

Crl.M.C.No. 4741 of 2019



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 28<sup>TH</sup> DAY OF MAY 2025 / 7TH JYAISHTA, 1947

CRL.MC NO. 4741 OF 2019

CRIME NO.211/2019 OF MEDICAL COLLEGE POLICE STATION,  
THIRUVANANTHAPURAM

TO QUASH ANNEXURE A1 FINAL REPORT AND ALL FURTHER PROCEEDINGS  
PENDING AS C.C.NO.281 OF 2019 OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE COURT, THIRUVANANTHAPURAM

PETITIONERS/ACCUSED NOS. 2 AND 3:

- 1 DIPIN VIDYADHARAN  
AGED 38 YEARS, S/O.VIDYADHARAN,  
LV SADANAM, MULLOOR.P.O.,  
VIZHINJAM, THIRUVANANTHAPURAM
- 2 ANIL R.G.  
AGED 44 YEARS, S/O.RAVEENDRAN NAIR,  
GEETHA NIVAS, KUDAPPANAKKUNNU.P.O.,  
PEROORKADA, THIRUVANANTHAPURAM.

BY ADVS.  
ARUN.B.VARGHESE  
SRI.R.SANJAY SANKAR

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 THE STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM
- 2 RATHEESH KUMAR @ JAYESH  
AGED 35 YEARS, S/O.JAYAKUMAR,  
TC 1/146, PUTHENVEETIL HOUSE,  
CHERUVAYKAL VILLAGE, KALIYILKONAM,  
THIRUVANANTHAPURAM 695011

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BY ADVS.  
SRI.SALIM V.S.  
SMT.K.S.HASEENA  
SRI.SANGEETHA RAJ.N.R-PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
28.05.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**"CR"**

## **ORDER**

This Crl.M.C. has been filed under Section 482 of Cr.P.C to quash Annexure A1 final report and all further proceedings in C.C.No.281 of 2019 on the files of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram (for short, 'the trial court').

2. The petitioners are accused Nos. 2 and 3. They face indictment for the offences under Sections 120(o) of the Kerala Police Act, 2011 (for short, 'KP Act') and Section 43 r/w 66 of the Information Technology Act, 2000 (for short, 'the IT Act') on the allegation that they posted a message in a WhatsApp group defaming and insulting the Chief Minister and other Ministers of Kerala.

3. The 1<sup>st</sup> accused, the petitioners and the 2<sup>nd</sup> respondent are the members of an education society named SAT Health Education Society (SATHHESH) in Medical College

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Hospital, Thiruvananthapuram. The members of SATHHESH have formed a WhatsApp group, namely "SATHHES PLANET". The 1<sup>st</sup> accused is the administrator; the petitioners and the 2<sup>nd</sup> respondent are the members of the said WhatsApp group.

4. The Medical College Police registered a crime against the 1<sup>st</sup> accused and the petitioners alleging offence punishable under Section 120(o) of KP Act based on the complaint given by the Chairman of SATHHESH to the Chief Minister. Annexure A1/15 is the FIR. After investigation, final report was filed before the trial court, incorporating the offence under Section 43 r/w 66 of the IT Act as well, along with Section 120(o) of the KP Act.

5. The prosecution allegation is that the petitioners and the 1<sup>st</sup> accused repeatedly posted messages in the above-mentioned WhatsApp group, which are derogatory and insulting to the Kerala Chief Minister and other Ministers before 26.01.2019

6. The petitioners seek to quash Annexure A1 final

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report and all further proceedings in C.C.No.281 of 2019 on the ground that the allegations in the final report do not constitute the ingredients to attract the offences alleged.

7. I have heard Sri.Arun B. Varghese, the learned counsel for the petitioners, Sri.Salim.V.S., the learned counsel for the 2<sup>nd</sup> respondent and Sri.Sangeetha Raj N.R., the learned Public Prosecutor.

8. The learned counsel for the petitioners submitted that even if the entire allegations in the final report are believed at their face value and accepted in their entirety, they do not *prima facie* constitute an offence or make out any case against the accused. Per contra, the learned counsel for the 2<sup>nd</sup> respondent and the learned Public Prosecutor submitted that the FIR as well as the final report disclose serious allegations, and it is impermissible to quash criminal proceedings under Section 482 of Cr.P.C. when there are serious triable issues. The truthfulness and falsity of allegations are questions of fact and matters of evidence to

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be considered at the trial and cannot be prejudged at this stage, submitted the counsel.

9. As stated already, the allegation in the final report against the petitioners, in short, is that, they, as members of the WhatsApp group, namely 'SATHHES PLANET', posted repeated messages which are derogatory and insulting to the Kerala Chief Minister and other Ministers. The petitioners do not dispute the allegation that they had posted messages concerning the Kerala Chief Minister and other Ministers in the WhatsApp group. Their case is that by posting so, no offence is attracted. Initially, the offence under Section 120(o) of the KP Act alone was charged. Later, in the final report, the offence under Section 43 r/w 66 of the IT Act was also incorporated.

10. Section 120 of the KP Act deals with the penalty for causing nuisance and violation of public order. The heading of the said section itself shows that it deals with causing nuisance and violation of public order. Section 120(o) reads

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thus:

***“120. Penalty for causing nuisance and violation of public order.—***

If any person,—

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*(o) causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger”*

A reading of the above provision makes it clear that to attract the offence under Section 120(o) of the KP Act, a person should cause a nuisance of himself to any other person through a means of communication. The allegations in the FIR do not indicate that the petitioner caused a nuisance of himself to any other person by posting the impugned messages in the WhatsApp group. In the final report, altogether six witnesses are cited. CWs 1 to 4 are the members of the WhatsApp group, who complained against the petitioners and the 1<sup>st</sup> accused. CWs 5 and 6 are the police officers. The statements of CWs 1 to 4 recorded under Section 161 of Cr.P.C. have been produced. A perusal of the

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said statements would show that none of them has a case that the posting of messages or forwarding of messages by the petitioners has caused nuisance to the complainant or any other person. In short, neither in the FIR, nor in the statement of the witnesses, nor in the final report, is there any specific assertion that the petitioners caused any nuisance to the complainant or any other person. The only allegation is that the messages are derogatory and defamatory against the Kerala Chief Minister and other Ministers. The said allegations are not sufficient to attract the ingredients of Section 120(o) of the KP Act.

11. Section 43 of the IT Act deals with penalties and compensation for damage to computer systems, etc. This section basically provides for civil liability. Compensation can be claimed before an Adjudication Officer appointed under Section 46, if any of the acts listed under Section 43 have been committed. Section 66, on the other hand, addresses criminal liability, specifying punishment for those who commit

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offences described in Section 43 with dishonest or fraudulent intent. Specifically, Section 43 outlines penalties for:

- Unauthorized access: Accessing, securing access to, or causing access to a computer, computer system, or network without permission from the owner or authorized person.
- Unauthorized data handling: Downloading, copying, or extracting data, computer databases, or information from a computer system without permission.
- Computer contamination: Introducing or causing the introduction of computer viruses or contaminants.
- Damage to systems: Damaging or causing damage to computer systems, data, or programs.
- Disruption: Disrupting or causing disruption to a computer system or network.
- Denial of access: Denying or causing the denial of access to a computer system by any means.
- Violation of confidentiality: Hacking, altering, deleting,

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or adding data or other programs in a computer system.

To trigger a penalty under Section 43 of the IT Act, accessing, downloading, introducing virus, damaging the computer, computer system or network data, creating disruption, denying access, destroying or deleting the information, stealing, concealing or altering the computer source code by a person without permission of the owner in charge of the computer, computer system or computer network must be established. If someone dishonestly or fraudulently engages in any of the acts outlined in Section 43 of the IT Act, offence under Section 66 of the IT Act gets attracted and they can be punished for the said offence. Thus, the offence under Section 43 read with Section 66 of the IT Act only contemplates a situation where someone dishonestly or fraudulently does any act under Section 43 of the IT Act.

12. I fail to understand how Section 43 read with Section 66 of the IT Act is attracted in this case. As stated

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already, Section 43 essentially deals with the act of causing damage to the computer or computer system. There is no allegation at all that the petitioners caused damage to or destroyed the computer or computer system. There is absolutely no allegation that the petitioners engaged in any of the acts outlined in Section 43.

13. The upshot of the above discussion is that even if the entire allegations in Annexure A1 final report together with the materials collected during investigation which form part of the final report are believed in its entirety, no offence under Section 120(o) of the KP Act or Section 43 r/w 66 of IT Act is made out against the petitioners. It is trite that where the allegations in the FIR or complaint and the evidence collected in support of the same during investigation do not disclose the commission of any offence or make out a case against the accused, the High Court can exercise the wholesome power under Section 482 of Cr.P.C. to quash the proceedings.

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14. For the aforementioned reasons, no useful purpose will be served by allowing the criminal prosecution against the petitioners to continue and hence, Annexure A1 final report and all further proceedings in C.C.No. 281 of 2019 on the files of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram against the petitioners are hereby quashed.

The Crl.M.C.is allowed.

Sd/-  
**DR. KAUSER EDAPPAGATH**  
**JUDGE**

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APPENDIX OF CRL.MC 4741/2019

PETITIONER ANNEXURES

ANNEXURE A1    CERTIFIED COPY OF THE FINAL REPORT IN CC  
NO.281/19 PENDING ON THE FILES OF ADDITIONAL  
CHIEF JUDICIAL MAGISTRATE COURT,  
THIRUVANANTHAPURAM