IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942

Crl.MC.No.4842 OF 2019(E)

CRIME NO.266/2019 OF Town North Police Station , Palakkad

PETITIONER/ACCUSED:

MONISH,
AGED 27 YEARS,
S/O. SETHUMADHAVAN T.,
NIGHT WATCHMAN,
GOVERNMENT VICTORIA COLLEGE,
PALAKKAD.

BY ADV. SRI. V. A. JOHNSON VARIKKAPPALLIL

RESPONDENTS/DEFACTO COMPLAINANT & STATE:

1 **JAYARAJ P. C.,**
AGED 26 YEARS, S/O. CHAMI,
POTTAYIL PADINJARETHODI HOUSE,
KUNDALASSERI P. O.,
KERALASSERI, PALAKKAD – 678 631.

2 **STATE OR KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM – 682 031.

SRI. K. B UDAYAKUMAR, P.P

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30.07.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 30th day of July 2020

The petitioner is the sole accused in C.C No.578 of 2019 on the file of Judicial First Class Magistrate – II, Palakkad. He seeks quashment of Annexure - D final report laid against him for offences punishable under Section 153 I.P.C and Section 120(o) of the Kerala Police Act, 2011 (for short, 'the KP Act' only).

2. The prosecution case against the petitioner is that during the period from April 12 to April 16 of 2019, he shared a few facebook posts through his facebook account against the LDF candidates in the State with the intention of provoking rioting among a few sections of people in Kerala.

3. The contention of the petitioner is that the facebook posts were never intended to provoke rioting at all but, on the other hand, they were intended only to be innocuous political satires. It is also contended by the learned counsel for the petitioner that even if allegations in Annexure D report are taken as true also, they are not sufficient to constitute

the offences in question. I perused Annexure B series face book posts, but do not find them to be capable enough to create any hatred among the members of public nor cause rioting among any sections of the people.

4. It was argued by the learned counsel for the petitioner that even assuming that the face book posts contained false or offensive statements also, the only penal provision that would have been attracted was Section 66 A of the Information Technology Act, 2000, which was already struck down by the Honourable Supreme Court in ***Shreya Singhal v. Union of India (AIR 2015 SC 1523)***. The said provision was struck down by the Apex Court after holding that it offended the freedom of speech of the citizens and failed to balance the constitutional rights and the reasonable restrictions that may be imposed on such rights. It was also held that Section 66A suffered from the vice of vagueness as well as arbitrariness. The argument of the learned counsel for the petitioner, therefore, is that an act made punishable by a penal provision which was already struck down as unconstitutional, cannot be again made a subject matter of criminal prosecution, relying on analogous penal provisions in

different statutes. It is therefore, contended that the petitioner who could not at all have been prosecuted for offence punishable under Section 66A of the Information Technology Act, 2000 is now being sought to be prosecuted for offences punishable under Section 153 of IPC and Section 120(o) of the KP Act. The argument cannot be dismissed as unsound.

5. From the facts disclosed by Annexure D, the face book posts cannot be said to have been shared intending to provoke rioting in the society and an act punishable under Section 153 of IPC was committed. It is also incomprehensible as to how such face book posts could attract commission of nuisance under Section 120(o) of the KP Act. Therefore, the impugned final report is only liable to be quashed.

In the result, this Crl.M.C. filed invoking inherent powers under Section 482 of Cr.P.C. is allowed and consequently, Annexure D final report against the petitioner is hereby quashed.

Sd/-

T.V.ANILKUMAR
JUDGE

SPR

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A	CERTIFIED COPY OF THE F.I.R. NO.266/2019 PALAKKAD TOWN NORTH POLICE STATION, PALAKKAD ALONG WITH THE COMPLAINT SUBMITTED BY THE 1ST RESPONDENT DATED 24/04/2019.
ANNEXURE B	CERTIFIED COPY OF THE ALLEGED FACEBOOK POSTS INVOLVED IN CRIME NO.266/2019 PALAKKAD TOWN NORTH POLICE STATION, PALAKKAD.
ANNEXURE C	TRUE COPY OF THE OFFER LETTER DATED 20.06.2019 ISSUED FROM THE OFFICE OF THE SOUTH WESTERN RAILWAY.
ANNEXURE D	TRUE COPY OF THE FINAL REPORT IN CRIME NO.266/2019 PALAKKAD TOWN NORTH POLICE STATION, PALAKKAD DATED 27.05.2019.
ANNEXURE E	TRUE COPY OF THE APPOINTMENT ORDER DATED 02.03.2020 ISSUED BY THE SOUTHERN RAILWAY.

RESPONDENT'S/S EXHIBITS: NIL.