



2023:KER:81319

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 12TH DAY OF DECEMBER 2023 / 21ST AGRAHAYANA, 1945

WP(C) NO. 40709 OF 2023

**CRIME NO.55/CB/TVM/R/202/2022 OF CRIME BRANCH, THIRUVANANTHAPURAM,
AGAINST THE ORDER DATED 28.02.2023 IN CMP 4/2023 IN CP 107/2023 OF
JUDICIAL MAGISTRATE OF FIRST CLASS ,KATTAKADA**

PETITIONER:

XXXXXXXXXX
XXXXXXXXXX

BY ADVS.
V.SETHUNATH
V.R.MANORANJAN (MUVATTUPUZHA)
THOMAS ABRAHAM (K/1051/2010)
SREEGANESH U.
LAKSHMINARAYAN.R

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO HOME DEPARTMENT, SECRETARIAT,
THIRUVANATHAPURAM., PIN - 695001
- 2 THE STATE POLICE CHIEF, POLICE HEAD QUARTERS,
SASTHAMANGALAM. P.O THIRUVANATHAPURAM - 695010
- 3 THE HON: REGISTRAR (DISTRICT JUDICIARY)
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 4 THE HON: REGISTRAR GENERAL
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

BY ADVS.
HARINDRANATH B G
AMITH KRISHNAN H.(K/000666/2015)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****JUDGMENT**

Exordially, this Court is fully conscious of the agony and apprehension of the petitioner and travels with her to the fullest extent, without any reservation.

2. The petitioner is the hapless victim of a sexual offence allegedly committed on her by a Police Officer. It transpires that the said accused obtained bail from this Court; and, on the allegation that, in spite of the conditions imposed, he had committed further offences, the prosecution and the petitioner moved independent applications before the learned Magistrate for cancellation of his bail. Pertinently, both these applications were dismissed by the learned Magistrate; but, while delivering judgment, due to an obvious omission, in the order relating to the application of the petitioner, her name and identity were not anonymised.

3. There can be little doubt that the publication of the name and identity of the petitioner must have caused her great agony; and as I have said in the opening paragraph of this judgment, there can



be no justification for this, in any manner whatsoever.

4. However, the petitioner, apart from seeking that the official records be anonymised - as far as her name and identity are concerned, also seeks that necessary action be taken against the learned Magistrate who passed the order revealing her identity, under the provisions of Section 228 A of the Indian Penal Code (IPC).

5. As regards the first limb of the request of the petitioner – as impelled by her learned counsel – Sri.V.Sethunath, Sri.B.G.Harindranath – learned Standing Counsel for the High Court of Kerala, admitted unequivocally that the order in question requires to be anonymised immediately, for which, this Court can issue appropriate orders to the learned Magistrate.

6. However, *quad hoc* the second prayer of the petitioner – that the learned Magistrate be proceeded against under Section 228 A of the IPC – Sri.B.G.Harindranath raised serious objections, particularly that this goes contrary to the well enshrined protection to a Judicial Officer under the Judges (Protection) Act, 1985 (hereinafter referred to as ‘the Act’ for short). He also relied upon



the judgment of this Court in **Suresh and Another v. State of Kerala Represented by the Chief Secretary and Others** [(2019) 3 KLJ 639] in substantiation.

7. Sri.B.G.Harindranath, thereafter, argued that, though it is without doubt that the order in question ought not to have been issued by the learned Magistrate without anonymising the name and address of the petitioner under Section 228 A of the IPC, no offence can be made out against the said officer, going by its employed phraseology. He impressed upon me that, while the imperative requirement of keeping the identity of a victim of sexual offence secret, is inviolable from the declarations of the Honourable Supreme Court in **State of Punjab v. Ramdev Singh** [AIR 2004 SC 219], the inadvertent omission committed by the learned Magistrate will still not expose him/her to any action under Section 228 A of the IPC, particularly when the explanation to sub clause (3) thereof renders it perspicuous that it is only the printing and publication of a judgment, except that of the High Court or Supreme Court, will amount to an offence under it. He explained that this indubitably means that even when the printing and publication of a judgment of



any other Court may perhaps fall within its ambit, it will still not render the learned Magistrate susceptible to any action, for having issued it in exercise of judicial function because that is the specific tenor of the language used, while defining the provision. He thus prayed that this Writ Petition, to the extent to which the petitioner seeks action against the learned Magistrate who issued Ext.P1 order, be dismissed.

8. In reply, Sri.V.Sethunath – learned counsel for the petitioner, submitted that his client does not harbour any grudge against the Magistrate, but that she is voicing her *cri de coeur* through this Writ Petition, since she had to suffer immeasurable and indescribable ridicule and prejudice, when her identity became public. He submitted that, therefore, he leaves it to this Court to take a final decision; however, praying that the learned Magistrate be directed to immediately anonymise his client's name and address in the official address; but adding that, however, the damage has already been done.

9. It does not require me to restate that the situation of the petitioner is rather unfortunate; and that if she has been subjected to



ridicule and prejudice, it is for no reason that can ever be attributed to her. The requirement of maintaining the secrecy with respect to the identity of the victim of a sexual offence being inviolable, there cannot be any doubt that the learned Magistrate ought to have been more careful, while issuing the order in question.

10. However, the acme question is whether this omission would subject the learned Magistrate to any criminal action under Section 228 A of the IPC. I have no doubt that answer to this is to the negative because, Section 228 A of the IPC begins by saying that, whoever prints or publishes the name or any matter which may make known the identity of a person against whom an offence under Section 376, among others, of the IPC is alleged, or found to have committed, shall be punished with imprisonment of either description for a term which may extend to two years and also with fine.

11. It is admitted without contest that the petitioner suffered an offence charged under Section 376 of the IPC; and hence, the mandate of Section 228 A thereof would apply in her protection. But, as already said above, the rigour of the said Section operates only against a person who prints or publishes the name and identity



of the victim; but this, by no stretch of imagination, could apply in the case of a Court, before which an application is filed by the victim, for whatever be the relief that he/she may require. There can hardly be any dispute on this because, as I have already said above, sub clause (3) of Section 228 A of the IPC again mandates that whoever prints or publishes any matter in relation to any proceeding before a Court with respect to an offence referred to in sub section (1), without the previous permission of such Court, shall be punished with imprisonment and/or with fine. The explanation to this then says that printing or publication of judgment of a High Court and Supreme Court does not amount to an offence within the meaning of the said Section.

12. The forensic position, therefore, is absolutely limpid. The offence under Section 228 A of the IPC would get attracted to a person who prints or publishes any matter, so as to reveal the identity of the victim of an offence *inter alia* under Section 376 of the IPC, but it certainly not cover a case where a Court inadvertently reveals such name in Court proceedings or orders.

13. In fact, the afore position has been well settled by this



Court in **Suresh** (supra), wherein, the provisions of the ‘Act’ have also been considered in substantial detail.

14. Coming to the ‘Act’, the protection granted to the Judges therein is virtually plenary, because it protects a person who is, or has been, a Judge, from any action initiated *qua* an act, thing or word committed, done or spoken by him/her when, or in the course of or purporting to act in the discharge of his/her official or judicial duty or function.

15. In the case at hand, it is indubitable that the learned Magistrate was acting in performance of judicial duties and the error committed by her, or her office, is that the order was not anonymised *qua* the petitioner. This Court cannot, therefore, find the request of the petitioner, for initiation of action against the learned Magistrate under Section 228 A of the IPC, to be worthy of grant, specifically within the ambit of the said Section, read with the provisions of the ‘Act’.

16. However, before I conclude, it obligates this Court to declare without any ambiguity, that every Judge is to act fully conscious of the imperative requirement of maintaining anonymity of



victims of sexual offences, particularly in relation to those enumerated in Section 228 A of the IPC.

17. Many times, experience has shown that cause title of judgments are prepared by the offices of Courts concerned; while, only the judgments *per se* are corrected and verified by the learned Judicial Officers. The mounting number of cases adds to the problem and exacerbates mistakes; and obviously, therefore, this case should be an eye-opener to every such officer who discharges his/her duties under the ambit of penal provisions.

18. This Court, therefore, suggests that, in matters like this, wherever petitions are filed by or against victims of sexual offences – as specified under Section 228 A of the IPC - Judges and Judicial Officers must initiate immediate action to anonymise the details, particularly their names and addresses, before continuing with consideration of the applications/cases; and if this is done at the inception, obviously, the final orders will also carry such anonymisation. This should be done and ensured to be done.

19. For the afore purpose, I direct the Registry to immediately circulate a copy of this judgment, along with an apposite Office



Memorandum, to all learned Judicial Officers, particularly in the Criminal Jurisdiction, for necessary action and compliance.

20. It will also be apposite for the Registrar (District Judiciary) to serve a copy of this judgment on the Director, Kerala Judicial Academy, so that these issues can be kept in mind, while the training processes are undertaken for the Judicial Officers.

In summation and in the afore perspective, this Writ Petition is disposed of with the following directions:

a) The learned Magistrate is directed to immediately anonymise the proceedings and orders issued with respect to the application filed by the petitioner, within a period of two weeks from the date of receipt of a copy of this judgment.

b) However, this Writ Petition will stand dismissed, as regards the plea of the petitioner for action against the learned Magistrate under Section 228 A of the IPC.

c) Requisite action in terms of the directions and observations in paragraph 19 and 20 afore be taken forthwith.

Sd/ -

DEVAN RAMACHANDRAN
JUDGE

RR



APPENDIX OF WP(C) 40709/2023

PETITIONER EXHIBITS

SEALED COVER 1
(EXT.p1)

THE TRUE COPY OF THE COMMON ORDER PASSED
BY THE JFMC NO.1, KATTAKADA IN CMP
NO.3900/2022 AND CMP NO.4/2023 DATED
28.2.2023.

SEALED COVER 2
(EXT.P2)
EXHIBIT P3

THE TRUE COPY OF THE SCREENSHOT TAKEN FROM
THE WEBSITE OF THIS COURT
THE TRUE COPY OF THE OFFICE MEMORANDUM F.
NO. 24013/08/2015 DATED 16-01-2019 ISSUED
BY THE HOME MINISTRY, UNION OF INDIA