



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 11TH DAY OF NOVEMBER 2024 / 20TH KARTHIKA, 1946

CRL.MC NO. 8581 OF 2024

CRIME NO.1099/2023 OF Chathannoor Police Station, Kollam

CC NO.944 OF 2023 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT (TEMP), PARAVUR

PETITIONER/1ST ACCUSED:

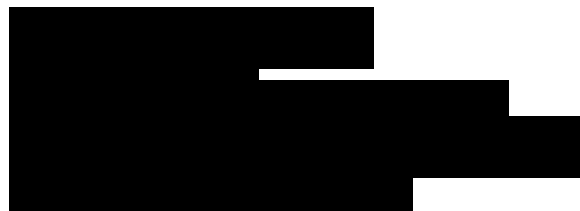
AMJITH
AGED 44 YEARS
C/O. SASANKAN, 475 A BRAHMALOK, PUTHENCHANTHA, VARKALA
P. O, VETTOOR, THIRUVANANTHAPURAM, PIN - 695141

BY ADVS.
SREEKANTH S.NAIR
SANDEEP P JOHNSON

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

2



PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
16.10.2024, THE COURT ON 11.11.2024 PASSED THE FOLLOWING:



“C.R”

A. BADHARUDEEN, J.

=====
Crl.M.C.No.8581 of 2024
=====

Dated the 11th day of November, 2024

ORDER

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) by the accused in Crime No.1099/2023 seeking to quash Annexures A1 FIR, A2 final report and the further proceedings in C.C.No.944/2023 on the files of the Judicial First Class Magistrate Court (Temp), Paravur against the petitioner.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor on admission. Perused the relevant documents.

3. The specific case of the prosecution is that the accused herein, who is the head of [REDACTED] College, and the Principal of the college made sexually coloured remarks and demanded sexual favour from the



defacto complainant, repeatedly stating that “adichu tharatte” “adichu tharatte”. The further allegation is that he also asked the defacto complainant to be obedient to him so that issuance of memo, transfer and suspension against the defacto complainant could be avoided. Further he used to say defamatory allegations against her, during staff meetings and PTA meetings. On 21.08.2023 the accused started staff meeting at 3.30 p.m and continued the same beyond 5.30 p.m, and when the defacto complainant made her stand that she would not continue at the meeting after 5.30 p.m, he shouted towards her. This is the base on which prosecution alleges commission of offences punishable under Sections 354-A, 354-D and 509 of the Indian Penal Code (‘IPC’ for short) and Section 119(A) of the Kerala Police Act (‘K.P Act’ for short).

4. While canvassing quashment of the entire proceedings, the learned counsel for the petitioner gave heavy reliance on Annexure A3 report of enquiry conducted by the Internal Complaints Committee (‘ICC’ for short), on the basis of a complaint given by the defacto complainant, where it was found that the allegations are false. Therefore, the prosecution allegations are also false, is the submission of the learned



counsel for the petitioner.

5. Whereas it is submitted by the learned Public Prosecutor that in Annexure A3 ICC report dated 12.02.2024, statement of the victim never recorded and a unilateral finding was entered into to the effect that the allegations are false. He also pointed out that going by the statement of the victim as well as the witnesses, who supported the prosecution allegations, the offences are made out, *prima facie*, and in such a case quashment could not be considered.

6. I have gone through the statement given by the defacto complainant and the specific allegation therein is that while the petitioner was holding the charge of Principal and Head of S.N college, he used to treat the defacto complainant badly and whenever he met the defacto complainant he used to ask her “adichu tharatte” “adichu tharatte” with the dual meaning, demanding sexual favour. In the additional statement of the defacto complainant, more instances were stated by the defacto complainant to the effect that she joined in Physics Department during 2022 and that when the accused met her at library and other places, he used to make unnecessary comments and he had grudge towards her since



she resisted the same. The further allegation is that the Principal instructed her to reach the college at 8.30 a.m during University exam time, who usually would reach the college at 9.30 a.m, but she expressed her willingness to reach the college only by 9 a.m as she anticipated indecent behaviour from the accused in the absence of other women teachers and employees therein. She also made a written complaint in this regard. Despite that the petitioner repeated the words extracted above with double meaning demanding sexual favour from her, despite having repeatedly made sexually coloured remarks. According to the defacto complainant, the accused continuously followed her and repeated the same and the same caused mental and physical sufferings to her. 'XX' (pseudo name), Assistant Professor, English Department working in the college from 2019 onwards; 'YY' (pseudo name), Associate Professor, Hindi Department working in the college for the last 18 years; 'ZZ' (pseudo name), Assistant Professor, Malayalam Department, 'XXX' (pseudo name), Assistant Professor, working in the college in the Chemistry Department, and other teachers working in the Commerce Department, Mathematics Department and Commerce Department, sited as witnesses also supported the case of



the defacto complainant, as alleged by the prosecution. Thus in the instant case the offences alleged by the prosecution are well made out, *prima facie*.

7. Since the learned counsel for the petitioner given heavy reliance on the Internal Complaint Committee report as the final word to decide the prosecution case, the pertinent question requires answer in this matter is:

When Internal Complaint Committee (ICC) report in terms of `the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act) runs contrary to prosecution case, whether the same alone is a reason to quash the entire criminal proceedings otherwise, by invoking power under Section 528 of BNSS?

8. In this connection it is preferable to refer PoSH Act which came into force with effect from 09.12.2013 pursuant to the judgment of the Apex Court reported in [AIR 1997 SC 3011], *Vishaka and others v. State of Rajasthan and others* assimilating the guidelines therein. On perusal of the PoSH Act, it could be seen that various measures to deal with harassment of women at work place, to keep their dignity at the workplace, have been incorporated after defining the term



“prevention of sexual harassment” in Section 3. Section 4 provides for ‘constitution of internal complaints committee’ (‘ICC’ for short) and its power. As per Section 11, the ICC has the power to inquire into complaint and as per Section 11(1) it has been provided that, *‘subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to



the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.”

9. As per Section 28 of the PoSH Act, it has been specifically provided that *the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.* That apart in Section 27, it has been provided that *(1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. (3) Every offence under this Act shall be non-cognizable.*

10. Thus the legal position emerges is that even the ICC can recommend measures under the PoSH Act including launching of criminal



prosecution. But as per Section 27 of the Act, cognizance of an offence punishable under the Act also is customised to the effect that the aggrieved woman or any person authorised by the ICC in this behalf alone could make a complaint. As per Section 28 of the PoSH Act, it has been specifically provided that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, the aggrieved person when directly makes a complaint to the police, police registers crime, conducts investigation and files final report finding commission of the offences alleged, the ICC report or its finding against the police report has no bearing on the prosecution case. It is shocking to note that majority of the ICC reports, I came across, are of unilateral and biased nature, favouring the majority of the institutions, and as such the credence of the ICC report is matter subject to thorough check and scrutiny to believe and act upon. Thus it is held that the report of the ICC is not the final word in so far as the allegations otherwise made before the police from the work place and for which crime was registered and investigated leading to final report alleging commission of the above offences.



11. Regarding ICC report, they also recorded statement of the accused and few other teachers, but the statement of the victim was not recorded and the justification is that she did not appear before the committee even on notice.

12. In the ICC report, considering the statements of the witnesses examined, by putting some vague questions and obtaining answers from them, gave clean chit to the accused without recording the statement of the victim, who is really aggrieved. I do not think that ICC report, prepared without even recording the statement of the victim, could supersede the prosecution records to disbelieve the same.

13. Going by the prosecution allegations, as I have already pointed out, apart from the victim many other Assistant Professors supported the prosecution case.

14. It is well settled that quashment of a criminal case can be considered only when the prosecution allegations do not suggest, *prima facie*, case. The prosecution case when made out from the statements of the victim and the witnesses, *prima facie*, quashment of the same would necessarily fail.



15. In the result, this CrI.M.C is dismissed.

Registry shall forward a copy of this order to the jurisdictional court concerned and to the 2nd respondent for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



APPENDIX OF CRL.MC 8581/2024

PETITIONER'S ANNEXURES

- Annexure A1** TRUE COPY OF FIR NO. 1099/2023 DATED 26.08.2023 OF CHATHANNUR POLICE STATION.
- Annexure A2** TRUE COPY OF UNNUMBERED FINAL REPORT DATED 02.11.2023 SUBMITTED BY THE INVESTIGATING OFFICER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT (TEMP), PARAVUR.
- Annexure A3** TRUE COPY OF COVERING LETTER WITH REPORT NO. ICC/ 3961/2023-24 DATED 12.02.2024 SUBMITTED BY THE PRESIDING OFFICER BEFORE THE PRINCIPAL IN CHARGE OF DEPUTY DIRECTOR.
- Annexure A4** TRUE COPY OF REPORT DATED 13.09.2024 SUBMITTED BY DR. M. S. LATHA TO THE SN TRUST.