



CRL.MC NO. 8677 OF 2024

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2024:KER:78155

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 1ST DAY OF NOVEMBER 2024 / 10TH KARTHIKA, 1946

CRL.MC NO. 8677 OF 2024

CRIME NO.486/2022 OF NORTH PARAVUR POLICE STATION, ERNAKULAM

CC NO.451 OF 2022 OF JUDICIAL MAGISTRATE OF FIRST

CLASS - I, NORTH PARAVUR

PETITIONER/FIRST ACCUSED:

AJITH PILLAI
AGED 56 YEARS
SON OF PRABHAKARA PILLAI, KAVUNGAL,
NATHYATTUKUNNAM BHAGOM, NATHYATTUKUNNAM, PARAVUR
VILLAGE, PARAVUR TALUK, ERNAKULAM, PIN - 683513

BY ADVS.
SREEKANTH K.M.
T.P.RASHMY
ARJUN T. PRADEEP

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 SINDHU VIJAYKUMAR
AGED 47 YEARS
W/O.VIJAYKUMAR, KADASSERY HOUSE, NANTHYATTUKUNNAM,
NATHYATTUKUNNAM KARA, PARAVUR VILLAGE ERNAKULAM,
PIN - 683513
- 3 STATION HOUSE OFFICER
NORTH PARAVUR POLICE STATION, NORTH PARAVUR,
ERNAKULAM, PIN - 683513
R1 & R3 BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 1.11.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



CR

ORDER

Dated this the 1st day of November, 2024

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the petitioner, to quash Annexure A3 Charge Sheet and all further proceedings thereunder in C.C.No.451/2022 on the files of the Judicial First Class Magistrate Court - I, North Paravur, arose out of Crime No.486/2022 of North Paravur police station, Ernakulam. The petitioner herein is the 1st accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. Perused the relevant records.

3. In this matter, the prosecution alleges commission of offences punishable under Sections 354C and 509 of the Indian Penal Code (for short, 'the IPC' hereinafter). The prosecution allegation is that, at about 4.30 hrs. on 3.5.2022, while the de facto complainant was in front of her house, accused Nos.1 and 2 reached there in a car and taken the photographs of herself and the house. When she reached there near the gate, she



restrained their car and questioned the photography. Then, both the accused shown gestures with sexual overtures. Specific allegation against the 1st accused is that, he had shown gesture depicting that of caught hold of her breast and the 2nd accused also shown a gesture with sexual intent and with dual meaning. Thereby, the modesty of the de facto complainant was outraged. This is the base on which, the prosecution alleges commission of the above offences.

4. While seeking quashment of the entire proceedings, the learned counsel for the petitioner argued that, even though the de facto complainant alleges commission of the overt acts stated in the FIS, in the mobile phone recovered from the accused, no photographs found. He also stated that the other witnesses had only hearsay knowledge regarding the occurrence. The learned counsel also pointed out that the de facto complainant while working as the Secretary of Nandyattukunnam Sree Subrahmania Swamy temple committee, the petitioner questioned her actions and due to rivalry, this case has been foisted.

5. The learned Public Prosecutor would submit that, going by the prosecution records, the prosecution case is



well made out, prima facie, even though the statement does not fully suggest offence under Section 354C of the IPC.

6. I have gone through the FIS and the same recites that, at about 4.30 hrs. on 3.5.2022, while the de facto complainant was in front of her house, accused Nos.1 and 2 reached there in a car and taken the photographs of herself and the house. When she reached there near the gate, she restrained their car and questioned the said photography. Then, both the accused shown gestures with sexual overtures. Specific allegation against the 1st accused is that, he had shown gesture depicting that of caught hold of her breast and the 2nd accused also shown a gesture with sexual intent and with dual intent.

7. Section 509 of the IPC provides as under:

509. Word, gesture or act intended to insult the modesty of a woman.—*Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.*



8. Similarly, Section 354C of the IPC provides as under:

354C. Voyeurism.—Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image



or act is disseminated, such dissemination shall be considered an offence under this section.

9. Even though explanation 1 to Section 354C provides that *“private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public,* the occurrence is in front of the house of the de facto complainant. Therefore, it could not be held that the said offence is made out.

10. Indubitably, watching or capturing the image of a woman, engaged in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image alone is punishable. If a woman normally appears in a public place or private place not in circumstances where she would usually expect, any other person if either see or captures her image, the same, in no way, affect her privacy by exposing the genitals, posterior or breasts are exposed



or covered only in underwear etc., no offence under Section 354C of the IPC, would attract. In the instant case, the de facto complainant was in front of her house, without any secrecy, as stated in Section 354C of the IPC and as such, the said offence would not attract herein. However, Section 354A(1)(i) and (iv) of the IPC defines offences of sexual harassment and punishment for sexual harassment and the same reads as under:

354A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) xxxx*
- (iii) xxxx*
- (iv) making sexually coloured remarks,*

shall be guilty of the offence of sexual harassment.

11. Going by the facts of this case, the overt acts would attract offence under Section 354A(1)(i) and (iv) of the IPC. In view of the above finding, even though the quashment, as such, could not be allowed, quashment sought for in relation to offence under Section 354C of the IPC, is liable to succeed, since prima facie, such offence is not made out from the materials. At



the same time, it is observed that, at the time of framing charge, the trial court shall consider as to whether materials are sufficient in framing charge for the offence punishable under Section 354A(1)(i) and (iv) of the IPC.

Accordingly, this petition is allowed in part. Prosecution for the offence under Section 354C of the IPC, is quashed, while allowing the prosecution to continue for the offence under Section 509 of the IPC.

Registry is directed to forward a copy of this order to the trial court, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL.MC 8677/2024

PETITIONER'S ANNEXURES

ANNEXURE A1 CERTIFIED COPY OF THE FIR NO.486 OF 2022
DATED 04.05.2022 OF THE NORTH PARAVUR
POLICE STATION

ANNEXURE A2 COPY OF THE STATEMENT DATED 04.05.2022,
GIVEN BY THE DEFACTO-COMPLAINANT BEFORE
THE POLICE

ANNEXURE A3 CERTIFIED COPY OF THE FINAL REPORT
NO.430/2022 DATED 26.06.2022

ANNEXURE A4 THE COPY THE BAIL ORDER DATED 20.05.2022
BY THIS HONOURABLE COURT IN B.A.NO.3679
OF 2022

RESPONDENTS' ANNEXURES : NIL