

M.V.Alias Vs. Annamma

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Court : Kerala

Decided On : Aug-19-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : M.V.Alias

Respondent : Annamma

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS WEDNESDAY, THE 19TH DAY OF AUGUST 2015 28TH SRAVANA, 1937 CrI.MC.No. 88 of 2015 ()
----- CRIME NO. 81/2011 OF KURUPPAMPADY POLICE STATION, ERNAKULAM DISTRICT ----- PETITIONER/ACCUSED :
----- M.V.ALIAS S/O. VARKEY, AGED 37 YEARS MANIYELI HOUSE, THURUTHI P.O. KURUPPAMPADY, ERNAKULAM DISTRICT. BY ADVS.SRI.GEORGE SEBASTIAN SRI.BYJU KURIAKOSE RESPONDENTS/LEGAL HEIR OF THE DEFACTO COMPLAINANT & STATE :

1. ANNAMMA W/O. LATE M.V. PAULOSE, MULEKKUDY HOUSE KRARIYELI KARA, KOMBANADU VILLAGE ERNAKULAM - 683 555.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM - 682 031. R2 BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY

HEARD ON 1908-2015, ALONG WITH CRL.MC. 3530/2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn ...2/- CrI.MC.No. 88 of 2015 () APPENDIX PETITIONERS' ANNEXURES : ANNEXURE A : A TRUE COPY OF THE COMPLAINT DATED 1912.2010 FILED BY THE HUSBAND OF THE 1ST RESPONDENT BEFORE THE C.I. OF POLICE, KURUPPAMPADY. ANNEXURE B A TRUE COPY OF THE FIR AND FI STATEMENT ALONG WITH THE STATEMENTS OF WITNESSES IN CRIME 812011 OF KURUPPAMPADY POLICE STATION. ANNEXURE C A TRUE COPY OF THE NOTICE DATED 203.2014 ISSUED BY THE S.I. OF POLICE, KURUPPAMPADY TO THE PETITIONER. RESPONDENT'S ANNEXURES : NIL //TRUE COPY// P.A. TO JUDGE Mn ALEXANDER THOMAS, J.

----- CrI.M.C.Nos.88 & 3530 Of 2015 -----
Dated this the 19th day of August, 2015.

ORDER

These CrI.M.Cs basically emanate from the impugned proceedings in Crime No.81/2011 of Kuruppampady Police Station registered for offences under Secs.294(b) & 506(i) of the IPC. There appears to be some complex development in the investigation of this crime inasmuch as there appear to be two final reports have been seen filed by the police. Anx-E in CrI.M.C.No.3530/2015 is the final report submitted on 21.2.2015 on which cognizance has been taken which has led to the institution of C.C.No.No.297/2015 on the file of the Judicial First Class Magistrate Court, Perumbavoor, which has now been transferred to the Judicial First Class Magistrate Court, Kuruppampady, where it is pending as C.C.No.262/2015. It appears that due to reason which are not very discernible, another final report was also submitted by the police in Judicial First Class Magistrate Court, Kuruppampady, on 9.4.2015 and based on the interim stay passed by this Court on 26.3.2015 in CrI.M.C.No.88/2015, the said subsequent final report has been returned by the court below concerned to the police. The illegality ::2:: CrI.M.C.Nos.88 & 3530 Of 2015 or otherwise of the aspects in this regard need not detain the attention of this Court in the light of the view this Court proposes to taken in the disposal of these cases.

2. The allegations in the impugned criminal proceedings is that the petitioner has used and figured abusive words and accordingly committed the offence under Secs.294(b) of the IPC. The matter in issue is no longer res integra and is covered by the decision of the Apex Court in cases more than one and one such latest decision is the one rendered in Latheef v. State of Kerala reported in 2014 (2) KLT987 wherein this Court has held that abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law, but to make it obscene, punishable under S.294(b) I.P.C., it must satisfy the definition of obscenity. Paragraph 5 of the ruling of this Court in Latheef's case (supra) made an exposition of law which reads as follows: "5. 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) I.P.C., it must satisfy the definition of obscenity. S.294 I.P.C. does not define obscenity. Being a continuation of the subject dealt with under S.292 I.P.C. the definition of obscenity under 292(1) I.P.C. can be applied in a prosecution under S.294 I.P.C. 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 KLT799 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 (2) KLT745 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) I.P.C. 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. Therefore, in the light of the settled legal position in the matter, the offence under Secs.294(b) dealing with obscenity will not lie in the facts of this case. The only other subsisting offence is the one under Sec.506 (i) of the IPC which indisputably is a non-cognizable offence. No one has a case that the prior permission of the jurisdictional Magistrate has been obtained before the registration of the crime and the investigation thereof in respect of the non-cognizable offence under Sec.506(i) of the IPC. Therefore, the impugned criminal proceedings which involve these offences is illegal and untenable. ::4:: Crl.M.C.Nos.88 & 3530 Of 2015 3. It is pointed out that the defacto complainant in this case is no more and his wife has been impleaded as contesting 1st respondent in both these case. Though notice has been duly served on the 1st respondent in these case, she has not chosen to enter appearance.

4. In this view of the matter the impugned final report/charge sheet filed in Crime No.81/2011 of kuruppampady Police Station which has led to the institution of C.C.No.262/2015 on the file of the Judicial First Class Magistrate Court, Kuruppampady and all further proceedings arising therefrom pending against the petitioner are quashed. In this view of the mater it is not necessary to advert to all other aspects of the matter. With these observations and directions, both Crl.M.Cs stand finally disposed of. ALEXANDER THOMAS, Judge. bkn/-

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