



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 4TH DAY OF JULY 2025/13TH ASHADHA, 1947

CRL.MC NO. 497 OF 2025

CRIME NO.434/2024 OF BEKAL POLICE STATION, KASARGOD

AGAINST THE ORDER/JUDGMENT IN CC NO.2519 OF 2024 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, HOSDRUG

PETITIONERS/ACCUSED 1 AND 2:

- 1 GOWRI SANKARI V.S,
AGED 26 YEARS, D/O VIKRAMAN.V,
RESIDING AT KOIKKALVILA HOUSE, PULIMOODU,
KULAPPADA. P.O, UZHAMALAKKAL, ARYANADU,
THIRUVANANTHAPURAM DISTRICT, PIN - 695542
- 2 PRASANTH BELLULAYA.U,
S/O BALAKRISHNA BELLULAYA,
RESIDING AT UBRAKALA HOUSE, KUMBADAJE,
KASARAGOD DISTRICT, PIN - 671551

BY ADVS.
SRI.T.MADHU
SMT.C.R.SARADAMANI
SHRI.RENJISH S. MENON
SMT.ALEENA JOSE
SMT.AVANTHIKA R.
SHRI.KARTHIK KRISHNA M.

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031



- 2 THE STATION HOUSE OFFICER,
BEKAL POLICE STATION, KASARAGOD DISTRICT,
PIN - 671318
 - 3 AKHILESH K,
AGED 26 YEARS, SON OF BALAKRISHNAN.C.H,
UTHRAM HOUSE, CHEMMATTAM VAYAL, MUTHAPPAN THARA,
BELLA VILLAGE, KASARAGOD DISTRICT, PIN - 671321
- SMT. SHEEBA THOMAS, PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
04.07.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“CR”****V.G.ARUN, J**

= = = = =

Crl.M.C.No.497 of 2025

= = = = =

Dated this the 4th day of July, 2025**ORDER**

The petitioners are accused Nos.1 and 2 in Crime No.434 of 2024 registered at the Bekal Police Station, now pending as C.C.No.2519 of 2024 on the files of the Judicial First Class Magistrate Court-II, Hosdurg. Therein, the petitioners are facing prosecution for the offences under Sections 192 and 45 of the Bharatiya Nyaya Sanhitha, 2023 ('BNS' for short), Section 51 of the Disaster Management Act, 2005 and Section 120(o) of the Kerala Police Act, 2011.

2. The prosecution allegation is that the petitioners posted negative comments in a WhatsApp group about the solicitation of contribution to the Kerala Chief Minister's Distress Relief Fund (CMDRF), towards rehabilitation of the Chooralmala-Mundakkai landslide victims. According to the prosecution, the derogatory comments posted by the petitioners are capable of creating riot and were intended to dissuade the public from contributing to the CMDRF.



3. Learned counsel for the petitioners submitted that the petitioners had only asked the members of their group to verify the credentials of the persons seeking contribution and to donate only to those who are trustworthy. According to the counsel, such a comment, posted in a closed WhatsApp group, cannot result in criminal prosecution.

4. *Per contra*, learned Public Prosecutor contended that the context, the timing of the comments and the pointed criticism against the party in power are clear proof of the intention to create riot and obstruct the flow of contributions to the CMDRF. According to the Public Prosecutor, the question as to whether the petitioners had such an intention has to be decided based on the evidence tendered during the trial of the case.

5. The comments, when read as a whole, makes it apparent that they were posted during the course of a discussion regarding utilization of the contributions made to the CMDRF. There are comments about mis-utilisation of the money donated and also against the political party in power. Even if so, to assume that such comments are capable of causing riot among



the public and nuisance to others, is to say the least, preposterous. That the comments are not palatable to a group of people or even to the Government, is no reason to initiate criminal prosecution against the petitioners, since the comments, though critical of the Government, are well within the bounds of law.

6. Our Constitution guarantees the right to freedom of speech and expression to every citizen. Fair criticism and right to express dissent is intrinsic to the concept of democratic governance. While on the subject, it will be beneficial to read the following erudite exposition of the Supreme Court at paragraphs 80 and 97 of the judgment in **Bennett Coleman & Co. and Others v. Union of India and Others** [(1972) 2 SCC 788];

"80. The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum, 'let the people have the truth and the freedom to discuss it and all will go well'. The liberty of the press remains an 'Art of the Covenant' in every democracy. Steel will yield products of steel.

xxx xxxx xxx

97. Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been



impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. *Voltaire* expressed a democrat's faith when he told an adversary in argument: "I do not agree with a word you say, but I will defend to the death your right to say it." Champions of human freedom of thought and expression, throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members."

(underline supplied)

7. In this context, the following scholarly words of Robert H Jackson, J. in **the American Communications Assn. CIO v. Douds** [339 US 382 (1950)], though with reference to the US Constitution, is of much relevance;

"Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored. "

8. Clamping persons expressing dissent or raising criticisms with criminal cases is an affront to the democratic values enshrined in our Constitution. The comments posted by the



petitioners being fair criticism, continuation of their prosecution will be an abuse of process of law and violative of the freedom of speech and expression guaranteed by our great Constitution.

9. Apart from the reasons stated above, even if the allegations are accepted, the alleged offences will not be attracted. For constituting the offence of rioting, force or violence must be used by an unlawful assembly or any member thereof in prosecution of the common object of such assembly. For the offence under Section 192 BNS to be attracted, the offender must have malignantly or wantonly, by doing an act which is illegal, given provocation to any person, intending or knowing that his act is likely to provoke the other to commit the offence of rioting. By no stretch of imagination can fair criticism of governmental action be termed as something done with the intention to provoke others to commit rioting. The above reasoning applies with equal force to the offence under Section 120(o) of the Kerala Police Act also.

10. For attracting the offence under Section 51 of the Disaster Management Act, either a public servant must be obstructed from discharging his functions under the Act or there



must be refusal to comply with the directions issued by the Government or the authorities under the Act. As the request for contribution made by the Government cannot be termed as a direction, comments alerting the members of a WhatsApp group to be cautious while making the contributions will not amount to refusal of a direction issued under Section 51 of the Disaster Management Act.

For the aforementioned reasons, the Crl.M.C is allowed. Annexure A2 final report and all further proceedings in Crime No.434 of 2024 registered at the Bekal Police Station, now pending as C.C No.2519 of 2024 on the files of the Judicial First Class Magistrate Court-II, Hosdurg, as against the petitioners, are quashed.

sd/-

V.G.ARUN, JUDGE

ARK/sj



APPENDIX OF CRL.MC 497/2025

PETITIONER ANNEXURES

ANNEXURE A1	THE CERTIFIED COPY OF THE FIR DATED 1/8/2024 IN CRIME NO. 434/2024 OF BEKAL POLICE STATION, KASARAGOD DISTRICT
ANNEXURE A2	THE CERTIFIED COPY OF THE FINAL REPORT DATED 2/9/2024 IN CRIME NO. 434/2024 OF BEKAL POLICE STATION