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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 1ST DAY OF OCTOBER 2024 / 9TH ASWINA, 1946

CRL.MC NO. 2575 OF 2018

CRIME NO.923/2016 OF KUNNAMANGALAM POLICE STATION, KOZHIKODE

CC NO.785 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM

PETITIONER/ACCUSED:

ABDUL NOUSHAD @ NOUSHAD AHSANI
AGED 37 YEARS, S/O. MUHAMMED K.V,
OTHUKKUNGAL, KOTTAKKAL, MALAPPURAM,
KUNNAMANGALAM, KOZHIKODE CITY,
KERALA, PIN 673 571.

BY ADV V.A.VINOD

RESPONDENTS/STATE AND COMPLAINANT:

1. **STATE OF KERALA**
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM,
   COCHIN - 682 031.
2. **RIZVANA**
   D/O.ABDUL RASAQ, SHAHINA MANZIL,
   ITTAMMAL, VADAKARA MUKK, KANJANGAD,
   KASARGODE, KERALA, PIN 671 315.

SRI.RENJITH.T.R, SR.PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01.10.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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"CR"

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.2575 of 2018

Dated this the 01st day of October, 2024

ORDER

If a Muslim girl gives a handshake to an adult male, and the girl who is giving the handshake and the adult who is accepting the handshake have no problem, can a third person can say that the Muslim girl violated the religious beliefs? This is the question to be decided in this case.

2. Petitioner is the accused in C.C..No.785/2017 on the file of the Judicial First Class Magistrate Court, Kunnamangalam. The above case is charge sheeted against the petitioner alleging offences punishable under Section 153 of the Indian Penal Code and Section 119(a) of the Kerala Police Act, 2011. The defacto complainant in the above case is the 2nd respondent herein. It is submitted that, the 2nd respondent is a Law Graduate, who was a

student of Karanthur Markaz Law College, Kozhikode. The case of the 2nd respondent is that, while she was a 2nd year Law Student at Markaz Law College, she got the opportunity to participate in an interactive session of Dr. T.M.Thomas Isaac, the then Minister of Finance, Government of Kerala, which was conducted in her college. The students who were participating in the Interactive Session could ask the Hon'ble Minister questions, and for such students, the Hon'ble Minister would also give a gift. Accordingly, the 2nd respondent was among the few students who were called upon the stage to be awarded a gift by the Hon'ble Minister himself for asking questions. The students who were called upon the stage, first gave a handshake to the Hon'ble Minister and then received the respective gifts and the said event was captured by media photographers and shown live in various Channels. The 2nd respondent also accepted the gift after giving a handshake to the minister. The grievance of the 2nd respondent is that, a few days after the above

event, she came to know from her friends that a new facebook post highlighting her handshake to the Hon'ble Minister was generated with a specification that she had violated Shariat Law. In addition to the same, the 2nd respondent in her complaint stated that a WhatsApp video has been circulating, containing the speech of the petitioner, remarking that she had violated Shariat Law by giving a handshake to the Hon'ble Minister, and as she being a grown up girl has committed adultery by touching another man and the said sequence of her handshake is also displayed in the video. The grievance of the 2nd respondent is that due to the circulation of the aforesaid WhatsApp video, she and her family were put in disgrace. Hence it is alleged that the accused committed the offence. Annexure-A1 is the final report. According to the petitioner, even if the entire allegations are accepted, the offences under Section 153 of the Indian Penal Code and Section 119(a) of the Kerala Police Act are not attracted.

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3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. “Shaking hands” is a traditional gesture that conveys greeting, respect, courtesy, agreement, deal, friendship, solidarity, etc. In the modern era, it is stated that, a firm handshake shows confidence and professionalism, and a weak handshake shows a lack of confidence or enthusiasm. A warm handshake shows the friendship of familiarity.

5. In Islam, physical contact between unrelated members of the opposite sex including a handshake is generally considered ‘haram’ (forbidden). This prohibition is based on Quranic Verses (eg.24:30-31, 33:35), Hadiths (saying of Prophet Muhammad) and Islamic jurisprudence (Fiqh). According to the Muslim religion, the reason for this prohibition is modesty and humility, avoiding the potential temptation of fitnah and maintaining moral boundaries. But the Quranic Verses emphasize personal choice as far as

religion is concerned. Surah Al-Kafirun (109:6) says, “For you is your religion, and for me is my religion”. Surah Al-Baqarah (2:256) says that “There is no compulsion in religion”.

6. Here is a case where the 2nd respondent, a Muslim girl, decided to give a handshake to the Hon’ble Finance Minister while accepting a gift from the Hon’ble Minister. What is the business of the petitioner to attack the 2nd respondent when the 2nd respondent voluntarily decided to give a handshake to the Hon’ble Minister while accepting a gift for participating in a discussion? As I observed in the earlier paragraph, religious beliefs are personal. There is no compulsion in religion, especially in Islam. One cannot compel another to follow his religious practice by the latter. Religious practice is a personal choice of every citizen of this country. A perusal of Article 25 of the Constitution of India would show that, subject to public order, morality and health and to the other provisions of that Part of the

constitution, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Propagate religion does not mean that the religious practice should be imposed on others. Every citizen has a right freely to profess and practice his or her religion. Article 26 says about freedom to manage religious affairs. Article 27 says about freedom as to payment of taxes for promotion of any particular religion or religious denomination. Article 28 says about freedom as to attendance at religious instruction or religious worship in certain educational institutions. Articles 25 to 28 of the Constitution of India do not permit a person to impose his religious beliefs on another. Therefore, the 2nd respondent has a right to follow a religious practice in her own way. None can impose a religious belief of his own on another. Therefore, if the allegation against the petitioner is correct, the same cannot be accepted in India, where the Indian Constitution is supreme.

7. This Court perused the entire criminal miscellaneous case. Except the contention that the offence is not attracted, there is no denial in the criminal miscellaneous case to the effect that the petitioner has not made such a speech remarking that the 2nd respondent violated Shariat Law by giving a handshake to the Hon’ble Minister. In all religions, there are age old practices and conventions. Some may agree and some may disagree with those religious beliefs. Agree and disagree is part of our democratic principle and it is also a constitutional right of every citizen. One cannot impose his religious practice on another and it is a personal choice of every citizen. If the prosecution case is correct and proved through cogent evidence, it is a serious thing which will definitely intrude on the personal liberty of the second respondent. Whether Section 153 IPC or Section 119(a) of the Kerala Police Act or some other offences are attracted based on the above allegation is a matter of evidence

8. The case of the petitioner is that the offences under Section 153 IPC and Section 119(a) of the Kerala Police Act are not attracted. It is not the law that in all cases where the ingredients of the offences alleged in the charge sheet are not attracted, this Court should step in and quash the proceedings. There are procedures in Criminal Procedure Court(for short Cr.P.C)/Bharatiya Nagarik Suraksha Sanhita (for short, BNSS) about how a criminal case is to be dealt with. The accused has to appear on summons and thereafter the Court will frame charge or record plea of the accused. The accused can plead guilty at that stage if he/she intends to do so. If not, the prosecution will adduce evidence. The accused will get an opportunity to cross-examine the witnesses. The prosecution will get an opportunity to re-examine the witnesses. Thereafter the incriminating circumstances will be put to the accused and the accused can give his comments on the incriminating circumstances. The accused can give a statement also at

that stage about his defence. Thereafter the accused can adduce defence evidence also. Subsequently, after hearing both sides, the Court pronounces the judgment. This is the normal procedure to be followed in any criminal case. This court need not step in and interfere with all cases where it is contended that the ingredients of the offences are not made out. After adducing evidence, new offences may come out. If the case is terminated at the nib, the accused will escape from the clutches of law. Moreover, if this Court starts to entertain criminal miscellaneous cases to quash cases triable by the Magistrate courts and other courts saying that, no ingredients of the offences alleged in the police charge are attracted, this court will be doing the work of trial courts. This will only burden the work of this court. The trial court is not sitting only to find out whether offences alleged in the police charge sheet are made out or not. If a new offence is made out from the evidence, the trial court can frame charge for the same and proceed with the case in

accordance with the law.

9. Section 528 BNSS/482 Cr.P.C says that, nothing in the Code/Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code/Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Therefore, to prevent abuse of the process of any Court and to secure the ends of justice, this Court can invoke the inherent jurisdiction. This doesn't mean that in all cases in which the ingredients of the offences alleged in the police charge are not attracted, this Court should immediately step in. Unless there is an abuse of the process of the Court or to secure the ends of justice, this Court need not invoke the powers under Section 528 BNSS/482 Cr.P.C.

10. In this case, the allegation against the petitioner is that, a WhatsApp video is circulating which contains the speech of the petitioner, remarking that the 2nd respondent

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has violated Shariat Law by giving a handshake to the Finance Minister of the State, and as such, she, being a grown up girl, has committed adultery by touching another man. It is alleged that the video is circulated and the said sequence of her handshake was also displayed in the video. A young brave muslim girl comes forward and says that, it violates her personal freedom of religious belief. In such situations, our constitution will protect her interest. Moreover, it is the duty of the society to support her. No religious belief is above the constitution and the constitution is supreme. It will be better to extract the allegation in Annexure A1 final report:

"Charge U/S 153IPC, 119(a) KP Act

18/08/2016 തീയതി കോഴിക്കോട് ജില്ല കുന്ദമംഗലം അംശം കാരന്തൂർ മർക്കസ് ഓഡിറ്റോറിയത്തിൽ വെച്ച് ബഹു കേരള ധനകാര്യമന്ത്രി Dr: തോമസ് ഐസക് സാറിന്റെ Interactive session-ൽ പങ്കെടുത്തതിനു ലഭിച്ചതായ ഗിഫ്റ്റ് സ്റ്റേജിൽ വെച്ച് പരാതിക്കാരി സ്വീകരിക്കുന്ന സമയത്ത് Shakehand കൊടുക്കുന്നതായ ഭാഗങ്ങൾ ഒരു പൊതു സ്ഥലത്ത് വെച്ച്

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ശരിയത്ത് നിയമങ്ങൾ തെറ്റിച്ചാണെന്ന് പറഞ്ഞുകൊണ്ട് ഈ കേസിലെ പ്രതി സോഷ്യൽമീഡിയകളായ Whatapp, Facebook എന്നീ മാധ്യമങ്ങൾ വഴി പ്രചരിപ്പിച്ചതിൽ വിദ്യാർഥിയായ പരാതിക്കാരിക്ക് തന്റെ വിദ്യാഭ്യാസത്തിനും ഭാവി ജീവിതത്തിനും പ്രശ്നം വരുന്ന രീതിയിൽ മാനഹാനി ഉണ്ടാവുകയും തദ്വാര പരാതിക്കാരിയുടെ കുടുംബത്തിനും മാനഹാനി ഉണ്ടാകുകയും മതസംഘടനകൾ തമ്മിൽ സ്പർദ്ധയും വിദ്വേഷവും ഉണ്ടാക്കുകയും അതുവഴി ലഹള ഉണ്ടാക്കണമെന്നുള്ള ഉദ്ദേശത്തോട് കൂടി മനപ്പൂർവം ശ്രമിച്ചതായി വ്യക്തമായിട്ടുള്ളതിനാൽ പ്രതി മേൽവകുപ്പുപ്രകാരം ശിക്ഷാർഹമായ കുറ്റം ചെയ്തിരിക്കുന്നു എന്ന്."

11. Whether the same attracts the offences under Section 153 IPC and Section 119(a) of the Kerala Police Act is a matter to be decided by the jurisdictional court. I am of the considered opinion that this Court need not exercise the extraordinary jurisdiction under Section 482 Cr.P.C/Section 528 BNSS to quash this proceedings in the peculiar facts and circumstances. If the petitioner is innocent, he can face the trial and get an honourable acquittal from the

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jurisdictional court. I am of the considered opinion that there is no abuse of the process of the Court as alleged by the petitioner or there is nothing to secure the ends of justice in this case to invoke the extraordinary powers of this court under Section 482 Cr.P.C/Section 528 BNSS. This Court is of the view that the petitioner has to surrender before the jurisdictional court and face the trial in accordance with the law. Hence, there is no merit in this case. I make it clear that, the trial court will decide the case untrammeled by any observation in this order. The registry will forward a copy of this order to the trial court forthwith and the trial court will dispose the case as expeditiously as possible in accordance with law.

Consequently, this Criminal Miscellaneous Case is dismissed.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

JV/DM

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APPENDIX OF CRL.MC 2575/2018

PETITIONER ANNEXURES

ANNEXURE A1. **COPY OF THE FINAL REPORT IN CC NO.785 OF 2017 IN THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMANGALAM.**

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE