

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 15TH DAY OF JUNE 2023 / 25TH JYAISHTA, 1945

CRL.MC NO. 631 OF 2020

AGAINST THE ORDER/JUDGMENTCC 990/2019 OF JUDICIAL

MAGISTRATE OF FIRST CLASS ,KOTTAYAM

CRIME NO.629 OF 2019 OF MANARKAD POLICE STATION

PETITIONER/S:

JAYAPRAKASH P.P.,
AGED 53 YEARS
S/O.PADMANABHAN NAIR, KAKKANATTU PARAMBIL
HOUSE, POOTHAKUZY P.O., SOUTH PAMPADY,
KOTTAYAM, PIN - 686 521.

BY ADVS.
M.P.MADHAVANKUTTY
SHRI. SHIJOY JOHN MATHEW

RESPONDENT/S:

- 1 SHEEBA REVI,
AGED 49 YEARS, W/O.PRAKASH, LEELA SADANAM
HOUSE, APARTMENT NO.II/A2, BLUBELL APARTMENTS,
KALATHIPADY, KOTTAYAM, PIN - 686 010.
- 2 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682 031.
BY ADVS.
R1 BY SRI.ADITHYA RAJEEV
SHRI.SREEDEV U
R2 BY PUBLIC PROSECUTOR SRI SANAL P RAJ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 15.06.2023, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

“CR”

ORDER

The petitioner, the sole accused in C.C.No.990 of 2019 on the file of the Judicial First Class Magistrate Court-I, Kottayam, which arises from Crime No.629 of 2019 of the Manarkad Police Station, Kottayam, seeks to quash the Final Report and all further proceedings.

2. The petitioner faces charges under Sections 354-D and 509 of the Indian Penal Code.

3. The prosecution case was initiated based on the First Information Statement lodged by respondent No.1, who was then employed as Zilla Zainik Welfare Officer at the District Office, Kottayam. The petitioner was employed as Assistant Zilla Zainik Welfare Officer in the Office.

4. The crux of the allegations in the complaint filed by respondent No.1 is as follows:-

4.1 On 29.04.2019, the petitioner was on leave. At about 10.30 am, the Office phone rang. Respondent No.1 attended the call and said hello. The petitioner was on the other side of the line. He told respondent No.1 that he had certain photographs and documents and he would file a complaint based on them. As respondent No.1 could not clearly hear what the petitioner was saying, she disconnected the call. The petitioner called again. Respondent No.1 did not respond. Then the petitioner called another Officer. The petitioner threatened him also. He repeatedly called respondent No.1 and talked to her in a rude manner. The repeated calls made by the petitioner affected the mental peace of respondent No.1 and disturbed her.

4.2 The petitioner also threatened Shri.Muraleedharan, another Officer. He questioned him why respondent No.1 did not take the phone.

5. Respondent No.1 reiterated her allegations in the statement filed before the Magistrate under Section 164 Cr.P.C.. She added that the petitioner threatened her that he would complain to the Vigilance. He threatened that he would set fire to the exchange, respondent No.1 added. The petitioner sent Whatsapp messages to her with the intent to disturb her.

6. The learned Counsel for the petitioner Sri. M.P.Madhavankutty, submitted that the ingredients of the offence of 'Stalking' as defined in Section 354-D of the Indian Penal Code are absent in the allegations levelled against the petitioner.

7. The learned Counsel for respondent No.1, per contra, contended that repeated attempts to contact a woman over the phone or in any other manner attracts the offence under Section 354-D of the Indian Penal Code. The learned Public Prosecutor supported the contentions of the learned counsel for respondent No.1.

8. Section 354-D, which defines “stalking” was introduced in the Indian Penal Code by way of the Criminal Law Amendment Act, 2013. The Criminal Law Amendment Act, 2013 was passed in the Parliament based on the report of the Committee on Amendments to Criminal Law headed by Justice J.S. Verma following ***Nirbhaya’s*** Case. Based on the report of the Committee, the Criminal Law (Amendment) Ordinance, 2013 was promulgated wherein, the offence of stalking was introduced as Section 354D, which reads thus:-

“354D(1)-Stalking : Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence of serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking:

Provided that the course of conduct will not amount to stalking if the person who pursued it shows-

(i).That it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the

responsibility of prevention and detection of crime by the state;or

(ii)that it was pursued under any law or to comply with any condition or requirement imposed by any person under any law;or

(iii)that in the particular circumstances the pursuit of the course of conduct was reasonable.

(2)Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.”

9. The word ‘person’ in the section was substituted by the word ‘woman’ and the expressions ‘watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person’ were deleted when the Criminal Law (Amendment) Act, 2013 was passed.

10. Section 354-D of the Indian Penal Code reads thus:-

“354-D. Stalking.--(1) Any man who--
(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman;
or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that--

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

11. The learned counsel for the petitioner contended that the offence of 'stalking' is attracted only when a man contacts or attempts to contact a woman to foster personal interaction repeatedly despite a clear indication of disinterest. The learned counsel contended that the intention of the legislature is to implicate those who maintain "behavioral pattern" of sexual offenders. It is

further contended that the person who commits the alleged acts should have the intention to outrage the modesty of a woman.

12. The debates in the Parliament certainly shed some light on the penal provision. The debates in the Parliament are traditionally used as external aid in resolving questions of construction. The relevant extracts of the debates in the Parliament on the Criminal Law [Amendment] Bill, 2013 are the following:-

“....this is about stalking..... A group of boys or men or an individual would follow a woman, see where she works, where she lives, what she does, which bus or which car she goes in; and that is stalking.

...The Bill has been brought with good intention of preventing acts of sexual offences on persons, and also protecting women from the lewd acts of men. But at the same time, we have to be very careful to ensure that the provisions of the Bill are not misused by the unscrupulous persons. So, there is a need to add a clause in this Bill against the misuse of provisions.”

13. The vital ingredient of the penal provision is *“to foster personal interaction despite a clear indication of disinterest”* by the woman.

14. The Oxford Advanced Learners’ Dictionary explains the meaning of the word “Foster” as:-

“to encourage the development or growth of ideas or feelings.”

15. The Advanced Learner’s Dictionary of Current English gives the following meaning to the word “Foster”:-

“have in one’s heart or mind”

16. Section 354-D was inserted in the Penal Code as a cognate offence of Section 354 which deals with assault or criminal force to a woman with the intent to outrage her modesty.

17. It is submitted by the learned counsel for the petitioner that the legislative intention was to bring in acts of men towards women with sexual feelings under the fold

of this penal provision. The learned Counsel relied on ***Singaraju Somasekhar vs. State of Telangana*** [MANU/TL/1808/2022] to substantiate his contention. In ***Singaraju*** the Telangana High Court, while constructing the penal provision 354-D of IPC held thus:-

“7.In order to attract Section 354D IPC, the contacting and attempt to contact shall be in respect of outraging the modesty of the woman. The intention here is to continue the relation with the de-facto complainant in spite of clear indication of her disinterest. Here both the petitioner and the de-facto complainant are at loggerheads. The petitioner has been calling the de-facto complainant in order to abuse, threaten etc., and not for any other purpose. Therefore, on perusal of the entire charge sheet, there are no ingredients, which attract the offence under Section 354D IPC. Therefore, the offence under Section 354DIPC cannot be fastened against the petitioner.”

18. In order to attract Section 354-D(1)(i) of IPC, the prosecution has to establish that a man followed a woman and contacted or attempted to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman. The Section takes in acts revealing sexual interest or lewd acts of man. Any act

whereby a man willfully contacts or attempts to contact a woman in such a manner as to damage the virtue that attaches to a female owing to her gender attracts the offence of Stalking.

19. A threat or abuse by a man towards a woman who is at loggerheads with him, as in the present case, would not attract the offence of stalking. The concern of the Legislature regarding the possibility of misuse of the penal provision is also relevant here.

20. In the given case, it is difficult to conclude that the petitioner contacted respondent No.1 with the intent to foster personal interaction. Therefore, this Court comes to the conclusion that the allegations do not reveal the ingredients of the offence under Section 354-D of IPC.

21. The petitioner also faces a charge under Section 509 of IPC. Section 509 reads thus:-

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, 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.

22. In order to attract the offence under Section 509 of IPC, the prosecution has to prima facie establish that the petitioner intended to insult the modesty of the woman in question.

23. Relying on ***Basheer v. State of Kerala*** (2014 KHC 5026) this Court in ***Ramesh v. Sub Inspector of Police*** [2021 (1) KHC 339] held thus:-

17. It is well settled by the rulings of this Court as in the case in *Basheer v. State of Kerala* [2014 KHC 5026:2014 (4) KLT SN 65 (C.No.81)] that, “mere insult will not attract Sec.509 of the IPC and for a prosecution under Sec.509 to lie there must be a definite allegation of insult to the modesty of women or intrusion to the modesty of women or intrusion to the privacy of women. So, the allegations must involve modesty of women or privacy of women and mere insult or false allegation will not attract the prosecution under Sec.509 of the IPC”. So also it has been held in decisions as in *State of Kerala v. Hamsa* [1988 KHC 382:1988 (2) KLT 89] that, “the test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and

keep in view all circumstances concerning her, such as, her station and way of life and known notions of modesty of such a woman”.

24. In the case on hand, the allegations levelled by respondent No.1 do not reveal the offence under Section 509 of IPC.

25. On the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 Cr.P.C., the Apex Court in ***State of Haryana and Others v. Bhajan Lal and Others*** (1992 Supp. (1) SCC 335) held thus:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible

guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, 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.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

26. The present case is fully covered by categories 1 and 3, as enumerated in ***Bhajan Lal***. The criminal proceedings consequent to the final report in C.C.No.990 of 2019 on the file of Judicial First Class Magistrate-I, Kottayam stand quashed.

The Crl.M.C. is allowed as above.

Sd/-
K. BABU, JUDGE

kkj

APPENDIX OF CRL.MC 631/2020

PETITIONER ANNEXURES

- ANNEXURE I CERTIFIED COPY OF THE FIRST
INFORMATION REPORT BEARING NO.629/2019
DATED 17/05/2019 SUBMITTED BY THE
MANARKAD POLICE STATION BEFORE THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-
I, KOTTAYAM.
- ANNEXURE II THE CERTIFIED COPY OF THE FINAL REPORT
BEARING FINAL REPORT NO.1031 OF 2019
DATED 10/08/2019 SUBMITTED BEFORE THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-
I, KOTTAYAM.