

Raghu Vs. State of Kerala

Raghu Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/2708

Court : Kerala

Decided On : Nov-22-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Raghu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID SATURDAY, THE 22D DAY OF NOVEMBER 2014 1ST AGRAHAYANA, 1936 CrI.MC.No. 1585 of 2014 ----- IN CP 572013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY CRIME NO. 81/2013 OF MULANTHURUTHY POLICE STATION, ERNAKULAM PETITIONERS: ----- 1. RAGHU, AGED 61 YEARS, S/O.V.K.KITTUPILLA, VETTATHU HOUSE, VETTIKKAL P.O. MULANTHURUTHY-682314, ERNAKULAM DISTRICT.

2. CHANDRAN, AGED 49 YEARS, S/O.V.K.KITTUPILLA, VETTATHU HOUSE, VETTIKKAL P.O, MULANTHURUTHY-682314, ERNAKULAM DISTRICT.

3. SWARAJ, AGED 42 YEARS, S/O.NARAYANAN, VETTATHU HOUSE, VETTIKKAL P.O., MULANTHURUTHY-682314, ERNAKULAM DISTRICT.

4. PRAKASH, AGED 40 YEARS, S/O.NARAYANAN, VETTATHU HOUSE, VETTIKKAL P.O. MULANTHURUTHY-682314, ERNAKULAM DISTRICT. BY

ADVS.SMT.AYSHA YOUSEFF SMT.MOLLY JACOB SMT.RABIA BEEGAM T.K.
SRI.JOBI.A.THAMPI SMT.M.KABANI DINESH SMT.SITHARA SHAMSUDEEN
SMT.ASHIFA YOUSEFF SMT.FASHIYA YOUSEFF
RESPONDENTS/RESPONDENTS: ----- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM.

2. THE DEPUTY SUPERINTENDENT OF POLICE, MUVATTUPUZHA.
Crl.MC.No. 1585 of 2014 :

2. :

3. THE SUB INSPECTOR OF POLICE, MULANTHURUTHY-682315.

4. M.M.SASI, S/O.MADHAVAN, MADASSERI HOUSE, THALPANA PULLIKUMEL
P.O., MULANTHURUTHY-682314 ERNAKULAM (DISTRICT). R4 BY ADV.
SRI.P.G.MANU (MAMMALASSERY) R4 BY ADV. SRI.C.C.PRAKASH R4 BY
ADV. SMT.SANDHYA R.NAIR R1 TO R3 BY SR. PUBLIC PROSECUTOR
SMT.SAREENA GEORGE.P THIS CRIMINAL MISC. CASE HAVING BEEN
FINALLY HEARD ON 22.11.2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING: Crl.MC.No. 1585 of 2014 ----- APPENDIX
PETITIONERS' ANNEXURES: ----- ANNEXURE-I: PHOTO COPY
OF THE PETITION DTD.5.3.2013 MADE BY THE 4TH RESPONDENT.
ANNEXURE-II: PHOTO COPY OF THE FIR DTD.8.3.2013 REGISTERED
AGAINST ACCUSED NO.1 & 2 AND 5 OTHER IDENTIFIABLE PERSONS.
ANNEXURE-III: PHOTO COPY OF THE FINAL REPORT FILED BY THE 2ND
RESPONDENT ALLEGING OFFENCES U/S.294(B AND SECTION 3(1)(X) OF
THE SCHEDULED CASTE SCHEDULED TRIBE ATROCITIES ACT.
ANNEXURE-IV: PHOTO COPY OF STATEMENT OF M.M.SASI. ANNEXURE-
IV(A): PHOTO COPY OF STATEMENT OF SMT.PRASEENA. ANNEXURE-IV(B):
PHOTO COPY OF STATEMENT OF SMT.LATHA BABU. ANNEXURE-IV(C):
PHOTO COPY OF STATEMENT OF EBY. ANNEXURE-IV(D): PHOTO COPY OF
STATEMENT OF MOHANAN. ANNEXURE-IV(E): PHOTO COPY OF
STATEMENT OF MARIAKUTTY. ANNEXURE-V: PHOTO COPY OF THE
SUMMONS ISSUED BY THE MAGISTRATE TO THE 3RD PETITIONER.

ANNEXURE-VI: PHOTO COPY OF THE SUMMONS ISSUED BY THE
MAGISTRATE TO THE 4TH PETITIONER. RESPONDENTS' ANNEXURES:
----- NIL //TRUE COPY// P.A TO JUDGE ab P.UBAID, J.

----- Crl.M.C No.1585 of 2014
----- Dated this the 22nd day of November, 2014

ORDER

The petitioners herein are the accused Nos.3 to 6 in C.P No.57/2013 before the Judicial First Class Magistrate Court II, Kolencherry. They now seek orders under Section 482 of the Code of Criminal Procedure, quashing the final report and further proceedings in the said case, under Section 294(b) of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act'). Crime in the said case was registered on the complaint of the 4th respondent herein. Annexure I in this proceeding is copy of the complaint and Annexure 3 is copy of the final report submitted by the police.

2. The case of the petitioners herein is that the offence under Section 3(1)(x) of the SC/ST Act is alleged by the police specifically against the second accused, and that the allegation against them is only under Section 294(b) of the Indian Penal Code. As regards Section 294(b) of the Indian Penal Code their further contention is that the allegations in the Crl.M.C No.1585 of 2014 2 FIR or in the final report will not constitute the essential elements and ingredients of the said offence. As regards the other offence under the SC/ST Act their first contention is that it is not against them, and if at all it could be assumed that there is such a charge against them also, the final report or the FIR does not contain the very essential ingredients of that offence. Of course, on a perusal of the Annexure III final report, I find that the police has alleged two specific offences against two sets of accused. The offence under Section 294(b) IPC is seen alleged against accused No.1 and 3 to 6, whereas the offence under Section 3(1)(x) of the SC/ST Act is seen specifically alleged against the 2nd accused. It stands well settled that a mere statement that the accused used obscene words in public place, will not attract Section 294(b) of the Indian Penal Code. The words used by the accused must be

retold in the complaint and in the final report, and those words must have the effect of arousing sexual feelings, as defined under the law. This position is well settled. In the FIR or in the final report, I do not find anything specific, or any specific word or sentence satisfying the definition of obscenity under the law to attract a prosecution under Section 294(b) of the IPC. I find that the prosecution as CrI.M.C No.1585 of 2014 3 against the petitioners herein under Section 294(b) IPC is liable to be quashed.

3. Now let us come to the other offence under the SC/ST Act. Here also it is well settled that for a prosecution under Section 3(1)(x) of the SC/ST Act, the alleged offence must have been committed in public view. Of course such an offence can be committed even in a private property. Here the final report shows well that the second accused used such abusive words in his house compound. In this case, I do not find anything in the FIR or in the final report to show that anybody other than the complainant and the accused persons had heard the alleged words.

4. It is well settled that to attract a prosecution under Section 3(1)(x) of the SC/ST Act the accused must have used the abusive or insulting words or humiliating words against a member of Scheduled Caste or Scheduled Tribe, with the object of humiliating him or abusing him as a member of Scheduled Caste or Scheduled Tribe. Use of mere abusive words with the object of abusing one personally, will not attract such an offence. CrI.M.C No.1585 of 2014 4 5. As discussed above, I find that the prosecution in this case does not have a definite case against the petitioners herein. Whether it is under Section 294(b) of the Indian Penal Code or under Section 3(1)(x) of the SC/ST Act, what is alleged by the police against these petitioners is quite unsustainable under the law. Thus the whole prosecution as against them is liable to be quashed. In the result, this Criminal Miscellaneous Case is allowed. The prosecution as against the petitioners herein in C.P.No.57/2013 before the Judicial First Class Magistrate Court, Kolencherry will stand quashed under Section 482 of the Code of Criminal Procedure, and the petitioners will stand released from prosecution. The bail bond, if any, executed by the petitioners will stand discharged. The committal proceeding can continue as against other accused. P.UBAID JUDGE ab