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Free expression includes criticizing the chief minister's relief fund: Kerala High Court dismisses Facebook post case



According to the Court, a citizen's social media criticism of the Chief Minister's Relief Fund did not violate the Kerala Police Act or the IPC unless it caused a public disturbance.

A 38-year-old man was accused of criticizing the Chief Minister's Distress Relief Fund (CMDRF) on Facebook, but the Kerala High Court recently dismissed criminal charges against him .

Fairness VG Arun said that in a democracy, people must be allowed to voice their thoughts, even if they disagree with the government or a segment of society, and that merely criticizing the government cannot result in criminal penalties.

The Court emphasized that restrictions on free expression under Article 19(2) of the Indian Constitution would only apply where a comment escalates to the point where it endangers public order, national security, or India's sovereignty and integrity.

"A law restricting speech or expression that tends to provoke public disorder or tends to affect India's sovereignty and integrity, as well as the security of the State, can only be prosecuted under Article 19(2) if the comment reaches the level of incitement. The Court further stated that in this particular case, the mere fact that a portion of the public finds the petitioner's remarks offensive is enough to start criminal proceedings."

The Court determined that the petitioner's remark was within the basic right to freedom of speech and expression protected by Article 19(1)(a) of the Constitution because it found no such incitement on his behalf.

The petitioner allegedly said on Facebook on August 11, 2019, that anyone who wanted to assist the victims of the 2018 flood should donate directly rather than to the CMDRF, which Chief Minister Pinarayi Vijayan might misuse.

"Anyone can personally assist if they so choose. Pinarayi is upset about not receiving the money immediately, and if it is paid, it will be fraudulently obtained," the comment said.

The Indian Penal Code's Section 505(1)(b) (publishing or circulating any statement, rumour, or report which induces others to commit an offence against the state or disturb public order) and Sections 118(b) (penalty for spreading rumour on any essential service), 118(c) (penalty for willfully damaging essential service to create panic in public), and 120(o) (penalty for causing nuisance and violation of public order through anonymous call, message, letter, email, etc.) of the Kerala Police Act, 2011.

The petitioner, feeling wronged, went to the court to request that the allegations and proceedings against him be dismissed.

Every citizen has the freedom to criticize the government, according to the petitioner's

attorney, and this criticism shouldn't be equated with inciting others to commit crimes against the state or causing public unrest.

The public prosecutor, however, maintained that the remark was meant to thwart the government's attempts to gather money for disaster relief and even qualified as a crime under

The Court emphasized that speech restrictions cannot be justified by the government's fear of possible backlash or criticism. It alluded to the Supreme Court's stance in Shreya Singhal v. Union of India, where it was decided that the state could not repress dissent under the pretense of upholding public order because freedom of thought and expression is the cornerstone of a democratic constitution.

This fundamental right includes the ability to criticize the government and those in charge of affairs for their policies and acts.

High Court of Kerala

Additionally, the Court determined that none of the charges brought against the petitioner were relevant because it noted that his Facebook comment did not cause any harm to any vital government service as required by Sections 118(b) of the Kerala Police Act or incite fear or disturb public tranquility as required by Section 505(1)(b) of the IPC.

Additionally, Section 118(c) prohibited the designation of assistance efforts for disaster victims as "essential services," and Section 120(o) of the Kerala Police Act prohibited the punishment of a single comment as a persistent nuisance.

As a result, the Court invalidated the final report and all associated actions taken against the petitioner.

Advocates Suvin R. Menon, Parshathy SR, Achuth Krishnan R, and Cristy Therasa Suresh represented the petitioner.

Vipin Narayanan, a public prosecutor, represented the State