

Crl M.C.No. 1858 of 2020



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2025:KER:16718

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 27<sup>TH</sup> DAY OF FEBRUARY 2025 / 8TH PHALGUNA, 1946

CRL.MC NO. 1858 OF 2020

CRIME NO.382/2019 OF GANDHINAGAR POLICE STATION, KOTTAYAM

AGAINST CC NO.564 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST

CLASS - I, ETTUMANOOR

PETITIONER/ACCUSED:

ARUN.G.NAIR  
AGED 33 YEARS  
S/O. GOPINATHAN NAIR, ASHA BHAVAN HOUSE, KUMARANALLOOR  
P.O. KOTTAYAM.

BY ADV C.S.MANILAL

RESPONDENT/STATE/COMPLAINANT:

THE STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM 682 031.

OTHER PRESENT:

SMT.MAYA M.N., SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
20.02.2025, THE COURT ON 27.02.2025 PASSED THE FOLLOWING:



**S.MANU, J.**

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Crl.M.C.No.1858 of 2020  
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Dated this the 27<sup>th</sup> day of February, 2025

**ORDER**

Accused in C.C No.564 of 2019 on the file of the Judicial First Class Magistrate's Court, Ettumannoor has filed this Crl.MC, praying to quash the final report in Crime No.382 of 2019 of Gandhinagar Police Station and the proceedings in C.C.No.564 of 2019.

2. Offences alleged against the petitioner in the final report are under Sections 153 of IPC and 120(o) of the Kerala Police Act. The case was registered on 28 .02.2019 on the basis of a petition submitted to the District Police Chief, Kottayam by the President and Secretary of the Block Committee of a youth's organization, DYFI. The Petition dated 17.1.2019 is produced as Annexure - I. Grievance voiced in the petition is that the petitioner who was an employee of the Travancore Devaswom Board, working in Vasudevapuram Temple, Kudamaloor had been indulging in repeatedly making heinous Facebook posts



against the Chief Minister of Kerala, the Devaswom Minister and the District Police Chief, Kottayam and their pictures along with those of animals were posted. Further, it was requested in Annexure-I that stringent actions in accordance with law may be taken against such activities of the government servant, which are in violation of the Service Rules. The FIR produced as Annexure-II discloses that the crime was registered on the basis of Annexure-I complaint received by the District Police Chief. In the FIR, it was alleged that the petitioner, who was an employee of the Travancore Devaswom Board and a member of the organization, Travancore Devaswom Employees Sangh, with the intention to defame the Hon'ble Chief Minister of Kerala and the Hon'ble Minister for PWD and to cause political riots, shared several Facebook posts on his Facebook account between 1.12.2018 and 2.1.2019, which were defamatory to the Hon'ble Chief Minister of Kerala and the Hon'ble Minister for PWD. By the said acts, the petitioner defamed DYFI represented by the defacto complainants, the Honble Chief Minister of Kerala and Honble Minister for PWD and the petitioner also attempted to cause political riots.

3. Investigation was completed in a short time and the final report was filed on 15.03.2019. Same allegation as in the FIR is repeated in



the final report also.

4. By order dated 3.3.2020 in Crl.M.ANo.1/2020 further proceedings on the basis of the final report were stayed by this Court for a period of three months. The interim order was extended from time to time.

5. I have heard the learned counsel for the Petitioner – Mr.C.S.Manilal and the learned Public Prosecutor – Ms.Maya M.N.

6. The learned counsel for the petitioner argued that the registration of the crime against the petitioner itself was a clear instance of abuse of process of law. He pointed out that the crime was registered on the basis of Annexure-I petition submitted by office bearers of DYFI to the District Police Chief, Kottayam. He contended that in the said petition, the actual request was to take legal actions against the petitioner for violation of the Service Rules. He submitted that there were no averments to make out the offences under Section 153 of the IPC or Section 120(o) of the Kerala Police Act in Annexure-I petition. He further submitted that the said petition therefore, did not contain anything calling for any action by police and to set criminal law in motion. However, due to political reasons, crime was registered against



the petitioner for the offences under Sections 153 of the IPC and 120(o) of the Kerala Police Act. He pointed out that there are significant variations in the allegations in Annexure-I petition and Annexure-II FIR. The crime was registered only to harass the petitioner. The learned counsel also argued that the contents of even the final report and the allegations in the same do not make out the offence under Section 153. He submitted that the first and foremost ingredient for the offence under Section 153 of IPC is doing of an illegal act. Referring to the definition of the word 'illegal' under Section 43 of the IPC, the learned counsel submitted that the allegation in the final report is only to the effect that the petitioner shared some Facebook posts. Police have no case that the petitioner was the author of any of the posts. Sharing a post in social media cannot be considered as an illegal act. Hence the basic ingredient to attract the offence under Section 153 of IPC is lacking in this case. The learned counsel further contended that in order to attract the offence, the next major ingredient is that there should be provocation. He pointed out that there is no assertion in the final report that any person or particular class of persons were provoked by the acts committed by the petitioner. He also contended that even the defacto complainants have no case in Annexure-I petition that they or the members of their organization



were provoked by the sharing of Facebook posts by the petitioner to commit rioting. He argued that the limit of time, space and person is sacrosanct for attracting the offence under Section 153 of IPC and there must be proximity to the provocation and the resultant rioting. He hence vehemently submitted that even if the entire factual allegations in the final report are assumed as correct, the offence under Section 153 will not be attracted.

7. Regarding the offence under Section 120(o) of the Kerala Police Act, the learned counsel for the petitioner submitted that the said offence is non-cognizable and the police have no authority to investigate in case the offence under Section 153 of IPC is found not attracted. Even otherwise, the offence under Section 120(o) also will not be attracted in this case as there is no specific allegation that the petitioner by sharing Facebook posts had caused any nuisance. Therefore, prosecution for the offence under Section 120(o) also cannot be legally sustained.

8. The learned counsel relied on the order in **Sajidh v. State of Kerala** [2019 (4) KLT 808] and the order in **Sanjeev S. v. State of Kerala** [2023 (3)KHC 324] to buttress his contentions. The learned counsel also referred to an unreported order in CrI.M.C.No. 1185 of



2021. Referring to the observations of the Hon'ble Supreme Court in **Shreya Singhal v. Union of India** [AIR 2015 SC 1523], the learned counsel submitted that while declaring the provisions of Section 66A of the Information Technology Act, 2000 as unconstitutional, the Hon'ble Supreme Court had discussed about the right to freedom of speech and expression and the limits of the same with respect to digital communications. The Hon'ble Supreme Court referred to the following observations in **S.Rangarajan v. P.Jagjivan & Ors** [(1989) 2 SCC 574]:

*“The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that I cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words,*



*the expression should be inseparably locked up with the action contemplated like the equivalent of a “spark in a powder keg”.*

9. The learned counsel referring to the reported decisions in **Sajidh and Sanjeev S.** (*supra*) argued that in those cases also facts and circumstances were almost identical and this Court held that the offences under Section 153 of IPC and 120(o) of Kerala Police Act would not be attracted. He made reference to the discussions in both reported decisions regarding the essential ingredients of the relevant offences. Drawing parallels from the discussions in those orders, the learned counsel submitted that the same view may be taken by this Court in the case at hand and the prosecution proceedings may be quashed.

10. The learned Public Prosecutor on the other hand submitted that the petitioner had acted malignantly and wantonly by sharing posts showing the Hon'ble Chief Minister and Hon'ble Minister for PWD in poor light and in a highly defamatory manner. She submitted that such Facebook posts have the potential to create unrest in the society and to provoke political riots. She pointed out that the defacto complainants were the office bearers of a youth organization who felt aggrieved by





the Facebook posts shared by the petitioner and the same could have led to the members of the organization resorting to violence and rioting on account of the political provocation. She also pointed out that the petitioner is an employee of the Devaswom Board and such acts committed by an employee of the Board cannot be approved. She referred to the statements recorded by police produced along with the final report and argued that several witnesses have been cited by police who viewed the Facebook posts of the petitioner. She also submitted that the Facebook posts were shared by the petitioner at a time when the situation was highly volatile on account of agitations against permitting entry of women of particular age groups in the holy place of worship at Sabarimala. She therefore, argued that the alleged acts of the petitioner had the potential to give rise to political riots and resulting in disharmony. She therefore, justified the prosecution proceedings and submitted that the petitioner should face the trial. She asserted that the proceedings are not liable to be quashed in exercise of the inherent powers of this Court.

11. I have carefully analyzed the contentions of the learned counsel for the petitioner and the learned Public Prosecutor. I have perused the documents produced by the petitioner and referred to the judgments



and orders cited.

12. As noted above, the prosecution proceedings were initiated on the basis of Annexure-I petition received by the District Police Chief, Kottayam. A careful reading of Annexure-I shows that the defacto complainants had no case that the Facebook posts of the petitioner caused any provocation or nuisance. In fact, the request in Annexure-I was to take appropriate action in accordance with law against the petitioner who had been allegedly violating the provisions of the Service Rules. There was misconception in depicting the petitioner as a government employee. He was actually an employee of the Devaswom Board. The grievance raised was that the petitioner was abusing the Hon'ble Chief Minister, Hon'ble Minister for Devaswom and District Police Chief. According to the defacto complainants, the petitioner was posting objectionable matters on his Facebook page. However, in the FIR, the allegation is that the petitioner had been sharing Facebook posts defaming the Hon'ble Chief Minister and Hon'ble Minister for PWD. There are material contradictions between the allegations in Annexure-I petition and Annexure-II FIR. The defacto complainants had no case that the petitioner posted anything against the Hon'ble Minister for PWD. On the other hand, they had a grievance that



defamatory posts against the Hon'ble Minister for Devaswom and District Police Chief were made by the petitioner. However, in the FIR, as noted above, according to the police, the petitioner shared defamatory posts against the Hon'ble Chief Minister, and the Hon'ble Minister for PWD. So also allegation of the defacto complainants was that the petitioner had posted objectionable materials on his Facebook page. Whereas, according to the allegation in the FIR, he had only shared such posts. Allegations as in the FIR are reiterated in the final report also.

13. It is well settled with respect to the offence under Section 153 of IPC that if the alleged act is not illegal; however wanton, however undesirable, however deplorable the act may have been, there could be no offence committed under Section 153. Therefore, the offence under Section 153 of IPC would lie against the petitioner only if the act of sharing the Facebook posts was an illegal act. As rightly pointed out by the learned counsel for the petitioner, the mere act of sharing Facebook posts simply criticizing someone cannot be held as *per se* illegal. Even if the target of criticism is a dignitary or a political leader and the criticism is unsavory the act cannot be termed as *ex-facie* illegal.



14. In the reported decision in **Sajidh** (*supra*), the petitioner therein had shared a Facebook post by the 2<sup>nd</sup> accused who wrote a poem and posted it, which according to the defacto complainants was insulting to Hindu religion and caused very much pain to him who professed and practiced Hindu religion. This Court noted that the petitioner who only shared the post through his Facebook account might have done a wanton act but the complaint did not reveal that he caused provocation to commit rioting to the defacto complainants or any person. In the complaint, the allegation was only to the effect that it caused pain to the defacto complainants, practicing Hindu religion. Likewise in the case at hand also, the defacto complainants had no case in Annexure-I petition that the acts committed by the petitioner caused any provocation to them or anyone else.

15. In **Sanjeev S.** (*surpa*), this Court analyzed the facts involved in the case and noted that the act committed by the petitioner in that case, however wanton or deplorable or undesirable or done with malice could not be held to satisfy the penal provisions of Section 153 IPC as the same was not *ex facie* illegal. In the instant case also, the sharing of Facebook posts by the petitioner cannot be found to be *ex facie* illegal.



16. In view of the above discussion, I find merit in the contentions of the learned counsel for the petitioner that the prosecution for the offence under Section 153 of IPC in the instant case is only an abuse of the process of law.

17. Regarding the offence under Section 120(o) of the Kerala Police Act, it is apposite to refer to the following paragraphs of the reported decision in **Sajidh** (*supra*).

*“14. The ingredients of an offence under Section 120(o) of the Kerala Police Act are: (1) A person causing a nuisance of himself to another person (2) Causing such nuisance shall be through any means of communication (3) Act causing nuisance may be done by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger.*

*15. A person causing nuisance of himself to any other person, through any means of communication, is the essential ingredient of an offence punishable under Section 120(o) of the Kerala Police Act.*

*16. In the instant case, the act of the petitioner sharing the facebook post, cannot be considered as a responsible act done by him. But, Annexure-III complaint does not*



*contain any allegation that, by sharing the facebook post, the petitioner caused any nuisance of himself to the de facto complainant or any other person.”*

18. Neither in Annexure-I petition nor in Annexure-II FIR or even in Annexure-III Final Report there is any specific assertion that the petitioner caused any nuisance of himself to the defacto complainants or any other person. Ingredients to attract the offence are lacking in the final report. Therefore, the offence under Section 120(o) also will not lie against the petitioner. It is also to be noted that the said offence is non-cognizable. Once the offence under Section 153 of IPC is found unsustainable, trial cannot proceed solely for the offence under Section 120(o) of the Kerala Police Act on the basis of final report filed by the police.

19. Regarding the submissions of the learned Public Prosecutor, it is apodictic that ideally the actions of individuals as responsible members of the society should be careful when the society is facing turbulence and the situation is volatile. However, the freedom of speech and expression being guaranteed under the Constitution cannot be denied and police action and prosecution against any dissent can be justified



and upheld only if the same are legally sustainable. When the offences alleged are found unsustainable in the eye of law on a scrutiny of the factual matrix, the prosecution proceedings cannot be permitted to go on as the same would amount to abuse of the process of law.

In the light of the above discussion, the Crl.M.C is allowed, Annexure-III Final Report in Crime No.382/2019 of Gandhinagar Police Station, Kottayam, and all further proceedings in C.C.No. 564 of 2019 of the Judicial First Class Magistrate's Court – I, Ettumanoor are hereby quashed.

**Sd/-  
S.MANU  
JUDGE**

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APPENDIX OF CRL.MC 1858/2020

PETITIONER ANNEXURES

- ANNEXURE 1                    TRUE COPY OF THE WRITTEN COMPLAINT DATED  
17/1/2019 SUBMITTED BY ONE K.K. SREEMON TO  
THE DISTRICT POLICE CHIEF KOTTAYAM.
- ANNEXURE II                    TRUE COPY OF THE F.I.R. IN CRIME NO. 382/2019  
REGISTERED BY GANDHI NAGAR POLICE STATION.
- ANNEXURE III                    CERTIFIED COPY OF THE FINAL REPORT NO.  
1158/2019 FILED BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE CORUT-1, ETTUMANOOR.
- ANNEXURE IV                    TRUE COPY OF THE ORDER DATED 16.11.2019 IN  
CRL.M.C. 7153/19.
- ANNEXURE V                    TRUE COPY OF THE DISCIPLINARY ORDER DATED  
13/06/2019, ISSUED BY THE DEVASWOM  
COMMISSIONER, THIRUVANANTHAPURAM.