

HIGH COURT OF KERALA**Bench : Justice Ziyad Rahman A.A.****Date of Decision: 16 February 2024**

Criminal Miscellaneous Case No. 759 of 2016

Xavier Pollayil Petitioner/Accused**Versus**

- 1. C.H.Chandrabhanu**
- 2. State of Kerala Respondents/Defacto Complainant**

Legislation and Rules:

Sections 120-B, 500, and 34 of the Indian Penal Code (IPC).

Subject: The petition seeks to quash all proceedings in Annexure A1 complaint in C.C.No.892/2012 at the Judicial First Class Magistrate Court-1, Cherthala, alleging offences under sections 120-B and 500 r/w Section 34 of the IPC.

Headnotes:

Criminal Law – Defamation – Section 499 and 500 of the Indian Penal Code – The High Court of Kerala deliberated on whether statements made in a court of law could constitute defamation under Section 499 read with Section 500 of the IPC. The Court examined the nature of the statements made in counter-affidavits and their defamatory potential. [Para 7-8, 10]

Publication Requirement for Defamation – Considered – The Court considered whether the requirement of 'publication' for defamation was satisfied in this case, where statements were made in court pleadings and were accessible to parties involved in the legal proceedings. [Para 9]

Application of Exceptions to Section 499 IPC – Discussed – The Court discussed the relevance of the exceptions provided in Section 499 IPC to the present case, emphasizing that the determination of whether an exception applies requires an examination of evidence during trial. [Para 8]

General Statements and Specific Defamation – Analyzed – The Court analyzed whether a general statement in a legal pleading can be considered specifically defamatory towards the complainant, considering the context of the statement and its relation to the complainant's role in the legal proceedings. [Para 10]

Decision – Dismissal of Criminal Misc. Case – The High Court declined to quash the proceedings, finding that the issues raised were appropriate for trial and not for determination in a proceeding under Section 482 Cr.PC. It was held that the inherent power under Section 482 Cr.PC was not applicable at this stage. [Para 11]

Direction – Trial Court to Decide – The Court left all contentions open for the trial court to decide, emphasizing that its observations were not intended to resolve any issues between the parties but to ascertain the prima facie case for invoking the inherent powers of the High Court. [Para 11]

Referred Cases:

- Ramakrishnan v. Subbaramma Sastrigal [1986 IC 705]
- Sunil Kumar Reddy C. and Another v. State of Andhra Pradesh and Another [2022 KHC 3929]
- Srinibash Ranjan Mishra and Ors. v. State of Jharkhand and Another [2016 KHC 4416]
- Raman Namboodiri v. Govindan [1962 KLT 538]
- Atul Kumar Pandey v. Kumar Avinash [MANU/WB/0557/2020]
- Thangavelu Chettiyar v. Ponnammal [AIR 1966 Madras 363]
- Prabhakaran v. Gangadharan [2006(2) KLT 122]
- Varghese Cor Episcopa v. State of Kerala [2020(1)KHC 390]

Representing Advocates:

Petitioner: Sri. G. Priyadarsan Thampi

Respondent 1: Sri. R. Krishnakumar (Cherthala)

Respondent 2: Adv. Seetha S., Sr. Public Prosecutor

ORDER

This CrI.M.C is filed by the accused in C.C.No.892/2012 on the file of the Judicial First Class Magistrate Court-I, Cherthala for quashing all further proceedings in the said Calendar Case as against him. The said Calendar Case was registered based on a private complaint submitted by the 1st respondent alleging offences punishable under sections 120-B and 500 r/w. Section 34 of the Indian Penal Code (IPC). Annexure A1 is the complaint and cognizance thereon was taken by the learned Magistrate.

2. Initially, the complaint was submitted against two persons. However, cognizance was taken only against the 1st accused, the petitioner herein, and no cognizance was taken against the 2nd accused. The allegations made in Annexure A1 are as follows: The complainant is a practicing lawyer of Cherthala Bar with 26 years of experience and a member of a reputed family. He was a member of the Rotary Club of Cherthala town. He, along with Advocate K.Premkumar, V.R.Sangeeth and K.S.Manoj, were illegally terminated from the membership of Rotary Club of Cherthala town. Challenging the said termination, they filed a suit as plaintiffs before the Munsiff Court, Cherthala, which was numbered as O.S.No.189/2010. The 1st accused, the petitioner herein, was the Secretary of the Rotary Club at the relevant time. Along with the suit, an interlocutory application was filed seeking an interim injunction, and on the date of filing the said suit itself, the Munsiff Court passed an interim order restraining the respondent Club therein from prohibiting the participation of the plaintiffs in the meetings of the Club. Certain other I.A.s were also filed. I.A.No.1380/2010 was filed to restrain the Club from changing the venue of the meetings from its usual place of meeting. Yet another interlocutory application, as I.A.No.2767/2010, was filed for a direction to place the attendance book in the meeting hall and not to prevent the plaintiffs in the suit from signing in the attendance book. The petitioner/1st accused filed counter affidavits to I.A.No.1380/2010 and I.A.No.2767/2010, wherein certain objectionable and defamatory imputations were made against the complainant and three others. The relevant statement in the counter affidavit filed in I.A.No.1380/2010 reads as follows:
“The members of the club are so generous that even the spongers or scroungers coming for food are never denied to have a share of food to their satisfaction. However such persons are not entitled to ask for the change of venue of the meetings of the Rotary Club of Sherthallai Town.”

Similarly, in I.A.No.2767/2010, the following statements were made.

“The members of the club are so generous that even the spongers or scroungers coming for food are never denied to have a share of food to their satisfaction. However such persons are not entitled to ask for the perusal of signing of the attendance book of the meetings of Rotary Club of Sherthallai Town”

The complainant alleges that the said statements were defamatory and were made with the intention of defaming the complainant.

3. As mentioned above, the cognizance thereon was taken by the learned Magistrate as against the petitioner alone. This CrI.M.C. is filed in such circumstances challenging all further proceedings pursuant to Annexure A1 complaint.

4. Heard Sri. G. Priyadarsan Thampi, the learned counsel for the petitioner, Sri. R. Krishnakumar (Cherthala) for the 1st respondent and Smt.Seetha S., Senior Public Prosecutor for the State.

5. The main contention raised by the learned counsel for the petitioner is that the averments in Annexure A1 complaint would not attract the offence under Section 500 of IPC. According to the learned counsel, the said statements were made in a counter affidavit filed before a court of law, which were intended to protect the interest of the parties to the suit, and therefore, it would fall under the exceptions contained in Section 499 IPC. It was also contended that it was only a general statement, and since several persons were attending the dinner and fellowship without invitation, under no circumstances the said statement could be treated as one made against the complainant, the 1st respondent herein. Therefore, the locus standi of the 1st respondent to submit a complaint was also challenged. The learned counsel places reliance upon the decision rendered in **Ramakrishnan v. Subbaramma Sastrigal [1986 IC 705]**, **Sunil Kumar Reddy C. and Another v. State of Andhra Pradesh and Another [2022 KHC 3929]** and **Srinibash Ranjan Mishra and Ors. v. State of Jharkhand and Another [2016 KHC 4416]** rendered by Jharkhand High Court.

6. The learned counsel for the 1st respondent would oppose the said contention. According to him, the contentions raised by the petitioner cannot be considered in a proceeding under section 482 Cr. PC. The

questions raised are touching upon the exceptions to section 499 of IPC which can be decided only during the course of trial. The learned counsel also places reliance upon the decision rendered by this Court in **Raman Namboodiri v. Govindan [1962 KLT 538]**, the order passed in **Crl.M.C.No.534/2016** and the decision rendered by the Calcutta High Court in **Atul Kumar Pandey v. Kumar Avinash [MANU/WB/0557/2020]**.

7. I have carefully gone through the records. The basic contention raised by the learned counsel for the petitioner is that the offences alleged against the petitioner would not be attracted as the said statements were made by him before a court of law. As far as the question whether a statement made before a court of law by way of pleadings would attract the offence under section 499 r/w section 500 IPC or not is concerned, the same is already settled by various decisions rendered by the Hon'ble Supreme Court as well as this Court. As rightly pointed out by the learned counsel for the 1st respondent, in Crl.M.C No.534/2016, a learned Single Judge of this Court, after referring to the decision rendered by the Madras High Court in **Thangavelu Chettiyar v. Ponnammal [AIR 1966 Madras 363]** and the decision rendered by this Court in **Prabhakaran v. Gangadharan [2006(2) KLT 122]** has categorically held that, if the pleadings filed in a court containing defamatory statement, it amounts to publication. In the decision in **Varghese Cor Episcopa v. State of Kerala [2020(1)KHC 390]** also, it was held that the statement made in a counter affidavit filed in a writ petition before this Court may also attract the offence under section 499 IPC if it contains defamatory statement. Thus, the legal proposition is very clear as per which, merely because the statement happened to be made in a counter affidavit submitted before a court of law, that would not enable the accused to contend that the same is not a publication which attracts the offence under Section 499 r/w. Section 500 of IPC. As held in **Prabhakaran's** case (supra), this Court has categorically held that if the pleadings filed in a court contain a defamatory statement, it amounts to publication. Thus, the contention raised by the learned counsel for the petitioner in this regard is only to be rejected.

8. The next aspect relates to the application of exception to section 499 IPC. It is true that, section 499 IPC contains ten exceptions. However, the question whether the statement which is the subject matter of a complaint falls in any of the exceptions to section 499 IPC is a matter which cannot be decided in a proceeding under section 482 Cr.PC. To establish the

ingredients of the exceptions provided in the said provision, an appreciation of the evidence is to be made. The same can only be done after examining the materials adduced by either party after the trial. In **Ramakrishnan's** case (supra), which was relied on by the petitioner, of course, this Court has laid down the circumstances under which the exceptions have to be examined. However, the said decision has been taken in a CrI.RP, filed against the conviction of the accused therein after a full-fledged trial.

9. It is true that, in **Sunil Kumar Reddy's** case (supra), the Andhra Pradesh High Court held that, unless there is specific averment in the complaint to the effect that other persons had read the contents of the counter affidavit, it cannot be concluded that, there was publication of the defamatory statement which is one of the essential ingredients for attracting the offence under section 499 of IPC. However, it is to be noted in this regard that the complainant in this case was a lawyer practicing at the Cherthala Bar, and the suit was instituted in the very same Court. The pleadings alleged to have been contained were also filed in the said suit. Evidently, the copy of the said pleadings must have been served to the other parties to the proceedings. Therefore, the circumstances under which the observations made by the Andhra Pradesh High Court were completely different from that of the present case, particularly because he was a practising lawyer of the very same Bar.

10. The next contention raised by the learned counsel for the petitioner is to the effect that it was a general statement without specifically naming the 1st respondent. Therefore, under no circumstances, that could be treated as a statement aimed at the 1st respondent. However, the crucial aspect to be noticed in this regard is that the said statements were made in the counter affidavits submitted in two I.A.s, which contained the affidavits of the plaintiff, who is none other than the complainant. Evidently, it was in response to that averments, the statements were made, and therefore, the said pleadings cannot be read in isolation with the averments or prayers put forward in the respective interlocutory applications and the persons who sought the prayers therein. Therefore, the prima facie view that can be adopted is that the said statements were made against the specific averments made in the affidavit filed by the plaintiff in support of his prayer, and therefore, under normal circumstances, it can only be aimed at the plaintiff. However, it is a matter to be finally decided by the trial court after

considering the evidence to be adduced in this regard, and the said question cannot be decided at this juncture.

11. Thus, after carefully considering all the materials placed on record and hearing the contentions raised by both sides, I am of the view that the issues sought to be resolved in this CrI. M.C. are beyond the scope of a proceeding under section 482 Cr.PC as evidently these are the questions which can only be decided in a trial.

Therefore, I do not find any scope for interference in the proceedings at this stage. Accordingly, this CrI.M.C. is dismissed. However, it is clarified that none of the observations made in this order were intended to decide any of the issues between the parties. On the other hand, it was only an attempt to find out whether any prima facie case is made out by the petitioner for invoking the inherent power of this Court under section 482 Cr.PC. It is further clarified that all the contentions raised by the respective parties are left open, which shall be decided by the learned Magistrate, untrammelled by any of the observations made in this order.

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