totally exonerated so long as offence under Sections 341 and 323 IPC will lie against him. Offence under Section 341 IPC is a cognizable one whereas

the other is non-cognizable. So, in all probability intention of the petitioner is superfluous and not in right earnest. No doubt offence under Section 294(b) IPC will not lie against the petitioner unless the lascivious tendencies or impure sexual thoughts arouse in the minds of the hearer. But that is a matter of evidence. Let

the trial court take evidence taking

Crl.R.P.550/2021 8 into consideration all the material aspects and the ingredients which are necessary for attracting such an offence as laid down by the superior courts. Subject to the same, the Crl.R.P. is dismissed.

12. In other words, even if it is found that the offence under

Section 294(b) will not lie, that will not give rise to an exoneration by the Court. Even if Section 294(b) IPC is struck off from the charge, offence under Sections 341 and 323 IPC will lie and he will have to face trial for the same. That is why it is said that the present prayer is superfluous and there is absolutely no meaning in contending that he should be discharged of offence under Section 294(b) IPC. I have no doubt that when the trial is conducted and an opinion could be formed on the culpability of the petitioner, the trial court will consider all relevant aspects. With these observations the Crl.R.P. is dismissed.

Sd/- K.HARIPAL JUDGE okb/jms-26.11 //True Copy// P.A to Judge
Crl.R.P.550/2021 9 APPENDIX OF CRL.REV.PET 550/2021 PETITIONER
ANNEXURE Annexure 1 TRUE COPY OF THE F.I.R AND F.I.S. IN CRIME
NO.53/2019 OF IRINJALAKUDA POLICE STATION.

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