

Kerala High Court

Sajidh.D vs The State Of Kerala on 16 November, 2019

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

SATURDAY, THE 16TH DAY OF NOVEMBER 2019 / 25TH KARTHIKA,
1941

CrI.MC.No.7153 OF 2019(D)

CRIME NO.122/2019 OF KADAMPUZHA POLICE STATION , Malappuram

PETITIONER/ACCUSED NO.1:

SAJIDH.D
AGED 32 YEARS
S/O. JAMAL MOHAMMED, MARAKKARA, KADAMPUZHA P.O,
MALAPPURAM.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA

RESPONDENT:

THE STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN-682 031

SRI.C.S.HRITHWIK SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16.11.2019, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CrI.M.C.No.7153/2019

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"CR"

R.NARAYANA PISHARADI, J

CrI.M.C.No.7153 of 2019

Dated this the 16th day of November, 2019

ORDER

The petitioner is the first accused in the case registered as Crime No.122/2019 of the Kadampuzha police station.

2. The offences alleged against the petitioner are punishable under Section 153 I.P.C and Section 120(o) of the Kerala Police Act, 2011.

3. The facts of the prosecution case are as follows: The newspapers had reported that two children, who belonged to socially backward class, were beaten to death by a violent mob at a place in the State of Madhya Pradesh, for defecating in open public place. The second accused in the case wrote about this incident, which is said to be a poem, and he posted the same in his facebook account. The petitioner shared the above facebook Crl.M.C.No.7153/2019 post with others. The de facto complainant made a complaint (Annexure-III) to the Sub Inspector of Kadampuzha police station regarding the above mentioned facebook post. He alleged that the words used in the facebook post are insulting to Hindu religion and they caused very much pain to him who professes and practises the Hindu religion. On the basis of that complaint, Annexure-IV first information report (FIR) was registered against the petitioner and the second accused for the offences mentioned above.

4. The petitioner has prayed for quashing Annexure-IV FIR and all proceedings based on it on the ground that the allegations contained therein do not constitute the ingredients of the offences alleged against him.

5. Heard learned counsel for the petitioner and the learned Public Prosecutor.

6. Section 153 of the Indian Penal Code reads as follows :

"Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to Crl.M.C.No.7153/2019 be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

7. The ingredients to constitute an offence under Section 153 I.P.C are the following: (1) An act shall be done which is illegal (2) Such illegal act shall be done malignantly or wantonly (3) The act done shall cause provocation to some person (4) The act giving provocation should have been done (a) intending that the provocation will cause the offence of rioting to be committed or (b) knowing it to be likely that such provocation will cause the offence of rioting to be committed.

8. The word "illegal" is defined in Section 43 of the Indian Penal Code as follows:

"The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action."

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9. The expression "malignantly" implies an act done with malice. The expression "wantonly" means act done recklessly without regard to the consequences.

10. I have perused Annexure-II, which is a copy of the facebook post made by the second accused. Prima facie, it contains words which may hurt the sentiments of persons who belong to Hindu religion.

11. The petitioner is not the author of Annexure-II. He only shared it with others through facebook account. He has probably done a wanton act. But, Annexure-III complaint does not reveal that the facebook post shared by the petitioner caused provocation to commit rioting, much less any provocation, to the de facto complainant or any other person. What is stated in the complaint is only that it caused pain to the de facto complainant as he is a person who practises Hindu religion.

12. In the aforesaid circumstances, it cannot be found that the act of the petitioner sharing Annexure-II facebook post attracted an offence punishable under Section 153 I.P.C.
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13. Section 120(o) of the Kerala Police Act, 2011 provides that, if any person, causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger, shall be punished on conviction.

14. The ingredients of an offence under Section 120(o) of the Kerala Police Act are: (1) A person causing a nuisance of himself to another person (2) Causing such nuisance shall be through any means of communication (3) Act causing nuisance may be done by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger.

15. A person causing nuisance of himself to any other person, through any means of communication, is the essential ingredient of an offence punishable under Section 120(o) of the Kerala Police Act.

16. In the instant case, the act of the petitioner sharing the facebook post, cannot be considered as a responsible act done by him. But, Annexure-III complaint does not contain any allegation that, by sharing the facebook post, the petitioner caused any CrI.M.C.No.7153/2019 nuisance of himself to the de facto complainant or any other person.

17. The discussion above would show that the ingredients of the offences punishable under Section 153 I.P.C and Section 120(o) of the Kerala Police Act, 2011 have not been made out against the

petitioner from Annexure-III complaint. Therefore, the proceedings against the petitioner for the aforesaid offences initiated on the basis of Annexure-III complaint are liable to be quashed.

18. In this context, it is to be made clear that Annexure-IV FIR as such cannot be quashed. This Court has only found that the offences alleged against the petitioner in the FIR are not attracted on the basis of Annexure-III complaint. This Court has not considered the question whether any other offence would be attracted by the act allegedly committed by the petitioner or the second accused.

19. In the result, the petition is allowed in part. All proceedings against the petitioner alone, for the offences punishable under Section 153 I.P.C and Section 120(o) of the CrI.M.C.No.7153/2019 Kerala Police Act, 2011, based on Annexure-III complaint, are hereby quashed.

(sd/-) R.NARAYANA PISHARADI, JUDGE jsr/15/11/2019 CrI.M.C.No.7153/2019 APPENDIX PETITIONER'S EXHIBITS:

ANNEXURE I TRUE COPY OF NEWS REPORT APPEARED IN MADHYAMAM DAILY DATED 07.09.2019.

ANNEXURE II TRUE COPY OF POEM TOGETHER WITH PHOTOGRAPH OF THE DECEASED CHILDREN.

ANNEXURE III TRUE COPY OF PETITION DATED 1.10.2019 FILED BEFORE THE S.H.O KADAMPUZHA POLICE.

ANNEXURE IV CERTIFIED COPY OF F.I.R. IN CRIME NO.

122 OF 2019 OF KADAMPUZHA POLICE STATION, MALAPPURAM DISTRICT.

RESPONDENT'S EXHIBITS : NIL TRUE COPY PS TO JUDGE