

## Rajesh Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 14, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 482

Information Technology Act, 2000 â€” Section 67, 78

Kerala Police Act, 2010 â€” Section 120(O)

**Hon'ble Judges:** G.Girish, J

**Bench:** Single Bench

**Advocate:** V.M.Krishnakumar, Mansoor.B.H., Seetha S.

**Final Decision:** Dismissed

### Judgement

G.Girish, J

1. The accused in C.C.No.1789/2018 on the files of the Judicial First Class Magistrate Court-II, Cherthala, has filed this petition under Section 482 of

the Code of Criminal Procedure, 1973(in short, "Cr.P.C."), to quash the proceedings against him in the said case. The final report in that case

was filed by the Inspector of Police, Kuthiyathod, alleging the commission of offence under Section 67 of the Information Technology Act, 2000, and

Section 120(O) of the Kerala Police Act, 2010. It is stated that the petitioner posted an obscene Whatsapp message in a group consisting of 240

members with the intention to denigrate the defacto complainant, and thereby caused nuisance.

2. According to the petitioner, the offence under the aforesaid Sections are not attracted even if the final report filed in the case is accepted in

totality. It is further contended that the Inspector of Police, Kuthiyathod, was legally incompetent to file a final report in connection with the offences

under the Information Technology Act, 2000.

3. Heard the learned counsel for the petitioner, the learned counsel for the third respondent and the learned Public Prosecutor representing the State

of Kerala.

4. The learned counsel for the petitioner, by relying on Rajesh v. State of Kerala [2013(4) KHC 169], argued that the investigation in connection

with the offences under the Information Technology Act, 2000, has to be conducted by the Cyber Police, and that the final report in connection with

such offences has to be filed by the SHO of the Cyber Police Station. The learned counsel for the petitioner would further contend that as per

G.O.No.909/2004/Home dated 15.04.2004 Cyber Police Station, Kerala, has been declared as the Police Station having jurisdiction throughout the

State of Kerala to investigate any offence committed under the Information Technology Act, 2000. According to the learned counsel for the petitioner,

the above G.O. impliedly mean that the jurisdiction of other Police Stations are ousted in connection with the offences under the Information

Technology Act, 2000.

Ã, 5. The argument of the learned counsel for the petitioner in the above regard is prima facie unsustainable in view of the provisions contained under

Section 78 of the Information Technology Act, 2000, which confer power on a Police Officer not below the rank of Inspector to investigate offences

under the said Act. That apart, the dictum laid down by this Court in *Rajesh v. State of Kerala* (supra) does not rule that the offences under the

Information Technology Act, 2000, could be investigated and chargesheeted only by the Cyber Police Stations constituted under the relevant

Government Orders. On the other hand, the ratio in the said decision is that when none of the offences under the Information Technology Act, 2000,

are disclosed in investigation, the Investigating Officer associated with the Cyber Police Station should send the case to the Police Station within

whose jurisdiction the other offences under the Indian Penal Code, 1860, were found to have been committed. Thus, the argument advanced by the

learned counsel for the petitioner against the jurisdictional competence of the Inspector of Police, Kuthiyathod, to file final report relating to the

offence under Section 67 of the Information Technology Act, 2000, is totally unsustainable.

Ã, 6. Another argument advanced by the learned counsel for the petitioner is that the contents of the Whatsapp message allegedly posted by the

petitioner cannot be termed as an obscene material coming under the purview of Section 67 of the Information Technology Act, 2000, or nuisance

under Section 120(O) of the Kerala Police Act, 2010. It is stated that the contents of the said Whatsapp message cannot be considered as lascivious

or appealing to the prurient interests of the persons seeing it, and hence the aforesaid offences are not attracted in the facts and circumstances of this

case. As regards the above argument, it has to be held that this Court is not expected to analyse the evidence and embark upon a finding in a petition

under Section 482 Cr.P.C. as to whether the offence alleged is actually established or not. It is for the Trial Court to decide on the basis of the

evidence adduced before it as to whether the prosecution successfully established the charge levelled against the accused. Thus, the challenge raised

by the petitioner against the sustainability of the proceedings against him in C.C.No.1789/2018, is totally unfounded.  
Needless to say that the present

petition is devoid of merit.

In the result, the petition is hereby dismissed.