

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

THURSDAY, THE 20TH DAY OF FEBRUARY 2020 / 1ST PHALGUNA, 1941

Cr1.MC.No.5130 OF 2019(A)

CC 1768/2018 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, TRIVANDRUM

CRIME NO.940/2018 OF Petta Police Station, Thiruvananthapuram

PETITIONER/ACCUSED:

ABHIJEET.J.K
AGED 23 YEARS
S/O. JAYAN, TC 76/481(2), KALATHUVILAKATHU HOUSE,
ANAYARA PUMP HOUSE, KILLIKUNNATHU LANE,
KADAKAMPILLY VILLAGE, THIRUVANANTHAPURAM 695 029

BY ADVS.
SRI.AJIT G.ANJARLEKAR
SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.GOVIND PADMANAABHAN

RESPONDENTS/STATE AND DE FACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR AT THE HIGH
COURT OF KERALA, ERNAKULAM.
- 2 THE STATION HOUSE OFFICER,
PETTAH POLICE STATION, THIRUVANANTHAPURAM CITY,
PETTAH POST, THIRUVANANTHAPURAM 695 024
- 3 PREETHI KAMALA,
AGED 39 YEARS
D/O. KAMALA DEVI, TC 29/123, KAMALA NIVAS, KAVARADI
ROAD, PETTAH POST, THIRUVANANTHAPURAM 695 024

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
14.02.2020, THE COURT ON 20.02.2020 PASSED THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

Crl.M.C.No.5130 of 2019

Dated this the 20th day of February, 2020

ORDER

The petitioner is the sole accused in the case C.C.No.1768/2018 on the file of the Court of the Additional Chief Judicial Magistrate, Thiruvananthapuram.

2. The prosecution case is as follows: On 12.07.2018, at about 21.30 hours, the de facto complainant, a lady aged 39 years, was proceeding to her house by walking through a public road. The accused followed her on a motorcycle. He approached her and invited her to accompany him on the motorcycle. He also made sexual gesture to her with his hand.

3. The case against the petitioner was registered on the basis of a written complaint made by the victim to the Sub Inspector of the local police station. After completing investigation, final report has been filed against the petitioner for

an offence punishable under Section 509 I.P.C.

4. This petition is filed under Section 482 Cr.P.C for quashing Annexure-A first information report registered against the petitioner and also Annexure-B final report filed against him.

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

6. Learned counsel for the petitioner has raised three grounds in support of the prayer for quashing the first information report as well as the final report against the petitioner. They are: (1) The allegations made against the petitioner in the first information report do not attract the offence punishable under Section 509 I.P.C. (2) The allegations raised against the petitioner in the final report do not disclose commission of an offence punishable under Section 509 I.P.C by him. (3) At any rate, the acts allegedly committed by the petitioner are trivial in nature and they come within the purview of Section 95 I.P.C.

7. *Per contra*, learned Public Prosecutor has submitted that the prosecution has produced sufficient materials to prove

the allegations raised against the petitioner and that the final report filed against him discloses commission of an offence punishable under Section 509 I.P.C.

8. Section 509 of the Indian Penal Code provides that, 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.

9. Utterance of any word or making of any sound or gesture by a person, intending to insult the modesty of a woman, attracts the offence punishable under Section 509 I.P.C, if such act was made intending that such word or sound shall be heard, or that such gesture shall be seen by such woman.

10. There is distinction between an act of merely insulting a woman and an act of insulting the modesty of a woman. In order to attract Section 509 I.P.C, merely insulting a woman is not

sufficient. Insult to the modesty of a woman is an essential ingredient of an offence punishable under Section 509 I.P.C. The crux of the offence is the intention to insult the modesty of a woman.

11. Section 509 I.P.C criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act (See **Khushboo v. Kanniammal : AIR 2010 SC 3196**).

12. The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty (See **State of Punjab v. Major Singh : AIR 1967 SC 63**). Modesty is a virtue which attaches to a female owing to her sex (See **Raju Pandurang Mahale v. State of Maharashtra : AIR 2004 SC 1677**).

13. If the word uttered or the gesture made could be perceived as one which is capable of shocking the sense of

decency of a woman, then it can be found that it is an act of insult to the modesty of the woman (See **Rupan Deol Bajaj v. K. P. S. Gill : AIR 1996 SC 309**).

14. In the instant case, the victim lady aged 39 years, was walking along a public road. It was night, at about 21.30 hours. The petitioner followed her on a motorcycle. He approached her and invited her to accompany him. The petitioner and the victim lady were not previously acquainted with each other. They were total strangers. Therefore, it cannot be found that the intention of the petitioner was to give the victim lady a lift or a free ride on the motorcycle, on account of friendship or relationship with her. There is also an allegation against him that he made sexual gesture to the victim lady with the middle finger of his hand. If the acts allegedly committed by the petitioner are considered in the light of the facts and circumstances of the case, prima facie, it can be found that his intention was to insult the modesty of the victim lady. The acts allegedly committed by the petitioner amount to an affront to her feminine decency. Such acts could be perceived as capable of shocking the sense of decency of the

victim lady. The invitation made by the petitioner to the lady contained an insinuation that she was a woman of easy virtue who was ready and willing to go with any man during night.

15. Learned counsel for the petitioner would contend that there is no material produced by the prosecution to infer that the petitioner intended to insult the modesty of the victim lady. Intention has to be gathered from the act complained of and the circumstances under which it is committed. Intention, being a state of mind, could not be proved by direct evidence. It has to be inferred from the facts and circumstances of a given case.

16. In **Rupan Deol Bajaj** (supra), the allegation against the accused was that he asked a lady colleague "You get up. You come along with me." It was held that, prima facie, in the light of the attending circumstances, it amounted to an act of insulting the modesty of the victim lady.

17. Learned counsel for the petitioner would contend that, even if the petitioner has committed any act as alleged by the prosecution, it is trivial in nature, which would come within the purview of Section 95 I.P.C. Learned counsel would rely upon the

decision of the Apex Court in **Veeda Menezes v. Yusuf Khan : AIR 1966 SC 1773** in support of his contention.

18. Section 95 of the Indian Penal Code states that, nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

19. In **Veeda Menezes** (supra), the Supreme Court has held as follows:

"The object of framing Section 95 was to exclude from the operation of the Penal Code those cases which from the imperfection of language may fall within the letter of the law, but are not within its spirit and are considered, and for the most part dealt with by the Courts, as innocent. Whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm.

It cannot be judged solely by the measure of physical or other injury the act causes. A soldier assaulting his colonel, a policeman assaulting his Superintendent, or a pupil beating his teacher, commit offences, the heinousness of which cannot be determined merely by the actual injury suffered by the officer or the teacher, for the assault would be wholly subversive of discipline. An assault by one child on another, or even by a grown up person on another, which causes injury may still be regarded as so slight, having regard to the way and station of life of the parties, relation between them, situation in which the parties are placed, and other circumstances in which harm is caused, that the victim ordinarily may not complain of the harm".

20. In **Narayanan v. State of Kerala : 1986 KLT 1265**, it has been held as follows:

"When considering the question whether the acts alleged against the petitioners would amount to an offence of wrongful restraint, the maxim "de minimis non curat lex" (the law does not take account of trifles) should be borne in mind if the harm caused or intended to be caused is so slight that no person of ordinary sense and temper would complain of such harm. The above principle

is embodied in Section 95 of the Code. The definitions of various offences in the Code are so framed as to bring a number of activities within the letter of the penal law. If we are to go by the definitions alone, "it is theft to dip a pen in another man's ink, it is mischief to crumble one of his wafers, it is assault to cover him with a cloud of dust by riding past him, it is hurt to incommode by pressing against him in getting into a carriage". At the same time, those are but few of the innumerable acts without the performance of which men cannot live together in society, and acts which it is desirable that they should do. It depends upon the degree of the acts and that is why the authors of the Code took particular care in striking a note of caution by incorporating Section 95 in the Code".

21. If the act allegedly committed by the petitioner is considered in the light of the principles laid down by the Apex Court in **Veeda Menezes** (supra), it cannot be found that it is an act of trivial nature which would come within the purview of Section 95 I.P.C. Whether an act which amounts to an offence is trivial in nature would undoubtedly depend upon the nature of the harm caused, the position of the parties, the knowledge or

intention with which the offending act is done and other related circumstances. Here, the petitioner had allegedly invited the victim lady, a stranger to him, to accompany him on the motorcycle during night time. Such an act cannot be considered as trivial in nature. The question whether an act is trivial in nature or not does not depend merely upon the fact whether any physical harm was caused or not. An act of affront to the decency and dignity of a woman cannot be considered as trivial in nature.

22. Section 354 I.P.C prescribes the punishment for outraging the modesty of a woman by an act of assault or use of criminal force. In spite of the existence of the aforesaid provision in the Indian Penal Code, the legislature has incorporated Section 509 in it, making punishable even a verbal attack of insulting the modesty of a woman. The intention of the legislature is evident. Commission of acts, which may not necessarily involve even any physical advances or assault, is also made punishable under Section 509 I.P.C. Originally, the punishment prescribed for the offence under Section 509 I.P.C was simple imprisonment for a

term which may extend to one year or fine or both. The punishment provided for the offence now stands enhanced to simple imprisonment for a term which may extend to three years with fine. The intention of the legislature is also evident from the enhancement of the punishment prescribed for the offence.

23. The observations made by the Supreme Court in **Deputy Inspector General v. Samuthiram: AIR 2013 SC 14** are relevant here. The Apex Court had occasion to observe as follows:

"We notice that there is no uniform law in this country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus stands, metro-stations, railway stations, cinema theatres, parks, beaches, places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace, needless to say, at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. Every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual

harassment like eve-teasing of women amounts to violation of rights guaranteed under Article 14, Article 15 as well. We notice in the absence of effective legislation to contain eve-teasing, normally, complaints are registered under Section 294 or Section 509 IPC. Eve teasing today has become pernicious, horrid and disgusting practice. More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilized and cultured society”.

24. In the aforesaid circumstances, the prayer for quashing the first information report and the final report against the petitioner cannot be allowed on any of the grounds urged by the learned counsel for the petitioner.

25. Consequently, the petition is dismissed. It is made clear that, appreciation of the evidence that may be adduced during the trial of the case, shall be done by the trial court untrammelled by any of the observations made in this order.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A

**A CERTIFIED COPY OF THE FIR IN CRIME
NO. 940 OF 2018 OF PETTAH POLICE
STATION, THIRUVANANTHAPURAM CITY**

ANNEXURE B

**A CERTIFIED COPY OF THE CHARGE SHEET IN
CRIME NO. 940 OF 2018 OF PETTAH POLICE
STATION, THIRUVANANTHAPURAM CITY.**

RESPONDENTS' EXHIBITS : NIL

TRUE COPY

PS TO JUDGE