



2024:KER:94897

Crl.M.C.No.2022/2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 17TH DAY OF DECEMBER 2024 / 26TH AGRAHAYANA,

1946

CRL.MC NO. 2022 OF 2019

CC NO.1468 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS,
KASARAGOD

PETITIONER/ACCUSED:

JAMAL, AGED 48 YEARS
S/O. SAINUDHEEN, ZAIN MANZIL,
BADIYADKA POST, KASARGOD

BY ADVS.
S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031
(CRIME NO. 357/2018 OF KASARGOD POLICE STATION,
KASARGOD)

SRI.SANGEETHARAJ N.R PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
05.12.2024, THE COURT ON 17.12.2024 PASSED THE FOLLOWING:

**'CR'****ORDER**

The accused in C.C.No.1468/2018 on the files of the Judicial First Class Magistrate Court, Kasaragod has filed this petition under Section 482 Cr.P.C to quash the proceedings in the said case.

2. The prosecution case is that the accused, while being the Outlet Manager of a SupplyCo shop at Kasaragod, posted on 27.08.2018, sarcastic comments in a Whatsapp group of the SupplyCo Employees of Kasaragod, against the appeal of the Chief Minister of Kerala to the Government servants to donate a month's salary to the Flood Relief Fund, with the intention of causing injury to the Government, and thereby committed the offence punishable under Sections 166 and 167 of the Indian Penal Code.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala. Perused the case diary file of the crime.

4. The controversial comment has been posted by the petitioner after extracting the picture of the Chief Minister of Kerala and the appeal made by him that all Malayalees may give a month's



salary for their land. The comments start from the caption that Malayalees will happily donate their monthly salary for the State but you have to reduce the expenditure. Thereafter, six instances of expenditure incurred by the Government are pointed out, which according to the author of that post, amount to defalcation. The above post concludes with the remark that the Chief Minister has to show role model and thereafter make advices.

5. Section 166 of the Indian Penal Code is extracted hereunder for the sake of convenience and easy reference:

"166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

The essential ingredients constituting the above offence are as follows:

- (i) The offender shall be a public servant at the time of commission of the offence.



(ii) The offender knowingly disobeyed any direction of the law as to the way in which he is to behave himself as a public servant.

(iii) The above disobedience was with the intention to cause injury to any person, or with the knowledge that it is likely to cause injury to any person.

6. As far as the present case is concerned, there is no dispute as to the fact that the petitioner comes within the definition of a public servant since he being an employee of the Civil Supplies Corporation of the Government of Kerala. The next aspect to be looked into is whether he disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant. On that point, it is argued by the learned Public Prosecutor that the code of conduct applicable to the Government employees proscribes open criticism of the policy and decision of the Government, and hence the petitioner had knowingly disobeyed the above direction of law. It is true that the service discipline to be followed by every Government employee requires such Government servant to avoid open and public criticism of the policies and decisions of the Government. In that sense it could be said that the petitioner had disobeyed the direction



of law as to the way in which he is to conduct himself as a public servant. However, there is absolutely no material available on record to show that the above disobedience on the part of the petitioner was with the intention to cause injury to any person, or with the knowledge that such disobedience is likely to cause injury to any person. As per the averment in the final report, the petitioner committed the aforesaid disobedience with the intention to cause harm to the Government. However, it is not possible to say that the word 'person' embodied in Section 166 I.P.C would take in its ambit Government as well. Going by the inclusive definition of person in Section 11 of the Indian Penal Code, the term 'person' includes any company or association or body of persons, whether incorporated or not. Having regard to the scheme and the context in which the word 'Government' is used in Indian Penal Code, it is not possible to say that the term 'person' envisaged under the various provisions of Indian Penal Code includes Government.

7. It is also pertinent to note that the comment posted by the petitioner quoting the appeal of the Chief Minister to donate one month's salary to the Flood Relief Fund, is not one exhorting others to refrain from contributing their monthly salary as requested by the



Chief Minister. On the other hand, the opening words of that comment itself show that the people of Kerala would wholeheartedly give their monthly salary for the land, but there shall be austerity measures on the part of the Government to reduce the expenditure. Thus, it is not possible to say that a person reading the above comment would be motivated to avoid payment of his monthly salary to the Flood Relief Fund. In that view of the matter, it cannot be said that the act of the petitioner making the above post in the whatsapp group of the employees of SupplyCo in Kasaragod, was intended to cause injury to any of the beneficiaries of the Flood Relief Scheme. That being so, the offence under Section 166 of the Indian Penal Code is manifestly not attracted in the facts and circumstances of the case.

8. As regards the other offence under Section 167 I.P.C slapped against the petitioner, it has to be stated that the said offence has got applicability only in respect of those public servants who are responsible for the preparation or translation of any document or electronic record. For the sake of convenience and easy reference, Section 167 I.P.C is extracted hereunder:



"167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as [such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

9. The term 'such public servant charged with the preparation or translation of any document or electronic record' incorporated in the aforesaid Section makes it clear that the above said penal provision is applicable to only those public servants who are having the legal obligation to prepare or translate any document as part of his official duty related to the post held by him. As far as the present case is concerned, the petitioner who holds the post of Outlet Manager of SupplyCo at Kasaragod cannot be said to be having the official responsibility for the preparation or translation of any document or electronic record. The facts and circumstances of this case are no way related to the preparation or translation of any such document or electronic record by the petitioner, as part of his



official duty, in a manner to be incorrect, with the intention to cause injury to any person. Therefore, there is absolutely no applicability of Section 167 I.P.C in the instant case.

10. In the light of the discussion made in the aforesaid paragraphs, it has to be stated that the offences under Sections 166 and 167 I.P.C are prima facie not attracted in the facts and circumstances of this case. That being so, the prayer in this petition for quashing the proceedings in C.C.No.1468/2018 has to be allowed.

In the result, the petition stands allowed. The proceedings in C.C.No.1468/2018 on the files of the Judicial First Class Magistrate Court, Kasaragod are hereby quashed. However, it is made clear that the observations made by this Court in this order are having no applicability in any departmental proceedings, if initiated against the petitioner in connection with his act of posting sarcastic comments in Whatsapp group against the policies and decisions of the Government.

(sd/-)

G. GIRISH, JUDGE



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APPENDIX OF CRL.MC 2022/2019

PETITIONER ANNEXURES

ANNEXURE 1

TRUE COPY OF THE FIR IN CRIME
NO.657/2018 OF KASARGOD POLICE STATION

ANNEXURE II

CERTIFIED COPY OF THE FINAL REPORT IN
CRIME NO.657/2018 PF KASARAGOD POLICE
STATION WHICH IS NOW PENDING AS CC NO.
1468/2018 ON THE FILE OF THE JUDICIAL
MAGISTRATE OF FIRST CLASS, KASARGOD