



2025:KER:22924

Cr1.M.C.No.2107 of 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 18TH DAY OF MARCH 2025 / 27TH PHALGUNA, 1946

CRL.MC NO. 2107 OF 2019

CRIME NO.861/2016 OF PUTHENCROZ POLICE STATION, ERNAKULAM
IN CC NO.947 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOLENCHERY

PETITIONER/ACCUSED:

P.T.JAHANGEER
AGED 35 YEARS, SON OF ABDUL RAZAK C.K.,
PALAYIL HOUSE, MUNDERI.P.O. CHUNGATHARA,
MALAPPURAM - 679334.

BY ADV
LEGITH T.KOTTAKKAL

RESPONDENTS/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
- 2 AKHIL SOMAN
AGED 25 YEARS, S/O.SOMAN, VAZHAKKALAYIL HOUSE,
PANCODE.P.O, PUTHENCROZ, ERNAKULAM - 682 310.

BY ADV.
SMT SEETHA S, SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18.03.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



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G. GIRISH, J.

CrI.M.C.No.2107 of 2019

Dated this the 18th day of March, 2025

ORDER

The petitioner is the accused in C.C.No.947 of 2016 on the files of the Judicial First Class Magistrate Court, Kolenchery. He faces prosecution for the commission of offence under Sections 294(b) IPC and 120(o) of Kerala Police Act, 2011. The prosecution case is that on 19.06.2016, at about 11.53 pm, the petitioner called the defacto complainant over telephone and resorted to verbal abuse by uttering filthy language, causing mental pain to the defacto complainant. The case has been registered by the Sub Inspector of Police, Puthencruz, on the basis of the complaint preferred by the defacto complainant. After the completion of the investigation, the Final Report has been filed before the Judicial First Class Magistrate Court, Kolenchery, alleging the commission of the offence under Sections 294(b) IPC and 120(o) of the Kerala Police Act.

2. In the present petition, the petitioner would contend that none of the offences alleged in the Final Report are attracted even if the entire accusations are accepted as such.



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3. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the 1st respondent.

4. The case of the prosecution is that the petitioner called the defacto complainant over telephone at about 11.53 pm on 19.06.2016, and resorted to verbal abuse by uttering filthy language. The motive for the above act is said to be the bickerings between the petitioner and the defacto complainant, in connection with the Facebook posts over current issues.

5. Having regard to the nature of the accusations levelled against the petitioner, it is not possible to say that the offence under Section 294(b) IPC is attracted. This is due to the reason that a private telephone call between the petitioner and the defacto complainant will not attract the necessary ingredient of Section 294(b) IPC, as per which the offender has to utter the objectionable words in or near any public place.

6. As regards Section 120(o) of the Kerala Police Act, the said offence is non cognizable, and it is not possible for the Investigating Officer to proceed with the investigation without getting the formal permission of the Jurisdictional Magistrate under Section 155(2) Cr.P.C. There is no case for the prosecution that the Investigating Officer had obtained permission



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of the Jurisdictional Magistrate under Section 155(2) Cr.P.C., before proceeding with the investigation. It appears that the investigating agency did not prefer the above course due to the reason that the other offence registered against the petitioner under Section 294(b) IPC is a cognizable offence and hence, there is no need to seek permission under Section 155(2) Cr.P.C. As already stated above, this is a case where the facts do not constitute the offence under Section 294(b) IPC. The Investigating Officer is well aware of the fact that a mere private telephone call between two parties and the utterance of abusive words in such a call, will not attract the requirements of Section 294(b) IPC. Still, the aforesaid offence has been incorporated in the First Information Report and the Final Report. The requirement of obtaining sanction under Section 155(2) Cr.P.C., for the investigation of a non-cognizable offence, cannot be bypassed by such shortcut methods of incorporating a cognizable offence in the FIR, even though there are apparently no materials before the investigating agency to register a case in connection with such an offence. As far as the present case is concerned, the investigating agency was having no material before it to proceed with the investigation in connection with the offence under Section 120(o) of the Kerala Police Act, 2011, without the sanction from the



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Jurisdictional Magistrate. Therefore, it has to be concluded that the prosecution against the petitioner in C.C.No.947 of 2016 on the files of the Judicial First Class Magistrate Court, Kolenchery, is without any legal basis. In such circumstances, it is highly necessary to quash the proceedings to meet the ends of justice.

In the result, the petition stands allowed. The proceedings against the petitioner in C.C.No.947 of 2016 on the files of the Judicial First Class Magistrate Court, Kolenchery, are hereby quashed.

Sd/-

**G. GIRISH
JUDGE**

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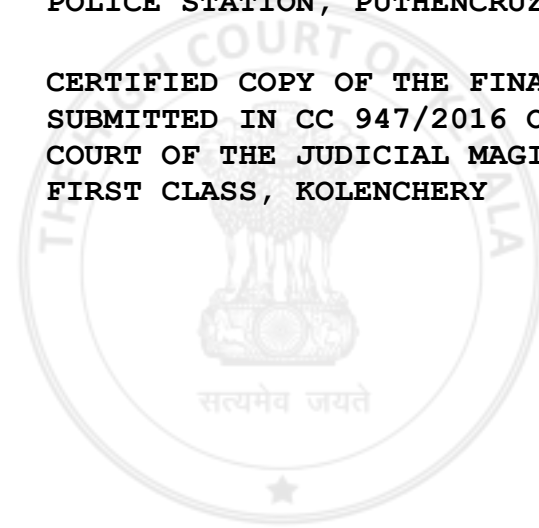
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APPENDIX OF CRL.MC 2107/2019

PETITIONER ANNEXURES

ANNEXURE A1 CERTIFIED COPY OF THE FIR NO.861/2016 OF
POLICE STATION, PUTHENCRUZ

ANNEXURE A2 CERTIFIED COPY OF THE FINAL REPORT
SUBMITTED IN CC 947/2016 ON THE FILE OF
COURT OF THE JUDICIAL MAGISTRATE OF THE
FIRST CLASS, KOLENCHERY



HIGH COURT OF KERALA
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