

Divya Ramesh vs State of Kerala

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Court : Kerala

Decided On : May-20-2019

Judge : Honourable Mr. Justice R. Narayana Pisharadi

Appeal No. : CrI.MC/2452/2015

Appellant : Divya Ramesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI MONDAY, THE 20TH DAY OF MAY 2019 / 30TH VAISAKHA, 1941 CrI.MC.No. 2452 of 2015 CRIME NO. 1634/2014 OF Kalamassery Police Station , Ernakulam PETITIONER/1st ACCUSED: DIVYA RAMESH, W/O.SAJAY, ASSET HOMES, EDAPPALLY TOLL JUNCTION, ERNAKULAM. BY ADVS. SRI.T.M.RAMAN KARTHA SMT.SYAMA MOHAN RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. 682 031. 2

SUB INSPECTOR OF POLICE KALAMASSERY POLICE STATION -
693 104. 3 ASST. COMMISSIONER OF POLICE DISTRICT CRIME
RECORDS BUREAU (D.C.R.B), KOCHI CITY (INVESTIGATING
OFFICER) - 682 031 4 VISHNU GOPAL S/O.M.RAMESH
VAISHNAVEEYAM, MALAPAMBA P.O, PAROPPADI, KOZHIKODE
DISTRICT - 673 009. PUBLIC PROSECUTOR SMT.M.N.MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
04.04.2019, THE COURT ON 20.05.2019 PASSED THE FOLLOWING:
R.NARAYANA PISHARADI, J ***** Crl.M.C.No.2452 of
2015 ----- Dated this the 20th day of May,
2019

ORDER

The petitioner is the first accused in the case registered as Crime No.1634/2014 of the Kalamassery police station under Section 118(d) of the Kerala Police Act, 2011. The petitioner seeks to quash the proceedings initiated against her on the basis of Annexure - A2 first information report, by invoking the power of this Court under Section 482 of the Code of Criminal Procedure, 1973.

2. The case against the petitioner and the other accused was registered on the basis of a written complaint (Annexure - A1) made by the fourth respondent before the Inspector General of Police (Cyber Cell), Ernakulam. The averment/allegation against the petitioner in the complaint is that she published and spread false and defamatory statements and also some photographs through the 'facebook' account registered in her

name through an online portal named www.truelies.com. It is alleged in the complaint that the other accused aided and abetted the act of the petitioner and that the accused have committed the offences punishable under Sections 66A, 67, 67A and 667B of the Information Technology Act, 2000 and Section 499 of the Indian Penal Code.

3. On the basis of the complaint, Crime No.1634/2014 of the Kalamassery police station was registered against the petitioner and the other accused only for the offence punishable

under Section 118(d) of the Kerala Police Act, 2011. The petitioner has stated that, subsequently, the Investigating Officer has added Section 66A of the Information Technology Act, 2000 also.

4. The petitioner seeks to quash the proceedings against

her in the case on the ground that the Honourable Supreme Court has held that Section 66A of the Information Technology Act, 2000 and Section 118(d) of the Kerala Police Act, 2011 are unconstitutional.

5. In spite of service of notice on the fourth respondent he has not entered appearance. Heard learned counsel for the petitioner and the learned Public Prosecutor.

6. Learned counsel for the petitioner submitted that in

the light of the decision of the Hon'ble Supreme Court in *Shreya Singhal v. Union of India* : AIR 2015 SC 1523 holding Section 66A of the Information Technology Act, 2000 and Section 118(d) of the Kerala Police Act, 2011 as unconstitutional, continuation of the proceedings against the petitioner would be an abuse of process of the court. There is considerable force in this contention.

7. In *Shreya Singhal (supra)*, the Hon'ble Supreme

Court has struck down Section 66A of the Information Technology Act, 2000 and Section 118(d) of the Kerala Police Act, 2011 being violative of Article 19(1)(a) of the Constitution of India.

8. In the light of the decision of the Hon'ble Supreme

Court in *Shreya Singhal (supra)*, continuation of the proceedings against the petitioner for the aforesaid offences, based on Annexure - A2 FIR would be an abuse of process of the court. Therefore, Annexure - A2 FIR and the proceedings

initiated against the petitioner are liable to be quashed.

9. Consequently, the petition is allowed. Annexure A2 FIR (Crime No.1634/2014 of Kalamassery police station) and all proceedings initiated against the petitioner pursuant to it are hereby quashed.

(sd/-) R.NARAYANA PISHARADI, JUDGE jsr/09/05/2019 APPENDIX
PETITIONER'S EXHIBITS: EXHIBIT P1 ANNEX.A1 - CERTIFIED COPY OF THE
COMPLAINT OF THE 4TH RESPONDENT DATED 20.9.2014 MADE BEFORE
THE I.G.OF POLICE CYBER CELL ERNAKULAM. EXHIBIT P2 ANNEX.A2 -
CERTIFIED COPY OF FIR IN CRIME NO.1634/2014 OF KALAMASSERY
POLICE STATION EXHIBIT P3 ANNEX.A3 - TRUE PHOTOCOPY OF THE FIR
AND STATEMENTS IN CRIME NO.1307/2014 OF THE KALAMASSERY POLICE
STATION. RESPONDENTS' EXHIBITS: NIL TRUE COPY PS TO JUDGE

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