

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 7TH DAY OF JANUARY 2022 / 17TH POUSHA, 1943

CRL.MC NO. 6574 OF 2014

AGAINST THE ORDER/JUDGMENT IN CC 931/2013 OF ADDITIONAL CHIEF
JUDICIAL MAGISTRATE (E.O), ERNAKULAM

PETITIONERS/ACCUSED Nos.1 TO 9:

- 1 THE MATHRUBHOOMI ILLUSTRATED WEEKLY
M.M.PRESS, CHEROOTY ROAD, CALICUT-673001 REPRESENTED
BY ITS EDITOR K.K.SREEDHARAN NAIR.
- 2 MATHRUBHOOMI PRINTING & PUBLISHING CO. LTD.
CALICUT-673001, REPRESENTED BY ITS AUTHORIZED PERSON
M.N.RAVI VARMA.
- 3 MR. M.N.RAVI VARMA
S/O PRINTER & PUBLISHER, MATHRUBHOOMI ILLUSTRATED
WEEKLY, M.M. PRESS, CHEROOTY ROAD, CALICUT-673001.
- 4 P.V.CHANDRAN
MANAGING EDITOR, MATHRUBHOOMI ILLUSTRATED WEEKLY,
M.M. PRESS, CHEROOTY ROAD, CALICUT-673001.
- 5 K.K.SREEDHARAN NAIR
EDITOR, MATHRUBHOOMI ILLUSTRATED WEEKLY, M.M. PRESS,
CHEROOTY ROAD, CALICUT-673001.
- 6 MR. M.P.GOPINATH
DEPUTY EDITOR, MATHRUBHOOMI ILLUSTRATED WEEKLY, M.M.
PRESS, CHEROOTY ROAD, CALICUT-673001.
- 7 KAMAL RAM SAJEEV
ASST. EDITOR, MATHRUBHOOMI ILLUSTRATED WEEKLY, M.M.
PRESS, CHEROOTY ROAD, CALICUT-673001.
- 8 BADRI REINA
MATHRUBHOOMI ILLUSTRATED WEEKLY, M.M. PRESS, CHEROOTY
ROAD, CALICUT-673001.

9 K.P.DHANYA
MATHRUBHOOMI ILLUSTRATED WEEKLY, M.M. PRESS,
CHEROOTY ROAD, CALICUT-673001.

BY ADV SRI.C.P.UDAYABHANU

RESPONDENTS/COMPLAINANT:

1 P.GOPALANKUTTY
AGED 58 YEARS
S/O ACHUTHAN NAIR, MADHAV NIVAS, ELAMAKKARA P.O.,
PERANDOOR, ERNAKULAM, PIN:682 026.

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682031.

BY SRI.M.C. ASHI, PUBLIC PROSECUTOR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.12.2021, THE COURT ON 07.01.2022 PASSED THE FOLLOWING:

SOPHY THOMAS, J.

C.R

Crl.M.C No.6574 of 2014

Dated this the 7th day of January, 2022

O R D E R

This Crl.M.C has been filed by the accused in C.C No.931 of 2013 on the file of Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam, to quash the entire proceedings in that case, which was initiated on a private complaint filed by the 1st respondent, who is the State Secretary of the Rashtriya Swayamsevak Sangh (RSS), alleging offences punishable under Sections 120B, 153A, 500 read with Section 34 of IPC.

2. The 1st respondent filed Annexure-I complaint alleging that the article written by A8, translated by A9 and published by 1st accused Mathrubhoomi weekly contained imputations, which were defamatory and misleading, lowering the reputation of RSS in the public. Moreover, the article published was capable of promoting enmity between different groups on the grounds of religion, prejudicial to communal harmony. The complaint was

filed against nine persons including Mathrubhoomi Illustrated Weekly, its printer, publisher, editor etc.

3. Learned ACJM (EO), Ernakulam conducted an enquiry and took cognizance of the offences punishable under Sections 500 and 501 against R2 to R9, and took cognizance of the offence punishable under Section 502 IPC also, against R2. Since the 1st accused-Mathrubhoomi Illustrated Weekly was not a legal entity, it was not arrayed as an accused. During enquiry no offence was made out against the accused under Section 120B and 153A of IPC and so, no cognizance was taken for those offences. So, only against R2 to R9, summons was ordered arraying them as A1 to A8, taking cognizance of the offences punishable under Sections 500, 501 and 502 of IPC.

4. In the Crl.M.C, the 1st petitioner is Mathrubhoomi Illustrated Weekly against which no cognizance was taken by the learned ACJM, and no summons was issued. No cognizance was taken against A2 to A9 for offences punishable under Sections 120B and 153A of IPC. So, those aspects need not be reopened or reconsidered in this petition.

5. According to the petitioners, the 1st respondent-State

Secretary of RSS has no locus standi to represent the organisation of RSS. They contended that it cannot be said that RSS is a definite and determinable body. Only if there is a definite association or collection of persons capable of being identified, it could be said that the defamatory matter applies to all the members of that organisation. The petitioners never intended to defame or injure the feelings of the 1st respondent or anybody else, by making such a publication in the century old reputed weekly. The article published in Mathrubhoomi Illustrated Weekly was originally based on a research study based on facts, findings and materials collected by the celebrated author, academician and political evaluator Sri.Badri Raina and it was translated and published by the petitioners. It was based on actual facts and figures, details and data, inferences and information, personal opinions, evaluations and on a strong conviction for the public good. The article reflects the in-depth analytical research made by Sri.Badri Raina. The role and duty of the media is to inform the readers about the state of affairs in and around the country. The press is free to engage or depend on scholars and eminent personalities to disseminate information

on matters of public importance. No socio-political organisation including RSS is beyond public scrutiny. So, the article published in Mathrubhoomi Illustrated Weekly did not contain any defamatory materials to cause damage to the organisation, RSS. Moreover, the averments in Annexure-I complaint are not sufficient to prove the essential ingredients of Section 499 of IPC, and there is nothing to show that the publication of imputation has been made with the intention, knowledge or belief, that it will harm the reputation of the person concerned. So, according to the petitioners, learned ACJM (EO), Ernakulam went wrong in taking cognizance, and issuing summons against the petitioners for offences punishable under Sections 500, 501 and 502 of IPC.

6. Heard the learned counsel for the petitioners and learned Public Prosecutor. Though the de facto complainant was served with notice, there was no appearance for him.

7. Admittedly, an article was published in Mathrubhoomi Illustrated Weekly dated 27.02.2011 about the impact of terrorist activities of RSS in Indian population. According to the petitioners, the said article was based on a research study on facts, findings, and materials collected by a celebrated

academician and political evaluator Sri.Badri Raina, translated and published by the petitioners. Since that article is based on actual facts and figures, it was published for the public good. The defamatory nature of the article published in Mathrubhoomi Illustrated Weekly, its authenticity and the intention and purpose for which it was published etc. are matters to be analysed and scrutinised after collecting evidence. Whether the petitioners, as responsible media persons, did any excess in publishing the articles, and whether the imputations published therein were really intended for public good or to harm the reputation of RSS etc. are also to be brought to light only on getting evidence during trial.

8. At present the main attack by the petitioners against Annexure-I complaint is that, the 1st respondent who claims to be the State Secretary of RSS has no locus standi to represent the organisation. Section 199 of Cr.P.C contains a ban that no court shall take cognizance of the offence of defamation except upon a complaint made by "some persons aggrieved by the offence". Section 199 thus lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved

person or not, and modifies that rule by permitting only an aggrieved person to move a Magistrate in case of defamation. The Section is mandatory so that, if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one, who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

9. Section 499 of IPC defines defamation, which reads thus:

“499. 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, except in the cases hereinafter expected, to defame that person”.

Explanation 2 to Section 499 makes it explicit that,

“It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such”.

10. A class of persons as such cannot be defamed as a class, nor could an individual be defamed by a general reference to a class to which he belongs. Going by explanation 2 to Section

499 of IPC, if a well-defined class is defamed, each and every member of that class can file a complaint. Where the words reflect on each and every member of a certain number or class, each and all can sue. But, this principle depends upon the determination of the number of persons of the class. If the collection of persons is an indeterminate and indefinite collection of body, it could not be said that each and every member of that body could maintain an action under Section 500, unless the complainant was referred to as a person who had been defamed under the imputation. When there is uncertainty as to whether the imputation would reflect either this man or that man, it could not be said that one particular man was meant in the imputation alleged.

11. Learned counsel for the petitioners would place reliance on the decision **Krishnaswami** vs. **C.H Kanaran** reported in 1971 KLT 145 to say that, if an indefinite and interminate body as the Marxist Communist Party or Marxists or Leftists as a collection of persons as such are defamed, from the fact that the collection of persons as such being an indeterminate and indefinite collection of body, it could not be said that each and every

member of that body could maintain an action under Section 500, unless the complainant was referred to as a person, who had been defamed under the imputation. In order to constitute an imputation concerning an association or collection of persons as such, there must be some definite body of persons, capable of being identified and to the whole of whom, it can be asserted that the defamatory matter applies.

12. If a person complains that he has been defamed as a member of a class, he must satisfy the court that the imputation is against him personally, and that he is the person aimed at before he maintained a prosecution for defamation. It is a well known principle that when an indefinite and indeterminate body of men are defamed, it would not be safe to single out one person to say that he was the person defamed.

13. The Law of Defamation and Malicious Prosecution by V.Mitter, 4th Edition, 1965 page 8 reads thus:

"An action for defamation would not lie at the instance of unincorporated collection of individuals such as a political party or members' club. Such groups are merely classes of persons and there can be no libel on a class. In *Eastwood v. Hamles*, (1858) 11 F. & F. 347 Willes, J. said: 'If a man wrote that all lawyers were thieves, no

particular lawyer could sue him unless there is something to point to the particular individual which there is nor here." The statement that there is no libel on a class is really governed by the rule that the plaintiff must prove that the libel refers to him."

14. In *Government Advocate vs. Gopal Bandu* reported in AIR 1922 Patna 101, it was held that,

"However reprehensible and morally unjustifiable the words complained of may be, they must, to be actionable, contain an imputation concerning some particular person or persons whose identity can be established. An imputation against an association or collection of persons jointly may also amount to defamation within the meaning of the S.499 IPC. but at the same time it must be an imputation capable of being brought home to a particular individual or collection of individuals as such."

15. In ***Achuthanandan*** vs. ***Varugheese*** reported in 1993 (2) KLT 737, this Court held that the words "association or collection of persons" mentioned in Section 499 have to be understood in conjunction with the expression "person aggrieved" in Section 199 of the Code of Criminal Procedure, though the two expressions are in two different codes. If the collection of persons is indefinite and indeterminable or interminate, no

complaint can be filed by an individual member, for the offence of defamation, unless he shows that the imputation refers to him in particular. "Collection of persons" is an elastic expression as it may apply to a very small unit as well as to a huge mass of people. In other words, it can have a limited construction and a very wide connotation. A defamatory imputation against a collection of persons falls within Explanation 2 to Section 499 of IPC. But when that Explanation speaks of a collection of persons, it must be a definite and a determinate body so that the imputations in question can be said to relate to its individual members or components. Thus, the law is well settled that, if the collection of persons is indefinite and indeterminable or interminate, no complaint can be filed by an individual member for the offence of defamation unless he shows that the imputation refers to him in particular.

16. In **G.Narasimhan, G Kasturi and K. Gopalan** vs. **T.V. Chokkappa** reported in (1972) 2 SCC 680, the Apex Court held that, in a case where Explanation 2 of Section 499 is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to

the defamatory words or imputations. Where a writing in weighs against mankind in general, or against a particular order of men, e.g. men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. If a well-defined class is defamed, every particular of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

17. In **Tek Chand Gupta vs. R.K. Karanjia and others** reported in 1967 SCC Online All.282 (1969 CrL.L.J 536), the Allahabad High Court held that, Rashtriya Swayamsevak Sangh (RSS) is a definite and identifiable class or body. So, when an article is published in a newspaper containing imputations meant to harm the reputation of Rashtriya Swayamsevak Sangh (RSS), complaint by individual member of RSS is maintainable under Explanation 2 to Section 499 of IPC. It is not necessary that the imputations in the article individually affected the reputation of the complainant. The Apex Court in *G.Narasimhan's case* (supra) made mention regarding *TeK Chand Gupta's case* (supra)) asserting that Rashtriya Swayamsevak Sangh (RSS) was a determinate body just like the body of public prosecutors

mentioned in *Sahib Singh Mehra's case* (AIR 1965 SC 1451). When the association was a determinate and an identifiable body, the defamatory words used against that association could be treated as defamation of the individuals who composed it. So, any member of that association can maintain a complaint under Section 500 of IPC.

18. The de facto complainant/1st respondent claims to be the State Secretary of RSS and that fact is not seen disputed by the petitioners. Even if the petitioners have got any challenge regarding the membership of the complainant in RSS, they are at liberty to make that plea before the trial court.

19. Since Rashtriya Swayamsevak Sangh (RSS) is a definite and identifiable body as held by the High Court of Allahabad and asserted by the Apex Court vide decisions cited supra, the contention of the petitioners that the 1st respondent has no locus standi to maintain a complaint under Section 500 of IPC is not tenable. So this Crl.M.C is liable to be dismissed.

The case is pending before the ACJM (EO) Court, Ernakulam since 2013. So, the trial court is directed to expedite the trial and to dispose the case, in accordance with law, without any further

delay, at any cost, within a period of six months from the date of receipt of a copy of this order.

With the above direction, this Crl.M.C is dismissed.

Sd/-

**SOPHY THOMAS
JUDGE**

smp

APPENDIX OF CRL.MC 6574/2014

PETITIONER ANNEXURES

ANNEXURE I: A CERTIFIED COPY OF THE COMPLAINT INITIATED BY R1 WHICH IS TAKEN ON FILE OF ACJM (E.O) COURT AS C.C.931/2013.

ANNEXURE II: PHOTOCOPY OF THE SUMMONS ISSUED TO A6 & A8

RESPONDENTS' EXHIBITS: NIL.

True Copy

P.S to Judge

smp