

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POU SHA, 1946

CRL.MC NO. 4729 OF 2021

CRIME NO.2607/2017 OF ALUVA EAST POLICE STATION, Ernakulam
AGAINST THE ORDER/JUDGMENT IN CC NO.944 OF 2017 OF
JUDICIAL MAGISTRATE OF FIRST CLASS -I, ALUVA

PETITIONER/ACCUSED:

R. RAMACHANDRAN NAIR, AGED 54 YEARS
S/O. RAVEENDRAN, RAVEENDRASADANAM, NEAR KSEB
PUTHENVELIKKARA, PUTHENVELIKKARA KARA,
PUTHENVELIKKARA VILLAGE, ERNAKULAM DISTRICT, PIN -
683594.

BY ADV P.MOHAMED SABAH

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031.
- 2 SUB INSPECTOR OF POLICE,
ALUVA EAST POLICE STATION,
ERNAKULAM DISTRICT, PIN - 683 101.

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BY ADV VINAY VIJAY SHANKER
PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
28.11.2025, THE COURT ON 06.01.2025 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.M.C.No.4729 of 2021-A******Dated this the 6th day of January, 2025******ORDER***

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure by the sole accused in Crime No.2607 of 2017 of Aluva Police Station, Ernakulam district, seeking the following reliefs:

“(i) Call for the records with regard to Annexure-1 FIR and Annexure-2 final report in Crime No.2607 of 2017 of Aluva Police Station, Ernakulam district, and quash the same as illegal;

and

(ii) Such other order or decision which this Hon’ble Court may deem fit in the interest of justice and circumstances of the case.”

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Also heard the learned counsel for the 3rd respondent, who filed a counter affidavit along with documents.



3. In this matter, initially crime was registered alleging commission of offences, punishable under Section 354A(1)(iv) and 509 of the Indian Penal Code ('IPC' for short), by the accused. After investigation, final report was filed alleging commission of offences punishable under Section 354A(1)(iv) and 509 of IPC as well as under Section 120 of the Kerala Police Act, 2011 ('KP Act', for short). The prosecution allegation is that the accused with intention to outrage the modesty of the defacto complainant, made sexually coloured remarks and overtures at about 2.30 hours on 31.03.2017 while the defacto complainant was working at the Electrical Section, Kerala State Electricity Board Ltd. ('KSEB Ltd.' for short). The specific allegation is that the accused commented that the body structure of the defacto complainant was fine and thereafter on 15.6.2017, 17.06.2017 and 20.06.2017, the accused sent messages with sexual overtures to the mobile number of the defacto complainant from his mobile number.

4. While pressing quashment of the proceedings, the learned counsel for the petitioner vehemently argued that, *prima facie*, the prosecution materials do not constitute ingredients to attract the offences alleged to be committed, by the petitioner. It is specifically pointed out



that mere reference that a person has a nice body structure could not be attributed to sexually coloured remarks within the ambit of Section 354A(1)(iv) of IPC. Same is the position with regard to offence under Section 509 as well as Section 120(o) of KP Act. Therefore, from the entire allegations, none of the offences is made out and therefore quashment prayer is liable to be allowed.

5. Vehemently opposing the quashment prayer, the learned counsel for the 3rd respondent submitted that the defacto complainant has been working as Senior Assistant in KSEB and the accused also was working as Sub Engineer of the Electric Section where the defacto complainant was working, though he retired as of now. In this connection, the learned counsel for the 3rd respondent placed emphasis on Annexure R3(a), copy of identity card of the defacto complainant. It is pointed out by the 3rd respondent that during 2013, when the accused was working as Meter Reader, the accused subjected her to insult by using vulgar language among the co-workers in public platforms. Accordingly, as on 05.04.2013, the defacto complainant lodged a complaint before the Executive Engineer, Electrical Section, as Annexure R3(b). As a sequel to Annexure R3(b) complaint, the accused was transferred to another section on 02.09.2013,



after 5 months of filing the complaint. During 2016 also, the harassment of the accused continued in the form of making frequent voice calls and sending messages to the defacto complainant and when the defacto complainant blocked the number of the accused, he started to send messages to the defacto complainant by using alternate numbers by using abusive language and sending vulgour messages. In this connection, the defacto complainant filed complaint before the Vigilance Officer, KSEB Ltd., Pattom, Thiruvananthapuram, and copy of the same is Annexure R3(c). Despite filing of this complaint also, the accused continued his indecent behaviour towards the defacto complainant. So, she lodged Annexure R3(d) complaint before the Circle Inspector of Police. Accordingly, this crime was registered. According to the learned counsel for the defacto complainant, on 04.04.2017 the accused sent some messages having sexual contents to the defacto complainant's mobile number 8089863543 and also misbehaved to the defacto complainant at a retirement function. Thereafter another complaint also lodged before the Chief Vigilance Officer, KSEB, Thiruvananthapuram, in Annexure R3(g). Annexute R3(h) is the copy of the screen shots showing vulgour text messages sent by the accused on 22.09.2017 and Annexure R3(i) is one among such messages



sent on 28.09.2017. According to the learned counsel for the 3rd respondent, thus, *prima facie*, the offences are made out specifically against the petitioner and in such a case, quashment of the proceedings could not be allowed.

6. Coming to Section 509 of IPC, it has been provided that whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman shall be punished with simple imprisonment for a term which may extend to three years and also with fine.

7. In the decision reported in [2024 KHC OnLine 584 : 2024 KHC 584 : 2024 KER 49601 : 2024 KLT OnLine 1799 : 2024 SCC OnLine Ker. 3595], **XXXX . State of Kerala**, this Court considered the essentials to constitute an offence punishable under Section 509 of IPC and held in paragraph 11 as under:

“11. In the decision in **Joseph M.V. v. State of Kerala** reported in [2024 KHC OnLine 440 : 2024 KER 36566], in paragraph Nos.11 and 12, this Court held as under:

“11. In order to bring home an offence punishable under



S.509 IPC, the ingredients are; utterance of any word, makes any sound or gesture, or exhibits any object, with an intention to insult the modesty of a woman, or with intention to intrude upon the privacy of such a woman.

12. Coming to the definition of the word 'modesty', the same has not been defined in the Indian Penal Code. So it is worth to look into its dictionary meaning. As per Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third new International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency' a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1993 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

Thus when utterance of any word, makes any sound or gesture, or exhibits any object, with an intention to insult the modesty of a woman or to intrude upon the privacy of a woman, the said overt acts would attract offence under Section 509 of IPC. On analysing the prosecution allegations, the ingredients to attract offence under Section 509 of IPC are made out, *prima facie*.



8. Coming to Section 120(o) of K.P Act, in the decision reported in [2024 (5) KHC 22], ***Raveendran V.K v. State of Kerala & anr.***, this Court held in paragraphs 15 and 17 as under:

15. *The next point to be decided is; whether the petitioner herein committed offence under Section 120(o) of the K.P Act? Section 120 of the K.P Act provides as under:*

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

If any person,—

xxxx xxxx xxxx xxxx xxxx

(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;

xxxx xxxx xxxx”

16. *xxxxxxxx*

17. *The question poses is, effecting publication or communication stating that a person, who is alive, as dead, would amount to a nuisance to the said person. On reading the definition of the term ‘nuisance’, the same means, a person or thing causing inconvenience or annoyance. Otherwise, the same is an act, which is harmful or offensive to the public or a member of it and for which there is a legal remedy. Coming to the term ‘annoyance’, the same is the feeling or state of being annoyed or irritated. It is difficult to say that once a communication is made so as to make a person a feeling or a state of being irritated, the same*



is not an annoyance or nuisance for the purpose of Section 120(o) of the K.P Act. If so, the publication effected by the petitioner herein would definitely attract an offence punishable under Section 120(o) of the Kerala Police Act, prima facie.

9. Going by the ratio in ***Raveendran V.K v. State of Kerala & anr.*** (*supra*) and the ingredients of Section 120(o) of the K.P Act, if any person causing inconvenience or annoyance 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, is an offence. Therefore, in the facts of this case, Section 120(o) of the K.P Act also squarely would apply.

10. Adverting to Section 354A of IPC, the same reads as under:

“Section 354A:- Sexual harassment and punishment for 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.
2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-



section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

On reading the penal provision, the same deals with sexual harassment and punishment for sexual harassment. It has been specifically provided that if a man commits an act of physical contact and advances involving unwelcome and explicit sexual overtures, the same is an offence under Section 354A(1)(i) of IPC. When a man commits an act and makes a demand or request for sexual favour, the same is an offence under Section 354A(1)(ii) of IPC. Similarly, when a man commits an act showing pornography against the will of a woman, the same also is an offence under Section 354A(1)(iii) of IPC. Coming to Section 354A(1)(iv) of IPC, any man making sexually coloured remarks to a woman is guilty of the offence of sexual harassment.

11. Indubitably, the legal position is clear on the point that quashment of criminal proceedings can be resorted to when the prosecution materials do not constitute materials to attract the offence alleged to be committed. Similarly, the Court owes a duty to look into the other attending circumstances, over and above the averments to see whether there are materials to indicate that a criminal proceeding is



manifestly attended with mala fide and proceeding instituted maliciously with ulterior motives. Once the said fact is established, the same is a good reason to quash the criminal proceedings.

12. In the instant case the allegation of the prosecution is that the accused with intention to outrage the modesty of the defacto complainant, by making sexually coloured remarks and overtures at about 2.30 hours on 31.03.2017 while the defacto complainant was working at the Electrical Section, Kerala State Electricity Board Ltd. ('KSEB Ltd.' for short), commented that the body structure of the defacto complainant was fine and thereafter on 15.6.2017, 17.06.2017 and 20.06.2017, the accused sent messages with sexual overtures to the mobile number of the defacto complainant from his mobile number.

13. Having noticed the facts of the case, it is discernible that the prosecution case is specifically made out, *prima facie*, to attract the offences alleged to be committed. Hence this Crl.M.C fails.

14. In the result, this Criminal Miscellaneous Case stands dismissed.

15. Interim order, already granted shall stand vacated.

Registry is directed to forward a copy of this order to the



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jurisdictional court for information and for further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/

APPENDIX OF CRL.MC 4729/2021**PETITIONER' s ANNEXURES**

- Annexure 1** CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.2607/2017 OF ALUVA EAST POLICE STATION, ERNAKULAM.
- Annexure 2** CERTIFIED COPY OF THE FINAL REPORT FILED BY THE 2ND RESPONDENT IN CRIME NO.2607/2017 OF ALUVA EAST POLICE STATION, ERNAKULAM.
- Annexure 3** TRUE COPY OF THE FIRST INFORMATION STATEMENT IN CRIME NO. 2607/2017 OF ALUVA EAST POLICE STATION.

RESPONDENTs' ANNEXURES

- Annexure-R3 (a)** A true copy of the Identity card of the defacto complainant(3rd Respondent).
- Annexure-R3 (b)** A true copy of the complaint dated 05.04.2013 filed before the Executive Engineer, Electrical Section, Aluva North, KSEB.
- Annexure-R3 (c)** A true copy of the complaint dated 03.11.2016, filed before the Chief Vigilance Officer,KSEB Ltd, Pattom, Thiruvananthapuram.
- Annexure-R3 (d)** A true copy of the complaint dated 20.06.2017, filed before the Circle Inspector, Aluva.
- Annexure-R3 (e)** A true copy of the First Information Report dated 22.06.2017 in crime no: 2607/2017 of Aluva Police Station, Ernakulam Rural.
- Annexure-R3 (f)** A true copy of the charge sheet dated 28.06.2017 filed before the Hon'ble Judicial First Class Magistrate Court -1, Aluva.
- Annexure-R3 (g)** A true copy of the complaint dated 08.08.2017 filed by the defacto complainant before the Chief Vigilance Officer, KSEB, Thiruvananthapuram.
- Annexure-R3 (h)** A true copy of the photocopy of the screen



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shots dated 22.09.2017 of the text messages received by the defacto complainant.

Annexure-R3(i)

A true copy of the screenshots dated 28.09.2017 of the comments posted by the accused in the facebook page of Abdul Latheef Arakkal.

Annexure-R3(j)

A true copy of the suspension order of the accused dated 16.10.2017.

Annexure-R3(k)

A true copy of the Enquiry report dated 24.10.2017 submitted by the Presiding Officer of Complaints Committee and Executive Engineer TMR Division Angamaly.