

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 20TH DAY OF DECEMBER 2022 / 29TH AGRAHAYANA,
1944

CRL.MC NO. 2322 OF 2018

CRIME NO.697/2017 OF Vadanappally Police Station, Thrissur
CC 2255/2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS CHAVAKKAD

PETITIONER:

DR.K.K.RAMACHANDRAN, AGED 61 YEARS
S/O. KRISHNA PILLAI, PEDIATRICIAN, T.M. HOSPITAL,
CHAVAKKAD P.O., THRISSUR DISTRICT, PIN - 680 506.

BY ADV SRI.C.P.UDAYABHANU

RESPONDENTS/DEFACTO COMPLAINANT:

1 SUB INSPECTOR OF POLICE
VADANAPPALLY POLICE STATION, VADANAPPALLY P.O.,
TRISSUR DISTRICT, PIN - 680 614.

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SRI. SANGEETHA RAJ, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20.12.2022, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER

Dated this the 20th day of December, 2022

This Crl.M.C has been filed to quash all further proceedings in C.C.No.2255/2017 on the file of the Judicial First Class Magistrate Court, Chavakkad (for short 'the court below').

2. The petitioner is the accused. The 2nd respondent is the defacto complainant. The offences alleged are punishable under Sections 294(b) and 354 A of IPC.

3. The petitioner is a Paediatrician practicing at T.M. Hospital, Chavakkad. The child of the 2nd respondent was a patient of the petitioner. The alleged incident was taken place on 7.6.2017 at about 6 pm at the hospital when the 2nd respondent brought her child to the petitioner for treatment. It is alleged that, while treating the child, the petitioner misbehaved with the 2nd respondent by showing obscene action with his finger and uttering obscene words against her.

4. I have heard Sri. Navneeth N. Nath, the learned counsel for the petitioner and Sri. Sangeetha Raj, the learned

Public Prosecutor. Even though notice has been served to the 2nd respondent, there is no appearance.

5. The learned counsel for the petitioner submitted that even if the entire allegations in the FIS together with the materials collected during investigation are believed in its entirety, no offence under Section 294(b) and 354 A of IPC are attracted.

6. A reading of the FIS would show that the circumcision of the son of the 2nd respondent was done at T.M. Hospital on 2.6.2017 by one Dr. Mahin. Since the child developed bleeding from his penis, the 2nd respondent took the child to the hospital on 7.6.2017 at 6 pm. The case of the 2nd respondent is that, the petitioner attended the child at his consulting room and during examination, when the child passed urine, the petitioner got angry and showered abusive words against her which according to her outraged her modesty.

7. In order to attract Section 294(b) of IPC, the following two ingredients are to be satisfied. (i) The offender has sung, recited or uttered any obscene song or word in or near

any public place and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered is not in or near any public place or that it caused no annoyance to others, no offence is committed.

8. Admittedly, the place of occurrence is the consulting room of the petitioner at the T.M. Hospital, Chavakkad. It can never be termed as a public place or near public place. That apart, in order to satisfy the definition of obscenity to attract Section 294(b) of IPC, the words uttered must be capable of arousing sexually impure thoughts in the minds of its hearers. [See **Sangeetha Lakshmana v. State of Kerala** (2008 (2) KLT 745)]. There is no case for the prosecution that the words allegedly uttered by the petitioner aroused sexually impure thoughts in the minds of the hearers. In these circumstances, I am of the view that the basic ingredients of Section 294(b) of IPC are not attracted.

9. Section 354A of IPC deals with sexual harassment and punishment for sexual harassment. It reads as follows:

"354A. Sexual harassment and punishment for

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sexual harassment(1) A man committing any of the following acts--

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment."

A reading of the FIS would show that none of the above ingredients are attracted. Hence, no purpose will be served in proceeding further against the petitioner. Accordingly, all further proceedings in C.C.No.2255/2017 on the file of the court below is hereby quashed. Cr1.M.C is allowed.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

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APPENDIX OF CRL.MC 2322/2018

PETITIONER ANNEXURES

- ANNEXURE 1 CERTIFIED COPY OF THE FIR IN CRIME NO.
697/2017 DATED 08.06.2017 OF
VADANAPPALLY POLICE STATION.
- ANNEXURE 2 CERTIFIED COPY OF THE SCENE MAHASER
DATED 09.06.2017 IN CRIME NO.697/2017.
- ANNEXURE 3 CERTIFIED COPY OF THE FINAL REPORT IN
C.C.2255/2017 DATED
- ANNEXURE 4 TRUE COPY OF THE CIRCULAR NO.
77304/SSB3/2007/HOME DATED 16.06.2008.