

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 26TH DAY OF JUNE 2018 / 5TH ASHADHA, 1940

CrI.MC.No. 8267 of 2017

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AGAINST THE ORDER/JUDGMENT IN CC 642/2017 of J.M.F.C., OTTAPPALAM
CRIME NO. 178/2017 OF OTTAPALAM POLICE STATION, PALAKKAD

PETITIONER(S)/ACCUSED 1 TO 10

- 1 ABDULLAH RIZWAN P.A
AGED 22 YEARS, S/O ABDUL NAZAR A, "RAHATH", MEENA NAGAR,
KALMANDAPAM, PALAKKAD. 678001 (ACCUSED NO.1)
- 2 AKSHAY
AGED 22 YEARS, S/O SUNDARESHAN KK, KAMBILIKKAL HOUSE,
AZHIKKODE PO, THRISSUR, PIN.680666, (ACCUSED NO.2)
- 3 AJAY PAVITHRAN
AGED 22 YEARS, S/O PAVITHRAN K.M, PALOORUMMEL HOUSE,
KAMBALAKKAD PO, WAYANAD.673121 (ACCUSED NO.3)
- 4 BABURAJ P
AGED 20 YEARS, S/O VINODHINI, PODIYATT ELLAM. PERUR PO,
PALAKKAD -679302 (ACCUSED NO.4)
- 5 MAHESH MOHAN,
AGED 20 YEARS, S/O MOHANAN PC, ANUGRAHA HOUSE,
KALLUVAZHI PO, PALAKKAD. 679514 (ACCUSED NO.5)
- 6 NABEEL P
AGED 23 YEARS, S/O KUNHABDULLA M, NABEELMANZIL HOUSE,
MEPPAYUR PO, CALICUT-673524 (ACCUSED NO.6)
- 7 ABDUL GAFOOR V I
AGED 23 YEARS, S/O IQBAL VK, VELAMPULLY HOUSE,
POOLAKKUNDU , OTTAPALAM PO-679101 (ACCUSED NO.7)
- 8 M. ZUHER
AGED 22 YEARS, S/O M. MAMMU, MANGALIYIL HOUSE,
PENGATTIRI, NELLAYA PO, PALAKKAD.679335 (ACCUSED NO.8)
- 9 DHEERAJ V
AGED 21 YEARS, S/O SATHEESH BABU T,
DARSANA HOUSE, KULAPPULLY PO, PALAKKAD. 679122 (ACCUSED
NO.9)

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10 BASTIAN K RAPHAEL
AGED 22 YEARS, S/O RAPHAEL KD, KALLUVEETIL HOUSE,
PERINGAVU PO, THRISSUR. 680008 (ACCUSED NO.10)

BY ADVS.SRI.LEGITH T.KOTTAKKAL
SRI.MANU SEBASTIAN
SMT.SURYA BINOY

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. NISHA
AGED 37, D/O NARAYANAN, PALLATHU HOUSE,
VELOOPADAM PO, THRISSUR,
PRESENTLY WORKING AS ASSISTANT PROFESSOR,
ELECTRICAL AND ELECTRONIC DEPARTMENT,
JAWAHARLAL COLLEGE OF ENGINEERING AND TECHNOLOGY,
LAKKIDI, (DEFACTO COMPLAINANT.)

R2 BY ADVS. SRI.VINAY RAMDAS
SMT.K.B.ANAMIKA
R1 BY PUBLIC PROSECUTOR SRI.RAMESH CHAND

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-06-2018,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE A1 CERTIFIED COPY OF THE FIR IN CRIME NO.178/2017 OF POLICE STATION OTTAPALAM.
- ANNEXURE A2 FINAL REPORT/CHARGE SHEET NO.263/2017 OF POLICE STATION OTTAPALAM SUBMITTED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, OTTAPALAM.
- ANNEXURE A3 COPY OF THE PRE ACCEPTANCE LETTER DATED 25.7.2017 ISSUED SENT BY WROCLAW UNIVERSITY OF SCIENCE AND TECHNOLOGY TO PETITIONER NO.9
- ANNEXURE A4 COPY OF THE INVOICE REMITTING FEES AT WROCLAW UNIVERSITY OF SCIENCE AND TECHNOLOGY BY PETITIONER NO.9.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

SUNIL THOMAS, J.

Crl. M. C. No. 8267 of 2017

Dated this the 26th day of June, 2018

ORDER

Petitioners are accused in C.C.No.642/2017 of Judicial First Class Magistrate Court, Ottapalam arising from Crime No.178/2017 of Ottapalam Police Station for offences punishable under Sections 294(b) of IPC and Section 119(b) of Kerala Police Act.

2. The crux of the prosecution allegation is that certain agitations were going on in the college wherein the petitioners were studying. The 2nd respondent is working as an Assistant Professor in that college. As is discernible from the records, on 21.02.2017 certain posters were pasted by some of the students, on the college buses. The Principal of the college demanded the students to remove it, but they refused to obey. It is stated that some of the teachers volunteered themselves to remove the posters. While the posters were being removed, some of the students allegedly misbehaved towards the teachers, showered them with abuses and videographed their acts and posted it in social media. Alleging that it caused considerable mental agony to the teachers, 2nd respondent laid a complaint on the next day.

Crime was registered and after investigation, final report was filed.

3. The petitioners have approached this Court contending that they are absolutely innocent, that they have been wrongly implicated and that the case has affected their career. It was contended that the materials gathered by the investigating agency, even if accepted in toto, will not establish any of the ingredients of the offences alleged against them. Learned counsel for the 2nd respondent sought time on a premise that the 2nd respondent is not satisfied with the way in which the investigation was conducted and proposes to challenge the final report.

4. It is pertinent to note that the final report was filed in February 2017 and it was produced as Annexure A2 along with the Crl.M.C. which was filed on 27.11.2017. The petitioners had been insisting for an early hearing on all posting dates on the ground that pendency of the criminal proceedings affect their career prejudicially. Hence, the very belated submission of the learned counsel for the 2nd respondent that the 2nd respondent proposes to challenge the final report at this stage, that too after the commencement of the argument of the learned counsel for

the petitioner cannot be accepted and is rejected.

5. Petitioners stand charged for offences punishable under Section 119(b) of the Kerala Police Act and Section 294(b) of the IPC. It was pointed out by the learned counsel for the petitioners that the complaint of the 2nd respondent forms the basis of the prosecution allegation. Further statement of the de facto complainant was recorded on 23.02.2017, wherein she stated that apart from what is stated in that she has no other fact to be disclosed.

6. In this background, the nature of allegation as discernible from Ext.P2 has to be viewed. The 2nd respondent has referred to two specific acts on the part of the students. The first one was that certain students misbehaved towards her and showered abuses. The second allegation was that some of the students published certain videographs recorded while she and others were removing the posters on social medias. However, at the end of the complaint, the 2nd respondent has given the names of 10 persons and stated that the above 10 persons formed part of some of the persons who threatened her. Clearly her allegation against the named 10 persons was only regarding threat. She has absolutely no case, not in the complaint nor in the further

statement that these are the persons who either showered her with abuses or persons who had posted the objectionable materials on the social media. Even when she was given an opportunity to clarify this, she has not explained more than that. Evidently, the only allegation against the 10 persons is of threatening. On that ground alone, offence under Section 119(b) and Section 294(b) cannot survive against the petitioners.

7. The learned counsel for the petitioners specifically contended that even the allegations of the prosecution do not constitute an offence under Section 119(b) of the Kerala Police Act, it provides that taking photographs or records or videos of propagate them at any place in a manner affecting reasonable privacy of a woman. What is meant by the reasonable privacy of a woman has not been defined. Though the learned counsel for the petitioners contended that Section 119(b) of the Kerala Police Act cannot be invoked, since it is absolutely vague and confers on the Police very wide powers to initiate criminal proceeding against the persons on the basis of a statutory provision which is vague, I am not inclined to accept it for the reason that the vice of statutory provision is not under challenge. However, the Hon'ble Supreme Court in **Shreya Singhal V. Union of India (AIR 2015**

SC 1523) had held that vague laws offend several important values. The court, relying on **Kartar Singh V. State of Punjab [(1194) 3 SCC 569]** held that vague laws may trap the innocent by not providing fair warning. Consequently, in the absence of a clear definition as to what is meant by a transgression into the privacy of a person, the conduct of the petitioner cannot *ex post facto* be brought within the campus of offending a statutory provision. Even otherwise as mentioned above, the 2nd respondent has no case that the petitioners are the persons who had made the publication in the social media.

8. There is yet another angle to the above. Even assuming that the petitioners are the persons who published it in the social media, whether it falls within the provisions of Section 119 of Kerala Police Act is still doubtful. The act videographed and published were the acts which were done by her in open, in the college ground, and in the presence of several other persons, as is discernible from the compliant itself. Necessarily, when one complains into the right of transgression into the privacy, it presupposes the existence of a private act or an act which was within the notice of public. When an act is done openly in the presence of other persons, it is doubtful whether the publication

of that may constitute an offence.

9. The offence under Section 294(b) cannot be imported in the present conduct at all. In **Latheef V. State of Kerala (2014 (2) KLT 987)** this Court held that to attract offence under Section 294(b), the act alleged must have a sexual content or must have a lascivious element involved. Even by a remote stretch of imagination it cannot be extended to this case.

Considering these facts, I am satisfied that none of the allegations alleged against the petitioners can survive in a court of law. Hence, the Crl.M.C. is liable to be allowed. Accordingly, Crl.M.C. is allowed. All further proceedings in C.C.No.642/2017 of Judicial First Class Magistrate Court, Ottapalam as against the petitioners herein stand quashed.

Sd/-

SUNIL THOMAS, JUDGE.