

Haries Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/725728

Court : Kerala

Decided On : Feb-16-2005

Reported in : 2005CriLJ3314; 2005(3)KLT400

Judge : K. Hema, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 292, 294, 323, 354, 506, 506(1) and 509; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Crl. M.C. No. 9717 of 2002

Appellant : Haries

Respondent : State of Kerala

Advocate for Def. : Tresa Rani George, Public Prosecutor

Advocate for Pet/Ap. : C. Rajendran, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Hema, J.

1. A bunch of anonymous letters was received by a woman. A mere glance through those letters is enough. Any reader can perceive the foul smell of the

author's filthy intentions. The victim's modesty gets hurt, injured, outraged, and terribly insulted. This is only normal. Her distress would have withered away, unheard and unattended. This is also not quite unusual. But, the victim in this case happened to be a senior police official from IPS cadre. She did not choose to languish her grievances in secrecy. She got the author traced out, unmasked him and brought him before law. A charge sheet was filed against him alleging commission of certain offences under the Indian Penal Code (IPC, for short).

2. Petitioner seeks to quash the charge laid against him under Section 292, 294(b) and 506(1) of IPC. The records in this case reveal mainly the following allegations: A lady police officer while working as District Superintendent of Police received some anonymous letters sent to her in her name-address through courier service. Those were all sent in her personal name so that the sender intended that those be read by the recipient. Vulgar and obscene language was used in the letters and those were written, intending to insult her modesty. The Superintendent of Police directed the Circle Inspector of Police to conduct an inquiry into the same. On inquiry, it was revealed that the petitioner was the author of those letters and a crime was registered against the petitioner. After investigation, charge sheet was laid against him under Section 292, 294(b) and 506(1) of IPC.

3. Learned counsel appearing for the petitioner contended that none of the acts allegedly committed by the petitioner would constitute any of the offences for which he is charge sheeted. The offences which are mentioned in the charge sheet are under Section 292, 294(b) and 506(i) of IPC. On going through the above provisions, I find that to attract offence under Section 292 IPC, there must be public circulation, sale or distribution of the alleged obscene writing. To make out an offence under Section 294(b) of IPC, the alleged obscene act must have been committed by the accused in or near a public place. But, the relevant letters were all sent to the victim in her personal address and those were expected to be read by her privately. Therefore it appears that the accused has not intended to do anything in public and hence neither an offence under Section 292 nor under 294 IPC is made out.

4. Learned counsel for petitioner hence submitted that the charge sheet in this case is to be quashed since allegations in the records do not constitute any of the offences which are stated in the charge. I cannot accept this argument. The question to be considered in a petition like this is not whether the ingredients of the offences stated in the charge alone are made out or not. What is to be looked into is whether the allegations disclosed from the records will constitute any offence or not. If the Court finds that the allegations make out an offence, charge cannot be quashed. So, I shall now proceed to consider whether the annoying acts allegedly committed by the accused will constitute any of the offences laid down in the Indian Penal Code. Learned counsel for petitioner submitted that no offence under IPC is made out in this case.

5. On going through the allegations made against the petitioner and also on reading the contents of the letters, I am hesitant to believe that the extensive penal legislation in our country is bereft of any suitable provisions to take care the per se annoying problems of a woman. It equally shakes all my senses of justice to convince myself that penal laws in this country are so inadequate to meet a situation like the one at hand. I am therefore strongly persuaded to go deeper into the question -- is there really no provision in the Indian Penal Code to deter a person who writes a letter to a woman intending to insult her modesty? Is Indian legislature so blind to such a severe problem of a woman? Should a woman in this country feel so helpless and unprotected in an annoying situation like this

6. I am reluctant to give a negative reply, without carefully scanning through the provisions in the Indian Penal Code. I have turned the annals of the Indian Penal Code one by one, in search of the provision which may take in the present situation. Section 509 IPC captures my attention. I shall extract the said section as hereunder:

'Section 509. Word, gesture or act intended to insult the modesty of a woman.- Whoever, intending 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 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 one year, or with fine, or with both'.

7. A reading of the title of Section 509 IPC itself shows that the section deals with an offence involving word, gesture or act which are intended to insult modesty of a woman. The offence under the said section will be attracted if a person intending to insult the modesty of a 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 object shall be seen by such woman, or intrudes upon the privacy of such woman. But, a question arises whether 'writing of letters' will constitute any of the acts stated in Section 509 IPC. The act committed in this case is not uttering of words or making of any sound. It is doubtful whether it amounts to exhibiting any object or intruding into a woman's privacy also which are referred to in Section 509 IPC.

8. Then the question is whether it will come within the expression 'making gesture' used in Section 509 IPC. But, the word 'gesture' is ordinarily used to refer to making of body signs implying movement of the limbs etc. It is used to refer to body-language. But, writing of letters does not involve any body language and hence it may apparently appear that such act will not amount to 'making gesture' as referred to in Section 509 IPC. But, what does the expression 'gesture' actually mean? Lord Denning, an English Judge cautioned in *Seaford Court Estates's* case (vide 1949 2 All ER 155) that 'the English language is not an instrument of mathematical precision'. To an Indian Judge, English is even more intrinsic being a foreign language. So, to understand the real meaning of an English word, I shall safely depend upon the dictionary first.

9. A reference to the dictionary is inevitable in this case because the word 'gesture' is not defined under the Indian Penal Code. The meaning of the word 'gesture' as per Concise Oxford Dictionary, eighth edition is, 'a significant movement of a limb or the body; the use of such movements esp. to convey feeling or as a rhetorical device; an act to evoke a response or convey intention'. As per Collins Cobuild 'English Dictionary for advanced learners' third edition, 'gesture' is 'something that you say or do in order to express your attitude or intentions, often something that you know will not have much effect'. As per Law Lexicon the word 'gesture' means

'a posture or movement of the body; an action expressive of the sentiment or passion of intended to show inclination or disposition'.

10. It is thus clear from the above discussion that the word 'gesture' refers not merely to body signs. Though the word 'gesture' is ordinarily used to mean movement of the limbs or body to convey a person's feelings, it can also connote an act done by a person to convey his intentions. According to dictionary meaning, an act done by a person to express his attitude or intentions also is a 'gesture'. A person can express his attitude or convey his intentions in a number of ways. For example, by speaking, giving, looking writing etc., etc. In that sense of the word, a person can make a gesture by doing an act without involving any body signs.

11. An example will make the position clearer: Suppose, a person is in dire need of immediate medical aid and another person sends his son who is a doctor to the former. The former thanks the latter by sending a letter or making a phone call, for the 'kind gesture' made by the latter. Here, gesture shown by both former and the latter is not by using any body-signs. The latter expressed his intention to help the former by the act of sending a doctor. In the very same way, the former conveyed his intention to express his gratitude to the latter by the act of sending a letter or making a phone call. Thus, while in one case, gesture is made by the act of sending a doctor, in the other case, it is done by the act of writing a letter or making a phone call. Thus, any act done by a person to express his attitude or convey his intentions is a gesture, as seen from the dictionary.

12. It therefore follows that a gesture need not necessarily involve any body language. It is not necessary that a person uses any body signs to make a gesture. He can convey or express his intentions by sending a doctor, writing a letter or by making a phone call etc. In fact, intentions of a person can be best expressed by way of writing a letter and there will be proof also for such act. Therefore, going by the dictionary meaning, it has to be concluded that writing of a letter can be treated as 'making a gesture' since by such act, the writer express his attitude or conveys his intentions.

13. But the question is whether the interpretation of the expression 'making gesture' referred to in Section 509 IPC, going by the mere dictionary meaning will

in any way be in conflict with the intention of the legislature or whether it will be in consonance with the same. While answering this question, I shall bear in mind, the cardinal principles which are to be followed in interpreting a word or expression in a statute. As observed in Chief Justice of A.P. v. L.V.A. Dixitulu, : [1979]1SCR26 , 'the primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they that made it' (Coke). Normally, such intent is gathered from the language of the provision'.

14. But, in Kehar Singh v. State, (Delhi Admn.), : 1989 CriLJ1 , Hon'ble Supreme Court held thus:

'But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provision as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency with the law as a whole and to avoid undesirable consequences'.

15. Hon'ble Supreme Court also held in District Mining Officer v. Tata Iron & Steel Co., : (2001)7SCC358 , as follows:

'The process of construction combines both liberal and purposive approaches. In other words, the legislative intention ie., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed'.

16. Thus, keeping in mind the above rules of interpretation, I have to proceed with the next task of interpreting the expression 'making gesture' used in Section 509 IPC, consistent with the intention of the legislature, understanding the purpose for

which the section is introduced, realising the mischief which is sought to be curbed by the provision etc. In India from time immemorial, a woman and her modesty are given very great values. Several legislations have come from time to time which are all meant to protect a woman who belongs to a weaker section of the society.

17. Though Section 323 IPC was available to protect a woman also from the use of a criminal force or assault against her, Section 354 was introduced into IPC, with a specific object. It was not because there was no other provision in IPC to punish a person using a criminal force or making an assault against a woman that another provision by way of Section 354 IPC was brought in. Legislature intended that a special provision must be made available to protect a woman, if any assault or force is used against her, intending to outrage her modesty. Emphasis was on the aggressions made on the modesty of a woman. Legislature specifically intended that any assault on a woman's modesty has to be curbed and controlled effectively.

18. Later, Legislature found that a woman must be protected not only from physical aggressions made in the course of outraging her modesty, but she should also be shielded from various other acts which do not involve even a touch. Legislature was quite aware that a woman's modesty can be insulted or outraged in various ways. A mere word, a wink, a touch or even a look would suffice to insult the modesty of a woman. Physical advances may not be necessary in all cases. Everything depends on the intention of the mischief-maker and the manner in which he conveys his intentions. It is evident that legislature intended that any aggression into a woman's modesty whether by any word, deed, touch or look need be curbed and deterred.

19. That is why even a verbal attack on a woman, a gesture and other acts stated in Section 509 IPC were brought under the said section. It is clear from a reading of Section 509 IPC that by introducing the said provision, legislature intended that any sort of aggression into a woman's modesty whether by any word, deed or act should be deterred, as evident from the title to the section itself. Thus, the acts which are done intending to insult the modesty of a woman which may not necessarily involve even any physical advances are also brought within the sweep

of a separate provision viz., Section 509 IPC.

20. In such circumstances, can it be for a moment presumed that the Legislature intended that a person who writes a letter to a woman with the intention to insult her modesty should go unpunished? If such a person, instead of uttering the insulting words, puts in writing all what he determines to utter against a woman and sends it to her, intending to insult her modesty, will any court be justified in holding that the Legislature expected such person to escape safely? Was it the intention of the Legislature that such a culprit must go unhurt only because he used his pen and not his tongue, to insult the victim? After suffering all the trauma, when a woman comes before Court with the best proof for the assault or violence made on her modesty by producing the letter, can the Court refuse to look into the same on the ground that the legislature never intended to bring cases involving writings within the purview of Section 509 IPC

21. I find it extremely difficult to reach a conclusion which will defeat the very object of Section 509 IPC. There can be little doubt that the Legislature would not have intended that a person who insults the modesty of a woman by his writings must be kept out of the province of Section 509 IPC. In a country like India, Legislature would not have ever intended that a person who expresses his attitude or intention to insult modesty of a woman by sending a letter should be absolved from criminal liability. I am of view that the very object of the provision will be defeated if a contrary view is taken. Thus, while interpreting the meaning of the relevant expression in Section 509 IPC in the light of the relevant rules of interpretation, I find that 'writing of letter' to a woman, intending to insult her modesty can be construed as 'making a gesture' under Section 509 IPC. I feel quite confident to hold that Indian Legislature's intention will not be contrary to what I have already concluded.

22. So, if the Court finds that a person writes a letter to woman and that the offender intends that such letter is seen or read by such woman and he also intends thereby to insult her modesty, an offence under Section 509 IPC will be clearly attracted. Charge sheet in this case itself reveals that the petitioner allegedly wrote insulting and obscene letters to the victim-woman. It is also clear

from the records that such letters were sent to her in the name-address so that the letters will be seen and read by the victim. It further appears from the contents of those letters that prima facie, intention of the author of the letters was to insult the modesty of the woman who receives the letter. Such intention can be discerned from the nature of the language, tone and tenor of the writing.

23. Learned counsel for petitioner however submitted that the relevant letters are in the form of poems and hence no intention as stated above can be attributed to the petitioner. True, that from the brevity of the lines and sentences, it may appear that the author of those letters might have 'intended' those to be poems rather than prose. But, whether such undersized sentences seen in the letter will make it a poem or not is a different issue. Let it be a poem or a prose, the crucial question is whether such writing is possibly intended to insult the modesty of a woman or not. To discover the intention of the author, the character, cast or mould of its literature - whether it is a poem or not - is not be quite relevant. What is decisive are the nature of the contents and the message which the words can convey, to infer the intention.

24. Any way, it is not proper for this Court in these proceedings to probe any deeper into the facts to enter any finding of facts. If any attempt is made in these lines, it is likely that it will prejudice the lower court. But, I make it clear that if at all the petitioner had any intention other than what may be explicit from the contents of the letter, he is at liberty to establish the same at the time of trial. But, the records in this case prima facie reveal allegations which constitute an offence under Section 509 IPC though the said section is not included in the charge sheet.

25. Therefore, incidently a larger question also wakes up before me. If the allegations made in the records of a case do not constitute any of the offences stated in the charge sheet and if it appears that another offence coming under a different section is made out from records, can this court quash the charge, invoking inherent powers under Section 482 of the Code of Criminal Procedure (Code, for short)? It is well settled that this Court can quash the charge if it finds that the allegations revealed from the records do not constitute ingredients of the offence alleged in the charge sheet. This is done to achieve the purpose stated in

Section 482 of the Code viz., to secure ends of justice and also to prevent abuse of process of Court.

26. But, when this Court finds that the allegations revealed from the records constitute any offence or offences other than what are stated in the chargesheet, it will not be just and proper to quash the charge. Such quashing will not only not secure ends of justice, but it will even result in miscarriage of justice. Having found that an offence under Section 509 IPC is prima facie made out, no interference is warranted under Section 482 of the Code . Though the specific section is not included in the charge sheet, nothing prevents the lower Court from proceeding against the petitioner for offence under Section 509 IPC. Any way, I am not inclined to quash the charge on the ground that there is failure to include a particular section in the charge sheet.

27. It is also submitted by learned counsel for petitioner that the person to whom letters were addressed is not cited as a witness by the prosecution and hence the offences alleged cannot be established. Therefore, it is further submitted that continuance of the proceedings would be of no use for the prosecution and it will only result in hardship to the petitioner. I am not persuaded to quash the charge on this ground also because there is no bar under law in examining a witness who is not cited as a witness in the witness list. The question whether examination of the victim is required or not can be considered at the appropriate stage by the court below but the non-inclusion of the victim in the witness list alone is no ground at all to quash the charge. In any view of the matter, this is not a fit case to quash the charge at the threshold.

28. The lower court is directed to proceed with the case in accordance with law, untrammelled by any of the observations made in this order on the merit of the case on facts.

The petition is dismissed.