
(2014) 03 KL CK 0120
High Court Of Kerala
Case No: Crl. M.C. No. 3476 of 2013

Fr. Mathew Pulimoottil Episcopa

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: March 7, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 509

Citation: (2014) CriLJ 2394 : (2014) 2 ILR 233 : (2014) 2 KHC 96 : (2014) 2 KLJ 176 : (2014) 2 KLT 1

Hon'ble Judges: N.K. Balakrishnan, J

Bench: Single Bench

Advocate: O.V. Maniprasad, Saju J. Panicker and Jolly George, Advocate for the Appellant; Rajesh Vijayan, Public Prosecutor, Geo Paul, Sanu Mathew, R. Vinu Raj and C.R. Pramod, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.K. Balakrishnan, J.

The petitioner is the accused in C.C. No. 486/2006 pending before JFCM - II, Ernakulam. Offence alleged against him is punishable under S. 509 I.P.C. The charge-sheet reads to the effect that on 14.5.2006 at about 7 a.m. the accused with the intention to insult the complainant abused her in the presence of the public. The accused is the Vicar of that Church. It is alleged that he asked "Daisy, why are you peeping? Why are you standing here? For peeping, nothing is being done here". This according to the prosecution would attract the offence under S. 509 I.P.C. S. 509 I.P.C. reads:-

509. Word, gesture or act intended to insult the modesty of a woman--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, of

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 one year, or with fine, or with both.

The learned counsel for the petitioner submits that there is no allegation to the effect that the accused made any gesture or that he exhibited any object at the complainant. It is also submitted that nothing was said by the accused which would intrude upon the privacy of the complainant. It can never be imagined that the words allegedly used by the accused which are incorporated in the charge-sheet and in her complaint would ever insult the modesty of any woman. The words allegedly uttered by the accused can never be said to be a word intruding upon the privacy of the complainant. There was no indecent representation of P.W. 1. No defamatory statement was also made. Learned counsel for the petitioner would submit that it would defy the logic to invoke the offence under S. 509 I.P.C. so as to proceed against the petitioner herein. It was held by the Hon"ble Supreme Court in [S. Khushboo Vs. Kanniammal and Another](#), :-

Similarly, Section 509 I.P.C. criminalizes 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.

2. The learned counsel for the respondent/complainant submits that the words used by the accused have to be understood in the context in which such words were used. It is alleged that the accused made that insinuation against the complainant while she entered the Chapel/Church when there were so many other persons to hear and as such those words did intrude upon the privacy of the complainant. From the words quoted in the charge-sheet I could not see any word which would intrude upon the privacy of the complainant nor can it be said that it was intended to insult the modesty of that woman. Simply because the complainant thinks that the words uttered by the accused carried some other meaning it cannot be said that the accused can be put to trial. Where the allegations made in the first information statement/charge-sheet even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, it would be well within the jurisdiction of this Court to quash the proceedings, for otherwise the accused may have to face an unnecessary trial. Similarly, where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge then also this Court would be justified in invoking S. 482 Cr.P.C. It is true that the power under S. 482 Cr.P.C. to quash a criminal proceedings can be exercised only sparingly and only when such an exercise is justified by the fact situation of the case. It has to be exercised with greater pragmatism.

3. In [Shakson Belthissor Vs. State of Kerala and Another](#), it was held by the Apex Court that while exercising inherent jurisdiction it should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. It was held that one of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint.

4. I fail to comprehend how the substance of the charge-sheet quoted earlier would amount to words or gestures intended to insult the modesty of the complainant or that it was intended to intrude upon the privacy of the complainant. In Annexure-I which is the complaint given by the complainant it was stated that when she went to the Chapel for prayers, the accused herein insulted her in public, stating "Daisy why are you peeping through, why are you standing here; for peeping I am not doing anything else here". It is not known how the aforesaid words would attract S. 509 I.P.C. The learned counsel for the complainant would submit that the accused made those comments in front of the believers who came to the chapel for prayers and it was calculated to defame the complainant.

5. It appears there is long standing dispute with regard to the ownership and management of the chapel, cemetery etc. There were/are series of civil litigations between the two groups with regard to the ownership and management of the cemetery at Elamkulam. It is stated that there are about 22 criminal cases also pending before various criminal courts instituted by either side. Whatever that be, the question here is, whether the words allegedly used by the accused, which are seen incorporated in the complaint and in the charge-sheet would prima facie show that those words were intended to intrude upon the privacy of the complainant or that it was intended to insult the modesty of the complainant. The ingredients to attract the offence under S. 509 I.P.C. are not seen in the charge-sheet filed by the police or in the complaint given by the complainant/respondent. Learned counsel for the petitioner would submit that the essence of a woman's modesty is her sex. The alleged utterance of words by the petitioner has nothing to do with the modesty of the complainant. At no stretch of imagination, it can be said that the words allegedly uttered by the accused have got any connection with the modesty of the complainant. It was held by the Hon"ble Supreme Court in [Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another](#), :-

Since the word "modesty" has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behavior, scrupulous chastity of thought, speech and conduct. The word "modest" in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shame fast". Webster's Third new International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency" a regard for

propriety in dress, speech or conduct". In the Oxford English Dictionary (1993 Ed) the meaning of the word "modesty" is given as "womanly propriety of behavior, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

In [Aloshia Joseph Vs. Rev. Dr. Joseph Kollamparambil and Another,](#) it was held by this Court that the modesty contemplated under S. 509 is to be understood as the "womanly propriety of behavior". Even if the allegations made in the complaint and the materials collected in support of the same are uncontroverted still it cannot be said that those allegations do disclose the commission of an offence under S. 509 I.P.C. or any other offence. The continuance of the criminal proceedings against the petitioner would be an abuse of the process of court.

Hence, this Crl.M.C. is allowed. Further proceedings in C.C. 486/2006 on the file of the Judicial First Class Magistrate-II, Ernakulam are quashed.

Dated this the 7th day of March, 2014.