

Manoj Jose vs Anil Kumar

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Court : Kerala

Decided On : Apr-08-2019

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : Crl.MC/1726/2019

Appellant : Manoj Jose

Respondent : Anil Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
MONDAY, THE 08TH DAY OF APRIL 2019 / 18TH CHAITHRA, 1941
CRIME NO. 217/2018 OF Thankamani Police Station , Idukki
PETITIONER: MANOJ JOSE AGED 40 YEARS S/O. THOMAS
JOSEPH, AZHAKATHU HOUSE, CHEMMALAMATTOM, THIDANADU,
KOTTAYAM DISTRICT HAVING PERMANENT ADDRESS AT
LANGOBARDENSTRASSE, EUROPE BY ADVS. SRI.GEORGE
SEBASTIAN SRI.ARUN LUCKOSE ABRAHAM RESPONDENTS: 1
ANIL KUMAR S/O. DAMODARAN, PUNNAKKAL HOUSE,
CHEMBAKAPPARA P.O, ERATTAYAR VILLAGE, UDUMBANCHOLA
TALUK, PIN- 685 514 2 STATE OF KERALA REPRESENTED BY

PUBLIC PROSECUTOR, HIGH COURT OF KERLA, ERNAKULAM, PIN - 682 031 BY ADV. SMT.MINI.V.A. OTHER PRESENT: SMT.MINI V.A. FOR R1, SMT.PRIYA SHANAVAS, PUBLIC PROSECUTOR FOR R2 THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08.04.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

ALEXANDER THOMAS, J.

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Crl.M.C.No. 1726 of 2019
Dated this the 8th day of April, 2019

ORDER

The prayer in the above Criminal Miscellaneous case filed under Section 482 of the code of criminal procedure 1973, prayers are as follows;

I) This Hon'ble Court may be pleased to quash Annexure A FIR and all further proceedings in pursuance of the same as against the petitioner in Crime No. 217/2018 of Thankamani Police Station, Idukki District. ii) To grant such other relief as this Hon'ble Court deems fit in the peculiar facts and circumstances of this case.

2. Heard Sri. George Sebastian learned counsel

appearing for the petitioner/accused. Heard Smt. Priya Shanavas learned prosecutor appearing for the 2nd respondent and Smt.V.A Mini learned counsel appearing for the respondent No.1(defacto complainant).

3. Earlier, the petitioner herein had approached this Court by filing Crl.M.C 6562 of 2018 before this Court seeking

-3- quashment of the impugned proceedings of Crime No. 51 of Thankamani police station which is registered of offences punishable under Section 294(b) and Section 506 IPC and Section 67 of Information

Technology Act,2000. The said case was registered on the base of a complaint filed by the 1 st respondent therein(1st respondent herein). This Court after hearing both sides and after the perusal of the FIR in the impugned Crime No. 51 of 2018 of Thankamani Police Station was registered on the basis of complaint dated 20.01.2018 given by the 1st respondent therein(R1 herein) which is produced as Annexure B in that Crl.M.C, has found that the FI statement and the other factual aspects does not disclose offences under Section 294(b) or Section 67 of the Information Technology Act. The allegation therein was on the basis of certain postings on the Facebook account of the defacto complainant allegedly made by the petitioner therein(accused therein) and on the perusal of the case diary which contained the alleged posting in the Facebook account and this Court held that in order to attract the offence under Section 294(b) and Section 67 of the Information -4- Technology Act. There should be words of statement which are obscene and that inorder to attract the obscenity the alleged statement or words should be lascivious or should appeal to the prurient interests or if its effect is such as to deprive and corrupt persons who are likely having regard all relevant circumstances, to read, to see the matter.

4. Accordingly, this Court conclusively and categorically

held that in Annexure B order dated 14.11.2018 in Crl. M.C No.

6562 of 2018 that offences under Section 294(b) of the IPC and Section 67 of the Information Technology Act are not attracted in the said case. Further, it was also noted that the other remaining Crime, viz Section 506 of IPC is a non cognizable offence. In that view of the matter, this Court as per Annexure B order dated 14.11.2018 had quashed the impugned proceedings in Crime No.51 /2018 of Thankamani Police Station and thus allowed the said Crl.M.C.

5. Now it appears that based on the complaint/FI statement given by the 1st respondent herein at Annexure A1, the police authorities have registered Annexure(A) FIR in Crime No. -5-

the petitioner herein has arrayed as the sole accused and offences alleging the petitioner therein are those under Section 66D and Section 67 D of Information Technology Act, 2000. Annexure A1(5) is the copy of complaint/ FI statement dated 20.08.2018 given by the 1st respondent herein which led to the registration of the above Crime No. 217 of 2018. The said FI statement of Annexure A(5) reads as follows;

22.07.2018 " & ' + " .+0 2 & . . . ' . 20 " 9446934627 & . ' " & + + " Q+R & R " " & & + . 0 & 2 " & . + " " 2 0 " " 2 -6- " & \ " 2 0& & . 22.07.2018 [(") 20 R + ; R ' R " . 20 ` " R " ' . ' c R+ " " . & ' + +0& R " " " 2 0& . & ' ' 0+ ' f " " . " " 2 0 & " . 18 12 . R R 0 . " 2+ ' R " f 2 0 " & . +& & . 2" + . ' " + " 0 8 " . R " .

6. A perusal of the said complaint /FI statement

indirectly would show that what the 1st respondent herein has suspecting that the petitioner herein has circulated false news against him in social media. Further it is stated that the petitioner herein has made postings in the Facebook that the above said

-7- allegations raised by the 1st respondent that the petitioner has circulated false news about R1 in the social media is wrong and false. It seen that R1 is the Secretary of the branch committee of a political party , viz CPIM in Idukki district. The further allegation made by him is that it is falsely circulated in the social media as if the branch committee of the CPIM has filed a complaint to the police authorities to take action of such defamatory statement as against R1 and his wife. Further that neither R1 nor the said branch committee has given any such complaint and that the news so circulated in the social media is false. Further that false sexual allegations are made against the wife of the 1 st respondent which created extreme distress to them. Further that efforts are consistently be taken to defame him by raising baseless and false allegations through social media and after that the photographs of R1 has been used and

similar to the Facebook account of the 1 st respondent has been falsely created and that postings are circulated using such bogus Facebook account. All these aspects are to insult and dishonor R1 and his family members. Further that the petitioner is suspecting that the person behind the -8- circulation of the false news against R1's wife is the petitioner , who is abroad. Further that R1 has not seen or been acquainted with the petitioner. The allegations based on the said FI statement, the offences alleging against the petitioner is Annexure

(A) FIR in the above said Crime No.217 of 2018 are those under Section 66D and 67 of the Information Technology Act.

6. Initially the Offence under Section 66D of the Information Technology Act, 2000 could be dealt with, Section 66D of the Information Technology Act, 2000 reads as follows;

Punishment for cheating by personation by using computer resource. -
Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees

7. The substantive Offence of cheating is dealt with in

Section 415 of the IPC which reads as follows; Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

8. The Offence of cheating by personation is dealt with Section 416 of the IPC which reads as follows;

-9- Cheating by personation.-A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. Explanation.-The offence is committed whether the individual personated is a real or imaginary person. Illustration a)A cheats by pretending to be a certain rich banker of the same name. A cheats by personation. b)A cheats by pretending to be B, a person who is deceased. A cheats by personation.

8. From a reading of the above said complaint/FI statement it is stated that it can be seen that none of the ingredients

of cheating or cheating by personation or cheating by personation using computer sources are disclosed in the fact and circumstances of the case. Essentially the allegation based on the above said complaint/ FI statement is that the 1st respondent suspects that it is the petitioner who is spreading false news against him and his wife through social media and also by creating bogus Facebook account as if it is the Facebook account of the R1.

9. Now the offence under Section 67 of the Information

Technology Act could be dealt with and the same reads as follows; Punishment for publishing or transmitting obscene material in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant

-10- circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term

which may extend to five years and also with fine which may extend to ten lakh rupees.

10. Section 294 of the IPC which deals with obscene acts

and songs reads as follows: Section 294 of the Indian Penal Code lays down the punishment for obscene acts or words in public. The other sections of Indian Penal code which deal with obscenity are 292 and 293. The law does not clearly define what would constitute an obscene act, but it would enter the domain of the state only when it takes place in a public place to the annoyance of others. Temple art or nakedness of sadhus are traditionally outside the purview of this section.

11. The definition obscenity is substantially contained in

Section 292(1) of the IPC which reads as follows; For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

12. By a comparison of provision in Section 67 of the

Information Technology Act viz the provisions contained in Sections 294, 292(1) of the IPC can be seen that the essential ingredients required for disclosing an Offence as per Section 67 of

-11- the Information Technology Act is that it should necessarily be by publication or transmission or causing of publication or transmission of electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. A careful analysis of the above said crucial ingredients in Section 67 and that in Section 292 (1) of

the IPC would make it clear that the ingredients of obscenity as contained those provisions is that it should be lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. Therefore the ingredients in 292(1) IPC and that in Section 67 of the Information Technology Act are almost identical. It has been held in various decisions as in P T Chacko Vs. Nainan Chacko [1967 KLT 799], Sangeetha lakshmanan vs. State of Kerala [2008 (2) KLT 745], Latheef v.State of Kerala [2014(2) KLT 987] that mere abusive words -12- or humiliating words or defamatory words will not as such amount to obscenity as defined under the law and that to make it obscene, punishable offence, it must necessarily satisfy the definition of obscenity as dealt with Section 292(1) of the IPC. In

order to attract obscenity the words must be in a sense of

lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. It has been held that in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers and it must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires. Merely because the words are humiliating, abusive and defamatory will not make it obscene unless the above said crucial elements are fully satisfied. Thus it can be seen from a reading of the FI statement/complaint in the instant case produced as Annexure A(5) in its entirety that it cannot be said that the alleged words said to have been spread in the social media by the person, is the one which is lascivious or it

-13- must appeal to the prurient interest, or will deprave and corrupt persons. The case of the petitioner is that the accused has spread false defamatory news in the social media against the 1 st respondent and such false sexual allegations against 1st respondent has been spread.

However it is stated clearly that the 1st respondent is suspecting the role of the petitioner herein in that whatever be the controversial of those allegations, one thing is certain and it is that the news said to have been allegedly falsely circulated by the petitioner cannot be said to be the one which is capable of arousing impure sexual thoughts or lascivious. At best it can be said that those words are defamatory and humiliating and false, assuming that the version of 1st respondent is correct. Therefore the offences under Section 67 of the Information Technology Act, 2000 is not disclosed in the present criminal proceedings.

13. The allegation raised in Annexure B in the previous

round of litigating process between the parties was also on similar grounds and this Court has conclusively held in Annexure B Order dated 14.11.2018 in CrI.M.C No.6562 of 2018 that it does not

-14- discloses the offences under Section 294(b) or Section 67 of the Information Technology Act and as to quash the impugned criminal proceedings. It will be profitable to refer to Para 5 of the decision of this Court in Latheef Case (supra) which reads as follows; Abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under S.294(b) IPC it must satisfy the definition of obscenity. S.294 IPC does not define obscenity. Being a continuation of the subject dealt with under S.292 IPC the definition of obscenity under 292(1) IPC can be applied in a prosecution under S.294 IPC also. To make punishable, the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. In P. T. Chacko v. Nainan Chacko reported in 1967 KHC 231 : 1967 KLT 799 this Court held that, the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. In Sangeetha Lakshmana v. State of Kerala reported

in 2008 (1) KHC 812 : 2008 (2) KLT 745 : 2008 (1) KLD 339 this Court held thus, in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers. Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code. I find that the conviction against the revision petitioner under S.294(b) IPC in this case, on the basis of the above words alleged to have been used by him, is liable to be set aside, and the revision petitioner is entitled to be acquitted. -15-

14. The petitioner's mother has filed a civil suit as O.S

No.159/2017 before the Munsiff Court, Kattapana, wherein she has obtained an order of injunction against the 1 st respondent herein and the suit is in pending. It is also stated that the petitioner's mother had also filed W.P.(C) No. 18457 of 2018 before this Court, seeking police protection against the alleged conduct of the 1st respondent herein and some others. The Division Bench of this Court in Annexure F judgment dated 02.08.2018, in W.P.(C) No. 18457 of 2018 had refused to grant the order of police protection as it was found that there was dispute between the parties on the alleged pathway. However, it was ordered therein that in case there is a violation of law and order, then the police may interfere to ensure that no cognizable offence is committed.

15. Learned counsel appearing for the 1st respondent has

made available a series of materials which she claims was given to the police and submitted materials to contend that it would clearly show that obscenity is involved in this case . Learned prosecutor has submitted that they have registered mainly on the

-16- basis of the above said complaint in the FI statement. Since the counsel for the 1st respondent persisted that the additional materials would show obscenity, this Court had gone through all those materials. Firstly the 1st respondent has no case that the said publication has been done at the 1st petitioner and as already refer to in the above said FI statement his allegation is only that he suspects the role of the petitioner in those matters. One of the materials would at best show that it is imputing the allegation that the 1st respondent has committed bestiality on an animal. Some other materials are to the effect that the 1st respondent is allegedly having an extra martial relationship with a lady.

16. A perusal of these materials would show that at best

that the allegations raised there in are amounting to defamatory and false allegations made against the person concerned. Those aspects cannot even remotely be said to be the one which is capable of arousing impure sexual thoughts or lascivious thoughts as contemplated in the concept of obscenity.

17. In short the allegations raised in the impugned criminal proceedings is broadly similar to that which has already

-17- been dealt by this Court in Annexure B order in CrI.M.C No. 6562 of 2018 wherein another crime on similar nature (Crime No. 51 of 2018) has already been quashed by this Court.

18. After hearing both sides, it appears that the the 1st

respondent has not kept in mind the fine and substantial distinction between obscenity and false defamatory statements. In the light of these aspects this Court is of the opinion that the offences as per Sections 66D and 67 of the Information Technology Act, 2000 is not disclosed and accordingly the impugned Annexure A FIR in Crime No. 217/2018 of Thankamani

Police Station and all further proceedings taken thereof as against the accused will stand quashed.

19. It is made clear that this Court has considered the

issues only from the limited compass as to whether or not the

above said offences under Section 66D and 67 of the Information Technology Act are disclosed in the instant case. If the petitioner has a case that the allegations made in the social media against him and his wife are defamatory and false, for him to proceed in the manner known to law. The petitioner is only suspecting the

-18- role of the petition in this, primarily if so the petitioner also take steps in the manner known to law, to ascertain as to who exactly is the author of the above said postings and news circulated in the social media.

20. In that regard, it appears from the materials shown by

the counsel for the petitioner that some person is deliberately and mischievously making false and defamatory accusations against the petitioner and also showing him in extremely poor light by even imputing the allegation as if the petitioner has committed bestiality with an animal. The petitioner has approached in this Court on more than one occasion out of anxiety suffered by him in that regard. Accordingly it is ordered that it is for the petitioner to immediately file a comprehensive petition detailing out all his grievances along with supporting materials before the State Police Chief praying that necessary enquiry may be conducted by the Cyber Cell Police or High Tech Cell of the Crime Branch or such other expert Police agency, who are having competence in Cyber related crimes to enquire into and find out as to who exactly is behind the circulation of such allegations in the social media against the petitioner. The petitioner may file such a petition before the State

-19- Police Chief within 2 weeks from the date notified for receiving a certified copy of this order. The State Police Chief may examine those aspects and refer the matter to the Cyber Cell Police or to the expert agency like the High Tech Cell of the Crime Branch or such other competent agency of the Police, who are having expertise to conduct investigation so as to ascertain as to who exactly is consistently making

the above said allegations against the petitioner. Such agency will make a comprehensive enquiry into those aspects and will thereafter examine whether cognizable offences are disclosed either in terms of the provisions contained in the Information Technology Act, 2000 or any other provisions in any Acts like Indian Penal Code, etc. if any cognizable offences so disclosed then, steps may be taken in an appropriate manner for registration of FIR/Crime in that regard and to cause investigation into such cognizable offences in the manner known to law. Even if it is found that no cognizable offences are committed, detailed enquiry should be conducted so as to find out as to who exactly is behind such mischievous action in incineration in various social media should be furnished to the petitioner so that he should proceed further with the matter in accordance with law. The State Police -20- Chief and the expert agency concerned will immediately take expeditious action immediately on receipt of the certified copy of this order as aforestated from the petitioner and action on the above line should be finalised without much delay, preferably within a period of 2 months therefrom so that petitioner is apprised of the outcome of the above said process.

21. The learned Prosecutor will forward a copy of this order

to the State Police Chief for necessary information and appropriate action. With these observations and directions, the above Criminal Miscellaneous Case will stand finally disposed of. SD/- ALEXANDER THOMAS JUDGE SJ -21- APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE A A TRUE COPY OF THE FIR ALONG WITH FI

STATEMENT IN CRIME NO.217/2018 OF THE THANKAMANI POLICE STATION. A TRUE COPY OF THE ORDER DATED 14.11.2018 IN ANNEXURE B CRL.MC NO.6562 OF 2018 ANNEXURE C A TRUE COPY OF THE IDENTITY CARD OF THE PETITIONER ISSUED BY THE REPUBLIC OF AUSTRIA ANNEXURE D A TRUE COPY OF THE CERTIFICATE ISSUED BY THE EMBASSY OF INDIA AT VEINNA DATED 07.09.2011 ANNEXURE E A TRUE COPY OF THE RELEVANT

EXTRACT OF THE PASSPORT OF THE PETITIONER

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