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Crl.M.C.No.1562 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 4TH DAY OF NOVEMBER 2024 / 13TH KARTHIKA, 1946

CRL.MC NO. 1562 OF 2020

CRIME NO.1171/2019 OF Town East Police Station, Thrissur
CC NO.1102 OF 2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,
THRISSUR

PETITIONER/ACCUSED:

SREEKUMAR MENON

BY ADVS.

S.RAJEEV

SRI.K.K.DHEERENDRAKRISHNAN

SRI.V.VINAY

SRI.D.FEROZE

SRI.ANAND KALYANAKRISHNAN

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031(CRIME NO.1171/2019 OF THRISSUR
EAST POLICE STATION, THRISSUR DISTRICT)

2 [REDACTED]

OTHER PRESENT:

SMT NIMA JACOB- PUBLIC PROSECUTOR - FOR R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
18.10.2024, THE COURT ON 04.11.2024 PASSED THE FOLLOWING:



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S.MANU, J.

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Dated this the 4th day of November, 2024

ORDER

The challenge in this Crl.M.C is against the proceedings arising from Crime No.1171 of 2019 of Thrissur East Police Station. The said case was registered on the basis of a petition submitted by the 2nd respondent to the State Police Chief on 21.10.2019. The State Police Chief forwarded the petition to the District Police Chief, Thrissur City, with a direction that the case should be investigated by the District Crime Branch under the personal supervision of the District Police Chief. The Station House Officer of Thrissur East Police Station thereafter registered FIR on 23.10.2019, alleging the offences under Sections 354D and 509 of Indian Penal Code r/w Section 120(o) of the Kerala Police Act, 2011 against the petitioner.



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2. The petitioner filed this Crl.M.C praying to quash all further proceedings in the crime, on registration of the FIR. During the pendency of the Crl.M.C., police concluded the investigation and filed the final report. The case is now pending as C.C.No.1102 of 2020 on the files of Judicial First Class Magistrate Court-I, Thrissur. In the final report, offences under Sections 354D, 294(b), 509 of the Indian Penal Code (IPC for brevity), and Section 120(o) of the Kerala Police Act, are alleged.

3. The petitioner filed an application thereafter, seeking to alter the prayer in the Crl.M.C as to quash all further proceedings in C.C.No. 1102 of 2020, pending with the Judicial First Class Magistrate Court-I, Thrissur. The said application was allowed by order dated 21.12.2022 in Crl.M.Appln.No.2 of 2022. By an order in Crl.M.Appln.No.3 of 2022, the further proceedings in C.C.No.1102 of 2020 were stayed on the same day.



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4. Though notice was duly served on the 2nd respondent and later intimation through police was also given, there is no appearance on her behalf.

5. Reading of the petition dated 21.10.2019 submitted by the 2nd respondent to the State Police Chief reveals that her case stated in it was as follows:

The 2nd respondent is an actress, active in the movie field for more than two decades. A charitable organization named _____, formed by her along with her parents, had been functioning at the time of submitting the petition. Petitioner herein is a movie director. The 2nd respondent engaged "PUSH" a company of the petitioner, for coordinating the activities of her foundation. She also acted in some advertorials in association with "PUSH." An agreement was executed with "PUSH" in 2013. It was terminated in 2017 on account of



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differences developed among her and the petitioner. Till then, commission as per the agreement was being paid to the petitioner. The 2nd respondent acted in a movie, " ", directed by the petitioner. During the shooting and later at the time of releasing and promotion, the petitioner engaged in defaming the 2nd respondent. In the shooting site, the petitioner used to talk to the 2nd respondent in an indecent manner and mentally harassed the 2nd respondent. He behaved so on account of the grudge against her. According to the 2nd respondent, the petitioner was making efforts to ruin her goodwill and to harass her associates. She had entrusted several signed blank papers and letter heads to the petitioner when the agreement between them was in force. She apprehended that the petitioner may misuse them. She submitted an audio clip along with the petition revealing the role of the petitioner



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herein in moves targeting her. She alleged that she had been put to irreparable injury and loss on account of the malicious activities of the petitioner. She therefore requested to ensure appropriate actions to ensure return of the signed papers in the possession of the petitioner and also to prevent the petitioner from making comments tending to cause disrepute to her and to outrage her modesty.

6. According to the learned Public Prosecutor, when the 2nd respondent was interrogated by the police after registration of the crime, she revealed more incriminating facts, and therefore, the offence under Section 294(b) of the IPC was also incorporated in the final report. Crux of the indictment as per the final report is that the accused had grudge against the defacto complainant on account of termination of the agreement with 'PUSH Integrated Communications Pvt Ltd' owned by the accused, that he



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conveyed messages adversely affecting the career and modesty of the defacto complainant through Facebook and over phone from April 2018, that he behaved disgustingly with her during the shooting of Malayalam Movie in its shooting site at Palakkad during 2018, also that he addressed the defacto complainant with a filthy word in the evening on 09.12.2018 at Dubai Airport, thus caused loss of reputation, defamation and outraged modesty of the defacto complainant.

7. I heard Sri.Vinay V., the learned counsel for the petitioner and Smt.Nima Jacob, the learned Public Prosecutor. I have perused the petition and the attached documents also.

8. Sri.Vinay V., the learned counsel, submitted that the prosecution proceedings launched against the petitioner are not sustainable in law. According to the learned



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counsel, the 2nd respondent approached the State Police Chief with a view to harass the petitioner on account of differences developed between them. He submitted that the petitioner, who is a reputed director, contributed much in promoting the 2nd respondent to come out successful when she began a second spell in her career. He contended that none of the offences alleged in the final report were actually attracted, and the police submitted the final report without proper application of mind. He relied on various precedents in support of the submissions regarding the sustainability of the alleged offences.

9. The learned Public Prosecutor on the other hand, submitted that the materials gathered by police during the investigation clearly revealed the commission of the alleged offences by the petitioner. She argued that apart from the statement of the 2nd respondent, police recorded statements of many other persons who were witnesses to



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the offences committed by the petitioner. She also submitted that if trial is conducted on the basis of the final report, the case will be proved as sufficient evidence is available. She also contended that the offences committed are to be viewed seriously and this Court may not quash the proceedings.

10. The offences alleged in the final report are under Sections 354D, 294(b), 509 of IPC and Section 120(o) of the Kerala Police Act. It is essential to analyze whether these offences would lie against the petitioner in this case. Section 354D is extracted hereunder:

"354D – Stalking

(1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication,

commits the offence of stalking:



PROVIDED that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2)Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

11. Sri.Vinay, learned counsel, argued that Section 354D, which was inserted by the Criminal Law Amendment Act of 2013, under Section 354. Section 354 deals with assault or criminal force to women with intent to outrage her modesty. He submitted that the offence of stalking under Section 354D is not a totally independent offence but the act becomes punishable when the same is committed



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with the intention to outrage the modesty of the victim. He relied on a reported order of this Court in **Jayaprakash P.P. v. Sheeba Revi** [2023 (4) KHC 597] explaining the ingredients of the offence under Section 354D. In the said order, this Court held that in order to attract the offence under Section 354D of IPC contacting and attempt to contact shall be in respect of outraging the modesty of a woman. The prosecution has to establish that a man followed a woman and contacted or attempted to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman. The section takes in acts revealing sexual interest or lewd acts of man. Any act whereby a man wilfully contacts or attempts to contact a woman in such a manner as to damage the virtue that attaches to a female owing to her gender, attracts the offence of stalking. Pointing out the law as explained by this Court, the learned counsel argued that admittedly the



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petitioner and the 2nd respondent were not in good terms at the time of the alleged occurrences. He invited my attention to paragraph No.19 of the reported order, which reads as under:

"19. A threat or abuse by a man towards a woman who is at loggerheads with him, as in the present case, would not attract the offence of stalking. The concern of the Legislature regarding the possibility of misuse of the penal provision is also relevant here."

12. I find merit in the argument of the learned counsel. In my view, inclusion of the offence under Section 354D in the facts of this case is not sustainable. Taking note of the issues between the petitioner and also the de facto complainant, it can never be said that the petitioner might have committed any acts that would fall within the true scope of the offence under Section 354D. Following a woman to abuse or threaten will not fall within the scope of the penal provision. Therefore, I am of the view that the



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offence under Section 354D is not attracted in this case.

13. Offence under Section 294(b) of the IPC has been incorporated on the basis of the allegation of the de facto complainant in her statement to police recorded after registration of the crime. She alleged that on 09.12.2018, the petitioner addressed her with a scurrilous malayalam word and abused her when they met in Dubai Airport. She, as also some others, interrogated by police stated that the petitioner addressed the de facto complainant using a filthy word in presence of many others. It is to be noted that such an incident was not revealed by the de facto complainant in the petition submitted to the State Police Chief on 21.10.2019. It is also relevant to note that at no point in time before her statement was recorded by police, the de facto complainant raised this incident alleged to have happened much earlier on 09.12.2018. In other



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words, there is a delay of more than ten months in raising a complaint with regard to the alleged incident. It is also to be noted that the said occurrence happened in a foreign country. Therefore, undoubtedly, Section 188 of the Cr.P.C was attracted. Proviso to Section 188 makes it mandatory that for prosecuting offences committed outside India, sanction of the Central Government shall be obtained. The corresponding provision in BNSS, S.208 is identically worded. In this case, such sanction of the Central Government is not seen obtained, though it becomes relevant at the stage of taking cognizance.

14. In **Thota Venkateswarlu v. State of Andhra Pradesh through Principal Secretary and Another** [(2011) 9 SCC 527], the Apex Court held as follows in paragraphs 14 to 16, which reads thus:

“14. The language of Section 188 Cr.PC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in



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respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal case, it was held that sanction under Section 188 Cr.PC is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows: (SCC p. 628, para 29)

“29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country.”

15. Although the decision in Ajay Aggarwal case was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Cr.PC. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central



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Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.PC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.”

As the language of S.208 of BNSS is the same as that of Section 188 of Cr.P.C., the above enunciation by the Hon’ble Apex Court still remains relevant.

15. It is well settled by several authoritative precedents that the test of obscenity under Section 294(b) of the IPC 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 this regard, it is gainful to refer to the following observations of the Hon'ble



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Supreme Court in **N.S.Madhanagopal and another v. K.Lalitha** [(2022) 17 SCC 818]:-

"7. It is to be noted that the test of obscenity under Section 294(b)IPC is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by K.K. Mathew, J. (as his Lordship then was) reported in P.T. Chacko v. Nainan Chacko explains as follows : (SCC OnLine Ker paras 5-6)

"5. The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b)IPC, by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In R. v. Hicklin, QB at p. 371 Cockburn, C.J. Laid down the test of "obscenity" in these words : (QB p. 371)

'... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences....'

6. This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra. In Roth v. United States, Chief Justice Warren said that the test of "obscenity" is the 'substantial tendency to corrupt by arousing lustful desires'.



Mr Justice Harlan observed that in order to be "obscene" the matter must "tend to sexually impure thoughts". I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are "obscene" and the utterance would constitute an offence punishable under Section 294(b)IPC."

16. In view of the law as explained in the above judgment as well as in several other precedents laid down by the Apex Court as well as this Court, the offence under Section 294(b) is also not made out against the petitioner even if the case of the de facto complainant regarding the incident alleged to have happened in Dubai on 09.12.2018 is assumed as correct. The word used may be defamatory and it might have hurt the de facto complainant; however, that is not sufficient to constitute the offence under Section 294(b). Hence, the offence under Section 294(b) also would not lie against the petitioner.



17. Section 509 of the IPC reads as follows:

“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 three years, and also with fine.”

18. The offence under the provision is attracted if the ingredients, such as utterance of any word, making of any sound or gesture, exhibition of any object with the intention to insult the modesty of a woman or with intention to intrude upon the privacy of such a woman, are satisfied. Mere utterances of unpleasant or abusive words without an intention either to insult the modesty of the women or to intrude upon the privacy of such women would not attract the offence under Section 509 of the IPC. This Court in



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Basheer v. State of Kerala [2014 (4) KLT SN 65 (C.No.81)] held that mere insult or false allegation would not attract a prosecution under Section 509 of IPC. The said judgment was relied on in **Ramesh v. Sub Inspector of Police** [2021 (1) KLT 735], **Jayaprakash P.P v. Sheeba Revi** [2023 (4) KHC 597] and **Joseph v. State of Kerala** [2024 KLT OnLine 1660]. Here the allegations in the final report are that the accused, through Facebook and over phone, abused the de facto complainant in a manner causing disrepute to her and outraged her modesty. When the allegations in the final report regarding the offence under Section 509 of IPC are tested, keeping in mind the principles laid down by this Court in the aforementioned decisions, the inevitable conclusion is that the accusations are not sufficient to constitute the offence under Section 509 of IPC. Hence the offence under Section 509 of IPC is also not sustainable against the petitioner.



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19. The remaining offence is the one under Section 120(o) of the Kerala Police Act. It is to be noted that the said offence is non cognizable. When all other offences alleged in the final report are found unsustainable, prosecution solely for the offence under Section 120(o) of the Kerala Police Act would not survive as permission required under law was not available.

In the result, this Crl.M.C is allowed. The final report in Crime No.1171 of 2019 of Thrissur East Police Station and the proceedings in C.C.No.1102 of 2020 of the Judicial First Class Magistrate Court – I, Thrissur are hereby quashed.

Sd/-

**S.MANU
JUDGE**

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APPENDIX OF CRL.MC 1562/2020

PETITIONER'S ANNEXURES

ANNEXURE I	CERTIFIED COPY OF THE FIRST INFORMATION REPORT ALONG WITH FIRST INFORMATION STATEMENT IN CRIME NO.1171/2019 OF THRISSUR EAST POLICE STATION, THRISSUR DISTRICT
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Annexure-II	A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO: 1171/2019
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