

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 08TH DAY OF JANUARY 2020 / 18TH POUSHA, 1941

Cr1.MC.No.6794 OF 2019(H)

IN CONNECTION WITH CC 119/2019 OF CHIEF JUDICIAL MAGISTRATE  
COURT, ERNAKULAM

PETITIONER/ACCUSED:

M.K.VARGHESE COR EPISCOPA  
AGED 58 YEARS  
S/O. M.J. KOSHI, NOW WORKING AS VICAR, ST. MARYS  
ORTHODOX CHURCH, KOIPALLY, KAYAMKULAM, RESIDING AT  
MUTHALAVANAPARAMBIL, KOLLAKADAVU P.O, MAVELIKKARA.

BY ADVS.  
SRI.K.R.VINOD  
SMT.M.S.LETHA  
KUM.K.S.SREEREKHA  
SRI.NABIL KHADER

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, KOCHI-682 031
- 2 PAPPACHAN PHILIPPOSE,  
AGED 64 YEARS  
S/O. T. PAPPACHAN, C/O. HOTEL GRAND SEASON,  
CHITTOOR ROAD, ERNAKULAM, PIN-682 016

SMT.V.SREEJA.P.P

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
07.11.2019, THE COURT ON 08.01.2020 PASSED THE FOLLOWING:

**"CR"**

**R.NARAYANA PISHARADI, J**

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Crl.M.C.No.6794 of 2019

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Dated this the 8<sup>th</sup> day of January, 2020

**ORDER**

The petitioner is the sole accused in the case C.C.No.119/2019 on the file of the Court of the Chief Judicial Magistrate, Ernakulam.

2. The aforesaid case is one instituted upon the complaint filed against the petitioner by the second respondent.

3. According to the petitioner, he is accused of committing an offence punishable under Section 500 I.P.C. However, the petitioner has not produced copy of the order passed by the learned Magistrate taking cognizance of the offences on the complaint filed against him by the second respondent (hereinafter referred to as 'the complainant').

4. Annexure-A1 is the copy of the complaint filed against the petitioner. The material averments in Annexure-A1 complaint

are as follows: The accused filed W.P.(C) No.12448/2018 before this Court seeking police protection against certain persons who were accused in the case which was registered as Crime No.472/2018 of Nooranad police station. In the aforesaid writ petition, the complainant was arrayed as the seventh respondent. There were various allegations and imputations made against the complainant in the aforesaid writ petition which are extracted in the complaint. Such statements made about the complainant in the writ petition filed by the accused are defamatory and the accused has committed an offence punishable under Section 500 I.P.C. On 09.04.2018, the accused made a visit to the hotel in which the complainant was residing. The accused met the Manager of the hotel and made statements defamatory to the complainant to him in front of the staff and the customers of the hotel. The accused told the Manager of the hotel that the complainant is the kingpin who is arranging contract killers. Such imputation was made by the accused intentionally with the knowledge that the goodwill and reputation of the complainant would be put to danger. The accused has caused irreparable

injury to the prestige and reputation of the complainant by making the defamatory statements.

5. This petition is filed under Section 482 Cr.P.C for quashing Annexure-A1 complaint and the proceedings initiated against the petitioner pursuant to that complaint.

6. Notice was served on the second respondent but he has not chosen to make appearance in this petition. Heard learned counsel for the petitioner.

7. Learned counsel for the petitioner contended that the averments in Annexure-A1 complaint do not attract the offence punishable under Section 500 I.P.C. Learned counsel for the petitioner also contended that the averments and the statements in the writ petition filed by the petitioner against the complainant enjoy absolute privilege and on the basis of those statements, no complaint for an offence punishable under Section 500 I.P.C is maintainable.

8. Section 499 I.P.C states that, whoever, by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning

any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said to defame that person. Four explanations and ten exceptions are also provided to this provision.

9. Under Section 499 I.P.C, in order that an offence of defamation may be committed, there must be making or publication of any imputation concerning any person by words either spoken or intended to be read, or by signs or by visible representations, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. To constitute the offence of defamation there must therefore be making or publication of an imputation concerning any person and the making or publication must be with intent to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. Unless there is publication there can be no commission of an offence of defamation.

10. The writ petition filed by the petitioner against the complainant contained a statement that, the persons who were

accused in the case registered as Crime No.472/2018 of Nooranad police station, are the hired goons of the complainant. The writ petition also contained a statement that the crime committed which led to the registration of Crime No.472/2018 of Nooranad police station is the handwork of the complainant and that respondents 8 to 10 in the writ petition are the contract killers hired by the complainant. Prima facie, these statements in the writ petition filed by the petitioner, are defamatory to the complainant.

11. If the pleadings filed in the court contain defamatory statements, it amounts to publication (See **Thangavelu Chettiar v. Ponnammal : AIR 1966 Mad 363**). Once a statement is filed in a court of law, it can be considered as published (See **Prabhakaran v. Gangadharan : 2006 (2) KLT 122**).

12. There is no merit in the contention of the learned counsel for the petitioner that the statements made by the petitioner in the writ petition filed before this Court enjoy absolute privilege. In **Shybimon v. Haridas : 2010 (2) KHC**

**607: 2010 (2) KLT 158**, it has been held as follows:

*"If a party to a judicial proceeding is prosecuted for the criminal offence of defamation in respect of a statement made in such judicial proceeding either on oath or otherwise, his criminal liability must be determined by reference to the provisions of Section 499 IPC alone. The English common law doctrine of absolute privilege can be set up as a defence only in a suit for damages under the Law of Torts. No such privilege is recognized by the Indian Penal Code beyond the limits of the exceptions embodied in Section 499 of the Indian Penal Code. The said provision together with its exceptions forms a complete code in itself with regard to the criminal liability of a person accused of the offence of defamation. Every defamatory statement not coming within any of the 10 Exceptions to Section 499 IPC is punishable under Section 500 IPC. The Court cannot engraft thereupon any further exceptions derived from the common law of England or based on grounds of public policy".*

13. The privilege defined by the exceptions to Section 499 of the Indian Penal Code must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be

had to the English Common Law to add new grounds of exception to those contained in the statute (See **Tiruvengada Mudali v. Tripurasundari Ammal: AIR 1926 Mad 906**). If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Section 499 I.P.C and the court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege (See **Satis Chandra Ckkrabarti v Ram Dayal : AIR 1921 Cal 1**).

14. The decision in **Tiruvengada Mudali** (supra) has been referred to by the Supreme Court in **M.C. Verghese v. T.J. Ponnann : AIR 1970 SC 1876** and it has been held as follows:

*"In Thiruvengadda Mudali v. Tripurasundari Ammal, ILR 49 Madras 728 a Full Bench of the Madras High Court observed that the exceptions to Section 499 I.P.C must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be had to the English common law to add new grounds of exception to those*



*contained in the statute. A person making libellous statements in his complaint filed in court is not absolutely protected in a criminal proceeding for defamation, for under the Eighth Exception and the illustration to Section 499 the statements are privileged only when they are made in good faith. There is therefore authority for the proposition that in determining the criminality of an act under the Indian Penal Code the courts will not extend the scope of special exceptions by resorting to the rule peculiar to English common law”.*

15. Reliance on the decision in **Gopalankutty Nair v. Sankunny Ezhuthassan : 1971 KLT 393** made by the learned counsel for the petitioner to claim absolute immunity from prosecution for defamation in respect of the statements made by the petitioner in the writ petition, on the ground that they are statements made in a judicial proceedings, is misplaced. The aforesaid decision was rendered in considering the maintainability of a suit filed for realisation of damages for defamation.

16. The decision of the Supreme Court in **Abdul Rehman v. Aneesh-ul-HaK : (2011) 10 SCC 696** also does not help the petitioner to show that the complaint filed against him is not

maintainable. It was a case in which the offences punishable under Sections 211 and 500 I.P.C were alleged against the accused. In that case, the Apex Court considered the applicability of the bar under Section 195 Cr.P.C in respect of the offence punishable under Section 211 I.P.C. The Apex Court held that the bar under Section 195 Cr.P.C would apply to taking cognizance of an offence punishable under Section 211 I.P.C committed in relation to a judicial proceedings and the Magistrate cannot take cognizance of that offence on the basis of a private complaint. It is pertinent to note that the Apex Court gave liberty to the complainant in that case to proceed with the complaint so far as the same related to commission of an offence punishable under Section 500 I.P.C.

17. There is yet another aspect which requires consideration. Annexure-A1 complaint also contains averments regarding the defamatory statement allegedly made by the petitioner about the complainant when the petitioner visited the hotel in which the complainant was residing. There is a specific allegation in the complaint that the petitioner told the Manager of

the hotel that the complainant is the kingpin who is arranging contract killers and that such statement was made by him in front of the staff and the customers of the hotel. The Manager of the hotel is a witness cited in the complaint. The aforesaid words, allegedly spoken to by the petitioner to the Manager of the hotel, are, prima facie, defamatory to the complainant.

18. Whether the petitioner is entitled to get the benefit of any of the exceptions provided to Section 499 I.P.C, whether he had made the statements in the writ petition in good faith for protection of his interest etc. are matters which cannot be decided by this Court in this petition filed under Section 482 Cr.P.C. Ordinarily, the question as to whether the statement in a given case falls under any of the ten exceptions to Section 499 I.P.C will have to be decided only after trial and the burden to bring the libel or slander under any of those exceptions is, by virtue of Section 105 of the Indian Evidence Act, on the accused.

19. The Ninth Exception to Section 499 I.P.C provides that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for

the protection of the interests of the person making it, or of any other person or for the public good. The Ninth Exception deals with statement made for the protection of the interest of the person making it. The ingredients of the Ninth Exception are, first that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it.

20. As noticed earlier, the question whether the petitioner had made the imputations against the complainant in the writ petition in good faith for the protection of his interest is a matter which cannot be decided in a petition filed under Section 482 Cr.P.C (See **Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi :(1996) 6 SCC 263**). It is needless to state that the question of applicability of the Exceptions to Section 499 I.P.C as well as all other defences that may be available to the accused will have to be gone into during the trial of the case (See **Balraj Khanna v. Moti Ram : AIR 1971 SC 1389** and **Jeffrey J.**

**Diermeier v. State of West Bengal : (2010) 6 SCC 243).**

21. The result of the discussion above is that the prayer made by the petitioner for quashing Annexure-A1 complaint and the criminal proceedings initiated against him by the complainant cannot be allowed.

Consequently, the petition is dismissed.

(sd/-)

**R.NARAYANA PISHARADI, JUDGE**

jsr/04/01/2010

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- ANNEXURE A1**                      **THE CERTIFIED COPY OF THE COMPLAINT  
FILED BY THE 2ND RESPONDENT BEFORE THE  
CHIEF JUDICIAL MAGISTRATE COURT,  
ERNAKULAM THAT WAS TAKEN IN FILES AS CC  
NO. 119/2019**
- ANNEXURE A2**                      **THE COPY OF THE WPC NO. 12448/2018**
- ANNEXURE A3**                      **THE COPY OF THE REPLY NOTICE SENT BY  
THE PETITIONER.**

**RESPONDENTS' EXHIBITS: NIL**

**TRUE COPY**

**PS TO JUDGE**