

(1998) 06 KL CK 0055
In the High Court Of Kerala
Case No : Criminal M.C. No. 1694 of 1996

Sasikumar B. Menon

APPELLANT

Vs

S. Vijayan and Another

RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 199
Official Secrets Act, 1923 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 499, 500

Citation : (1998) 2 ALT(Cri) 458 : (1998) CriLJ 3973 : (1998) 3 ILR (Ker) 837 : (1998) 4 RCR(Criminal) 156

Hon'ble Judges : P.V. Narayana Nambiar, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nair and B. Raman Pillai, for the Appellant; C.P. Udaya Bhanu, for No. 1 and S.U. Nazar, Public Prosecutor for No. 2, for the Respondent

Final Decision : Allowed

Judgement

P.V. Narayana Nambiar, J.—A complaint was filed by the first respondent against the petitioner and three others alleging offence punishable u/s 500 read with Section 34, I.P.C. which was taken on file by the Additional Chief Judicial Magistrate's Court, Ernakulam as C.C.No. 732 of 1996 and process was issued to the accused. The petitioner who is the first accused prays for quashing the proceedings pending against him.

2. Petitioner is the President of Asianet Communications Limited which is a company incorporated under the Companies Act. The allegations in the complaint, a copy of which is Annexure I, are briefly shown below :

3. The complainant is employed as the Regional Superintendent, Narcotic Control Bureau, Trivandrum, He was previously working as Special Branch, Inspector, Trivandrum City. At that time, one Mariyam Rasheeda, a Maldives national was found staying in India even after the date of expiry of her visa and hence, Crime

No. 225 of 1996 of Vanchiyoor Police Station was registered against her under the Foreigners Act and Rules. Thereafter Crime No. 246 of 1996 was registered by the Vanchiyoor police under Sections 3 and 4 of the Official Secrets Act. Subsequently, a special team headed by Mr. Siby Mathew D.I.G. of Police, conducted investigation in the above mentioned cases. Later, investigation was taken over by the Central Bureau of Investigation who after completing the investigation, filed a refer report on the ground that none of the offences alleged against the accused were revealed during investigation. Before the filing of the refer report by the Central Bureau of Investigation, the first accused conducted an interview of accused 2 to 4 and broadcasted the same through the cable T.V. Network of Asianet in which it is alleged that accused 2 to 4 made defamatory imputations with the deliberate intention of harming the reputation of the Kerala Police including the complainant. The first accused broadcasted the interview without ascertaining the truth of the imputations from the complainant. The imputations made by accused 2 to 4 and broadcasted by the first accused which are alleged to be defamatory are extracted hereunder :

A policeman had foisted something which does not contain even 1 % of truth which was later entrusted to a journalist.

In order to prevent any mark on the hip, a wooden plank was kept and assaulted by beating thereon.

The reputation of the Kerala Police in general was affected due to the publication. Hence, it is alleged that the accused committed offence punishable under Sections 500 and 34, I.P.C.

4. After receipt of summons, the petitioner appeared through counsel and sought for dropping the proceedings as, according to him, cognizance should not have been taken by the Court as the complaint does not disclose an offence and there are legal infirmities in taking cognizance of the same. Arguments were heard and the Court below rejected the plea of the accused to drop the proceedings as per Annexure II order which is also challenged in this application

5. Counsel for the petitioner argued that the Court below should not have taken cognizance of the offence alleged in the complaint as the complainant cannot be said to be aggrieved so as to maintain an action for defamation.

6. It is not stated in the complaint that the publication contains an averment that it is the complainant who assaulted accused 2 to 4 or that it was the complainant who investigated the case. It is also not stated in the complaint that the complainant is one of the officers included in the special investigation team. So, it cannot be said that he is personally aggrieved even if the words which are alleged to be defamatory will attract the definition of defamation contained in Section 499, I.P.C.

7. As per Section 199, Cr.P.C, no Court shall take cognizance of an offence punishable under Chapter XXI, I.P.C. except upon a complaint made by a person

aggrieved by the offence. Section 500 comes under Chapter XXI. Hence, it is to be considered whether the complainant is an aggrieved person. While considering this point, Explanation 2 to Section 499, I.P.C. also is to be considered. Explanation 2 to Section 499, I.P.C. reads thus :

It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

It is alleged in the complaint that the Kerala Police has been defamed. The complainant is a member of the Kerala Police. So, it must be decided whether the Kerala Police could be treated as an association or collection of persons, as provided under Explanation 2 to Section 499, I.P.C.

8. In order to attract Explanation 2 to Section 499, I.P.C, an association or collection of persons must be a definite and determinable body. Then only imputation could be said to relate to its members or components. The Kerala Police is not a definite or determinable body, but it is an ever changing body. Members of the police force are not static. Police personals retire and new persons are enrolled. The character and composition of the Kerala Police changes every now and then. So, it cannot be said that the Kerala Police is a definite and determinable body. To come to such a conclusion, the decisions reported in M.P. Narayana Pillai and Others Vs. M.P. Chacko and Another, and P. Karunakaran and Others Vs. Sri. C. Jayasooryan and Others, have come to my aid. In the decision reported in M.P. Narayana Pillai and Others Vs. M.P. Chacko and Another, this Court considered whether publication of imputation made against the Syrian Christian community will affect a member of the community. This Court held that there cannot be defamation against the community as such and the community as such may not have a reputation, but the reputation will only be of individual members of the community. Identity of the collection of the people will have to be established in relation to the defamatory imputations. Where persons in the association or collection as such are ascertainable and the words or imputations are shown to be against all the persons in the association or collection as such, any one of the members could make a complaint. As the imputations made was against the Syrian Christian community as a whole, the complaint filed by a member of that community and who was not a person who was individually affected by the imputations was found to be not maintainable. Similar is the decision reported in P. Karunakaran and Others Vs. Sri. C. Jayasooryan and Others, where the allegation was against the Indian National Congress (I) and the complaint filed by a member of the party against whom there was no individual accusation was found to be not maintainable. In both the cases, the complaint was quashed by this Court.

9. In the light of what is stated above, the complaint is not maintainable as the complainant is not a person affected by the so-called defamatory statement.

10. Moreover, apart from the words extracted in paragraph 3 of the order, the complaint does not contain any statement which can be said to be defamatory.

The words, "a policeman had foisted something which does not contain even 1 % of truth which was later entrusted to a journalist", will not be per se defamatory at all. It is not the case of the complainant that the policeman referred to therein is himself. It might be any member of the police force. Hence, it cannot be said that the petitioner can maintain an action for defamation. It is not known under what context the words "in order to prevent any mark on the hip, a wooden plank was kept and assaulted by beating thereon" has been made by accused 2 to 4. It is also not known whether the words refer to the police at all. At any rate, there is no reference in the complaint as to the person who inflicted injury on the accused. It is a matter for guess. The material broadcasted has not been produced in its entirety. The cassette which contains the broadcasted material should have been produced in Court by the complainant along with the complaint in order to understand what the defamatory words are and under what context such words were used in the interview. The petitioner is called upon to answer the accusations in the complaint. Absence of any valid allegations in the complaint cannot be made good by evidence during trial. Cause of action is the allegation in the complaint. What is required further is only to adduce evidence in support of the allegations. The accused is entitled to know what are the allegations raised against them. For that purpose, they cannot be asked to look into the evidence, oral or documentary. Absence of extractions of the words which constitute defamation in the complaint or production of the defamatory material in its entirety is a defect in the complaint which cannot be cured at a subsequent stage in the course of trial. Hence, it could very well be said that the accused will be prejudiced in his defence. So, the complaint should not have been taken cognizance of for that reason also.

11. The petitioner will be subjected to extreme harassment if he is constrained to undergo the ordeal of criminal trial based on the allegations contained in Annexure 1. There is not even a remote possibility in the prosecution ending in his conviction. In the circumstances, there is no necessity of directing him to face trial. It is the duty of this Court to prevent abuse of the process of the Court. Hence, the complaint cannot be permitted to be proceeded with. Interest of justice also demands quashing of the complaint. I also take note of the fact that the second accused who faced trial has since been acquitted.

In the light of what is stated above, the proceedings in C.C. No. 732 of 1996 on the file of the Additional Chief Judicial Magistrate's Court, Ernakulam as against the petitioner will stand quashed. The CrI. M.C. is allowed as above.