

Sibi vs State of Kerala

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Court : Kerala

Decided On : Dec-02-2020

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : CrI.MC/7883/2015

Appellant : SIBI

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
WEDNESDAY, THE 02ND DAY OF DECEMBER 2020 / 11TH AGRAHAYANA,
1942 CrI.MC.No.7883 OF 2015 AGAINST CC NO.1186/2014 OF JUDICIAL
MAGISTRATE OF FIRST CLASS,PALA CRIME NO.577/2014 OF PALA POLICE
STATION, KOTTAYAM PETITIONERS: 1 SIBI AGED 44, S/O.LATE
THANKAPPAN, MUKALIL HOUSE, POOVARANI P.O., PALA. 2 SOUMYA RAJ
AGED 34, W/O.SIBI, MUKALIL HOUSE, POOVARANI P.O., PALA. BY ADVS.
SRI.G.SREEKUMAR (CHELUR) SRI.NANDAGOPAL S.KURUP RESPONDENTS:
1 STATE OF KERALA REP BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682018. *ADDL 2 K. SURESH KUMAR, S/O KESHAVAN
NAIR, PARAMBATHETTU HOUSE, VELLIYEPALLY KARA, MEENACHIL

VILLAGE, KOTTAYAM. * (ADDL. R2 IMPEADED AS PER ORDER DATED 29.09.2016 IN CRL. M.A. NO.10031/2016 IN CRL.M.C. NO.7883/2015). R2 BY ADV. C.K.MOHANAN OTHER PRESENT: R1 BY SRI.SANTHOSH PETER, PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No.7883 OF 2015 2 (CR)

ALEXANDER THOMAS, J.

----- CrI.M.C. No.7883 of 2015
----- Dated this the 02nd day of December, 2020

ORDER

The prayer in the aforecaptioned Criminal Miscellaneous Case filed on 16.12.2015, under Section 482 of the Code of Criminal Procedure (Cr.P.C.), is as follows:- ".....quash Annexure A2 final report and all further proceedings pursuant thereto in C.C. No.1186/2014 on the file of the Judicial First Class Magistrate Court, Pala, in the interest of justice.

2. The petitioners herein have been arrayed as accused

1 & 2 among the two accused in the instant impugned Annexure-A1 First Information Report in Crime No.577/2014 of Pala police station, which has been registered for offences punishable under Sec.118(d) of the Kerala Police Act, 2011 and Sec.501 B of the Indian Penal Code (IPC) on the basis of the First Information Statement (FIS) given by the 2 nd respondent on 5-4-2014 in respect of the alleged incident which happened for the period form 01.07.2007 to 05.04.2014. It appears that

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the offence shown as per Sec.501 B of the IPC in Annexure-A1 FIR may be a typographical mistake inasmuch as there is no such offence in the

statute book and presumably what is meant to be conveyed is the offence as per Sec.501 of the IPC, which deals with printing or engraving matter known to be defamatory. The Police, after investigation, has filed the impugned Annexure-A2 Final Report/Charge Sheet in the said crime No.577/2014 of Pala Police Station, whereby the offence as per Sec.501 of the IPC has been deleted and the offence as per Sec.509 of the IPC has been duly added and the original offence as per Sec.118(d) of Kerala Police Act, 2011 has been retained, in which the petitioners herein have been arrayed as two accused persons therein. The learned Magistrate has taken cognizance and the case is now pending as C.C. No.1186/2014 on the file of the Judicial First Class Magistrate Court, Pala. Thereafter, it appears that the trial court has framed the charges at Annexure- A2 on 18.11.2014, which is under challenge in this case.

3. The brief of the prosecution case is that the petitioners herein (accused persons) have sent defamatory and vulgar letters that for the period from July, 2007 up to CrI.MC.No.7883 OF 2015 4

05.04.2014, the petitioners herein have sent defamatory and vulgar letter to the charge witnesses 1 to 3 about the wife of the 2nd respondent-de-facto complainant (CW2) and that thereby the petitioners have committed the offence as per Sec.118(d) of the Kerala Police Act, 2011 and Sec.509 of the IPC.

4. Sec.118(d) of the Kerala Police Act, 2011 reads as follows:-

118. Penalty for causing grave violation of public order or danger.- Any person who,-

(a) xxxxxx

(b) xxxxxx or

(c) xxxxxx or

(d) causes annoyance to any person in an indecent manner by statements or verbal or comments or telephone calls or calls of any type or by chasing or

sending messages or mails by any means; or

5. It is beyond any dispute that the provision

contained in Sec.118(d) of the Kerala Police Act, 2011, along with Sec.66A of the Information Technology Act, 2000, has already been struck down by the Apex Court in its celebrated decision in *Shreya Singhal v. Union of India* [(2015) 5 SCC 1]. Hence, the prosecution for the offence as per Sec.118(d) of the Kerala Police Act, 2011 will not lie. The only other

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offence is the offence as per Sec.509 of the IPC, which deals with words, gestures or act intended to insult the modesty of a woman. Sec.509 of the IPC reads as follows:- 509. Word, gesture or act intended to insult the modesty of a woman.- Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine. Sec.509 stipulates that where the accused with the intention to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard or that such gesture or objection be seen by such woman, or intrudes upon her privacy, then the accused is said to have committed the said offence as per Sec.509 of the IPC, and which will result in punishment with simple imprisonment for a term which may extend to 3 years or and also with fine, etc.

6. In the instant case, the allegation is not that the

petitioners/accused persons have uttered any word or made any sound or gesture, etc. to the wife of the 2 nd respondent, who is said to be the victim, with the intention to insult her modesty. Crl.MC.No.7883 OF 2015 6

The allegation is that the petitioners have sent derogatory and defamatory letters about the said woman to a third party (CW3). The said lady victim is mentioned as CW2 in Annexure- 2 charge sheet. The said factual allegations, if true, may have disclosed offence as per Sec.500 of the IPC or Sec.501 of the IPC which deals with defamation. The investigation agency has rightly understood that the offence as per Section 500 or 501 of the IPC cannot be the subject matter of taking cognizance by the learned Magistrate on the basis of a police report/final report/charge sheet. This is so in view of the statutory bar contained in Sec.199 of the Cr.P.C. which stipulates that the offenses contained in Chapter XXI of the IPC which is also inclusive of the offences as per Sects. 500 & 501 of the IPC can be taken cognizance only on the basis of complaint in writing of the aggrieved person. The other possible offences would have been the one as per Sec.118(d) of the Kerala Police Act, 2011, which has already been struck down by the Apex Court in its aforementioned celebrated decision in Shreya Singhal's case (supra). By no such imagination the act of the accused persons in sending derogatory or defamatory letters about the lady

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victim to a third person, even if it is assumed that the same is done with the intention to insult the modesty of the lady victim, cannot be subject matter of the offenses under Sec. 501 of the IPC. Hence, in the instant case none of the offenses alleged in the impugned criminal proceedings including the one at Annexure-A2 court charge would lie in the instant case. Hence the very initiation and continuance of the impugned criminal proceeding is nothing but abuse of the process of court and it inevitably lead to the acquittal of the accused persons and therefore it would

amount to unnecessary wastage of the precious time in processing the judicial organisation in the state, prosecution machinery and the investigation agency etc.

7. In that view of the matter it is ordered that the

impugned Annexure-A2 final report/charge sheet filed in Annexure-A1 crime No.577/2014 of Pala Police Station, which has led to the pendency of Calendar Case, C.C. No.1186/2014 on the file of the Judicial First Class Magistrate Court, Pala, to the extent it is directed as against the petitioners/accused and all consequential proceedings arising therefrom including the one at Annexure-A2 charges framed by the Judicial First Class

Crl.MC.No.7883 OF 2015 8 Magistrate Court, Pala, in the said C.C. No.1186/2014 will and all other proceedings as against the petitioners/accused will stand quashed and set aside. The petitioners shall produce a certified copies of this

order to the investigating officer concerned as well as before the

Judicial First Class Magistrate Court, Pala, for necessary information and further action. With these observations and directions, the above criminal miscellaneous case will stand finally disposed of. Sd/- ALEXANDER THOMAS, JUDGE
Skk//12122020 Crl.MC.No.7883 OF 2015 9 APPENDIX PETITIONERS' EXHIBITS: ANNEXURE A1 TRUE COPY OF THE FIRST INFORMATION REPORT DTD 5/4/2014 IN CRIME NO KOTTAYAM ANNEXURE A2 CERTIFIED COPY OF THE FINAL REPORT DTD 25/5/2014 IN CC NO 1186/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PALA RESPONDENTS' EXHIBITS: NIL

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