

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 5TH DAY OF NOVEMBER 2021 / 14TH KARTHIKA, 1943

CRL.MC NO. 5115 OF 2015

CRIME NO.626/2014 OF Guruvayoor Police Station, Thrissur
AGAINST THE ORDER/JUDGMENT IN CC 2316/2014 OF JUDICIAL
MAGISTRATE OF FIRST CLASS ,CHAVAKKAD, THRISSUR

PETITIONER/S:

AVINASH
S/O ANIL KUMAR, 'PANDARATHIL VEEDU', PAANGU
POOVATHUR, THRISSUR DISTRICT
BY ADVS.
SRI.THIYYANNOOR RAMAKRISHNAN
SRI.ARUN KUMAR.P
SMT.AMBIKA RADHAKRISHNAN

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE STATION,
GURUVAYUR.
REPRESENTED BY PUBLIC PROSECUTORS, SRI.A.S.
DHEERAJ & SMT. MAYA M.N.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 22-10-2021, THE COURT ON 05.11.2021
PASSED THE FOLLOWING:

Dated, this the 5th day of November, 2021

Order

This Crl.M.C. is filed under Section 482 Cr.P.C. by an advocate to quash the final report and all proceedings in C.C. No. 2316 of 2014 on the file of the Judicial First Class Magistrate Court, Chavakkad arising from FIR No. 626/2014 of Guruvayoor Police Station alleging commission of offence under Sections 283, 294 (b) of IPC and under Section 117 (e) and 120 (b) of the Kerala Police Act, 2011.

2. The gist of the prosecution case is as follows:-

While Civil Police Officer Unnikrishnan was doing his traffic duty on 27-4-2014 at 10.35 a.m., he was pasting a sticker on the Car bearing Reg. No. KL-08-Q-1564 which was parked near the “No Parking Board” in front of Guruvayoor Devaswom Hospital causing obstruction to the movement of the vehicles, a man in white shirt came and pushed him, angrily shouted him and threatened the CPO and swirled abuses on CPO 6251 Madhu who was with him. It was alleged that the complainant was doing his official duty of affixing stickers on the Car. The complaint alleged that the petitioner caused

obstruction to his duty and insulted the CPO in public.

3. The petitioner challenging the final report and all proceedings submitted that Annexure-A4 report of the Assistant Commissioner of Police (Special Branch) submitted before the Kerala States Human Rights Commission pursuant to the complaint of the petitioner clearly found that there was a lapse on the part of the police which resulted in the petitioner acting against the officer, as the Civil Police Officer Madhu was in plain clothes and not in his uniform and he was posting sticker on his car,. The petitioner, not aware of the fact that it was a civil police officer, bonafidely questioned the authority of the person, and that none of the allegations levelled made out any offence and thus prayed for quashing Annexure A charge sheet.

4. Heard the learned Counsel for the petitioner Sri. P.Arun Kumar and the learned Public Prosecutor Smt. Maya M.N.

5. The learned counsel for the petitioner submits that Annexure-A4 report prepared by the Assistant Commissioner of Police, on the basis of the direction of the Kerala State Human Rights

Commission, clearly found that there was lapse on the part of the police in not doing his official duty wearing uniform and that led to the petitioner questioning the authority which in turn led to the subsequent acts. This report, according to the learned counsel is a public document that is unimpeachable and incontrovertible and thus the very basis of the prosecution case is lost.

6. The learned counsel for the petitioner relies on the judgment in *Swastika Enterprises and Another v. State of Kerala and Another* (**2019 KHC 794**) to contend that Annexure -A4 being a public document, it can be relied on even in a proceeding under Section 482 Cr.P.C. It is trite that even in a proceeding under Section 482 Cr.P.C., public documents whose veracity is not disputed and those which are incontrovertible and unimpeachable can be referred or relied on in a proceeding under Section 482 Cr.P.C.

7. Section 117 (a) reads as follows:

“117 Penalty for interfering in the functions of the police:- whoever,-

xxx

(e) threatens, obstructs or assaults a Police Officer with the manifest intention of preventing such officer from discharging any of his duties”.

The section speaks of threat, obstruction or assault against the police officer with the manifest intention of preventing such officer from discharging his duties. It is clear from Annexure -A4 report, the veracity or content of which is not in dispute that the Civil Police Officer was not in his uniform. Resultantly, there is no question of the petitioner knowing that he is a police officer and as a sequel since there was no such knowledge, there cannot be any intention for preventing the police officer from discharging his duties. I hold accepting Annexure-A4 that no offence is made out under Section 117(e) of the Police Act. Since the requirement of the said section are not attracted in the instant case.

8. Regarding the offences alleged under section 283 IPC as well as 120(b) of the Kerala Police Act, both of which deals with penalty for causing nuisance or obstruction to public by any person in charge of the vehicle, I find that the petitioner has already remitted the fine imposed by the police for parking his car in a "No Parking Area" and the same is evidenced by Annexure - 3, and thus no further penalty or punishment is warranted.

9. With respect to the charge under Section 294 (b) it has to be

noted that the complaint, statements and the final report does not mention exactly as to the words or statement uttered by the petitioner so as to warrant attracting ingredients of offence under Section 294 (b). It is to be noted that the test of obscenity under Section 294 (b) of the Indian Penal Code is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment of Justice K.K. Mathew reported in P.T.Chacko v Nainan (1967 KLT 799) reads as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294 (b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin 1868-3-QB.360 at 371 Cockburn C.J. Laid down the test of 'obscenity' in these words:

“.....the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences”

This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D.Udeshi v. State of Maharashtra AIR.1965 SC 881 at 887. In Samuel Roth v. U.S.A. (1957) 354 U. S.476, Chief Justice Warren said that the test of 'obscenity' is the “substantial tendency to corrupt by arousing lustful desires”. Mr. Justice Harlan observed that in order to be 'obscene' the matter must “tend to sexually impure thoughts”. I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294 (b) IPC”.

It has to be noted that in the instance case, the absence of words

which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294 (b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294 (b) IPC.

10. In that view of the matter, I have no hesitation, for the reasons stated above to quash Annexure A-5 final report. The continuance of the proceedings will be a sheer abuse of the process of the court, as no purpose will be served by a trial in the aforesaid circumstances and to secure the ends of justice, this petition under Section 482 of the Cr.P.C. is liable to be allowed.

11. In the result, Crl.M.C. is allowed and all further proceedings in Annexure - 5 final report in C.C. No. 2316 of 2014 on the file of the Judl. First Class Magistrate Court, Chavakkad, arising from FIR No. 626 of 2014 of Guruvayoor Police Station, are hereby quashed.

12. Before parting with this case, the necessity of the police

force to wear the uniform while in duty needs to be emphasized with reference to the statutory provisions.

13. The uniform of a police man is his direct identification. A policeman in uniform is visible and a citizen immediately knows that he is a police man which will inform that the said individual is in charge of his protection and prevention of offences. It carries an undeniable symbolic value besides representing the State authority. The police uniform also symbolises pride, respect and authority over the citizens.

14. The requirement of the police officer to wear uniform while in duty is to be enforced without exception. There has been instances where this court had to remind the police officers to appear in Court in full uniform in the course of their official duty. This Court had also directed the officers under the Motor Vehicles Department to wear uniform prescribed under Rule 406 of the Kerala Motor Vehicle Rules, 1989 and the corresponding circulars to be implemented and to wear the uniform prescribed therein. See decisions in *Rajesh D. v. Superintendent of Police and Others* [2012 (1) KHC 194] and the judgment in [W.P.C. 17091 of 2021 (S) (MANU/KE/1996/2021)].

15. Sections 43 and 44 of the Kerala Police Act states only about the uniform or the vehicles used by the police that it has to be distinctive, exclusive and easily identifiable but also states why it is so required. It reads as follows:

“43. Police uniform to be distinctive, exclusive and easily identifiable .- (1) The State Police Chief may, with the prior approval of the Government, specify the uniform of all ranks and categories of Police Officers keeping in view the need that such uniform shall be distinctive, exclusive and easily identifiable.

2. The State Police Chief may specify the occasions and the manner of wearing the uniform and the duties for which uniforms are to be compulsorily worn, optionally worn or not worn.

3. A Police Officer shall always maintain his uniforms neatly, properly, suitably and in a state of good repair.

4. No person other than a Police Officer discharging official purpose shall, except for artistic or scientific purpose, wear any police uniform or any dress which is likely to have a feeling that it is a police uniform.

5. An officer authorised by the State Police Chief shall decide on the basis of the observation of the observer whether a particular dress worn by a person creates such an impression that person wearing such dress is a Police Officer when the person wearing such a dress is standing at a distance of twenty five meters from the observer.

“44. Police duty vehicles to be distinctive, exclusive and identifiable:- (1) The State Police Chief may, with the prior approval of the Government, specify the

colour, markings, equipments and accessories to be fitted to every police duty vehicle keeping in **view the need that such vehicles shall be distinctive, exclusive and easily identifiable.**

(3) No person, other than a Police Officer acting for official purpose shall keep, except for artistic or scientific purpose, any vehicle in such a condition as to create an impression that the said vehicle is a Police vehicle and an Officer authorised by the State Police Chief may decide whether a particular vehicle creates such an impression that such vehicle appears like a police duty vehicle to an ordinary observer standing at a distance of hundred meters away from the vehicle”.

16. All these points to the importance of wearing uniform so as to make the police identifiable and in deference to the Kerala Police Act, Police Manual and and Police Uniform Regulations.

17. Since the police officer takes pride in his/her uniform and the visibility of a police officer is very critical for the police and the society, the requirement of wearing the same while on duty except where deviations are permissible, shall be scrupulously observed.

18. I direct the State Police Chief to look into the matter and issue appropriate directions to ensure that the police officers comply with the relevant statutory provisions/guidelines making it mandatory

to wear the uniform while on duty except when it is permissible under law to deviate from the said mandatory requirement.

The Registry is directed to send a copy of this judgment to the State Police Chief for necessary action as stated above and further to submit an action taken report before the Registry of this Court within four months from the date of receipt of a copy of the judgment.

Sd/- Mohammed Nias C.P., Judge

ani/5/11/

/true copy/

APPENDIX OF CRL.MC 5115/2015

PETITIONER'S ANNEXURE

ANNEXURE -1: TRUE COPY OF THE FIR IN CR. NO. 626/14 OF GURUVAYUR POLICE STATION

ANNEXURE-2: TRUE COPY OF THE PAPER REPORT ABOUT RUSH AND TRAFFIC JAMS ON 27/4/14 IN GURUVAYUR TEMPLE REPORTED IN MALAYALA MANORAMA NEWSPAPER DT 28/4/14

ANNEXURE-3: TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF FINE OF RS. 100/- WITH RESPECT TO PETITIONER'S CAR BEARING NO. KL-8Q-1564

ANNEXURE-4: TRUE COPY OF THE REPORT BEARING NO 34/PTN/SB/RC/14 SUBMITTED BY THE ASST. COMMISSIONER OF POLICE, DISTRICT SPECIAL BRANCH, THRISSUR CITY TO THE KERALA STATE HUMAN RIGHTS COMMISSION, TRIVANDURM

ANNEXURE-5: TRUE COPY OF THE FINAL REPORT FILED IN C.C. 2316/14 ON THE FILE OF J.F.C.M. COURT, CHAVAKKAD