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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024 / 22ND BHADRA, 1946

CRL.MC NO. 370 OF 2016

AGAINST THE ORDER/JUDGMENT DATED 19.09.2015 IN
CMP NO.1862 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST
CLASS - III, THIRUVANANTHAPURAM

PETITIONER/1ST ACCUSED:

M.A.VAHEED
M.L.A., JINSALAYAM, KUNNUKUZHY, VANCHIYOOR
P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS/COMPLAINANT AND STATE:

1 K.K.LATHIKA
M.L.A., POOKKOTTU VEEDU, VATTOLI P.O.
KAKKATTIL, KOZHIKODE-673510.

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.

BY ADVS.
SRI.G.BIJU
SRI.M.RAJAGOPALAN NAIR(K/282/1973)
SRI.SANGEETHARAJ N.R., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 09.09.2024, ALONG WITH CRL.MC.2111/2016,
3178/2016, THE COURT ON 13.09.2024 PASSED THE
FOLLOWING:



2024:KER:69787

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024 / 22ND BHADRA, 1946

CRL.MC NO. 2111 OF 2016

AGAINST THE ORDER/JUDGMENT DATED 19.09.2015 IN
CMP NO.1557 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -III, THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.2:

DOMINIC PRESENTATION, M.L.A.,
VALIYATHAYIL, SUNORO CHURCH ROAD,
ERNAKULAM.

BY ADVS.

SRI.S.SREEKUMAR (SR.)

SRI.JACOB P.ALEX

SRI.JOSEPH P.ALEX

RESPONDENTS/COMPLAINANT & STATE:

1 JAMEELA PRAKASHAM, W/O.NEELALOHITHADASAN
NADAR, 'MANASI', T.C.8/164, THIRUMALA P.O.,
THIRUVANANTHAPURAM - 695 001.

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM-682 031.

BY ADVS.

SRI.ALAN PAPALI

SRI.ANTONY ROBERT DIAS

SRI.GILBERT GEORGE CORREYA

SRI.J.VIMAL

SRI.A.VELAPPAN NAIR

SRI.RENJITH T.R., SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 09.09.2024, ALONG WITH CRL.MC.370/2016,
3178/2016, THE COURT ON 13.09.2024 PASSED THE
FOLLOWING:



2024:KER:69787

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024 / 22ND BHADRA, 1946

CRL.MC NO. 3178 OF 2016

CRIME NO.236/2015 OF MUSEUM POLICE STATION,

THIRUVANANTHAPURAM

AGAINST THE ORDER/JUDGMENT DATED 19.09.2015 IN

CMP NO.1557 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST

CLASS -III, THIRUVANANTHAPURAM

PETITIONER/1ST ACCUSED:

K.SIVADHASAN NAIR,
EX-MLA, S/O.KESAVA PILLAI,
AGED 67 YEARS, SHIVA MADOM,
ARANMULA P.O., PATHANAMTHITTA DISTRICT.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.ARUN.B.VARGHESE

RESPONDENTS/COMPLAINANT & STATE:

1 JAMEELA PRAKASHAM,
EX-MLA,
AGED 59 YEARS,
W/O.NEELALOHITHADASAN NADAR,
MANSAL, T.C 8/164,
THIRUMALA P.O.,
THIRUVANANTHAPURAM - 695 001.

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM, PIN-682 031.

BY ADVS.
SRI.ALAN PAPALI
SRI.ANTONY ROBERT DIAS
SRI.GILBERT GEORGE CORREYA

CrI.M.C. Nos. 370, 2111 & 3178 of 2016

4



2024:KER:69787

SRI.J.VIMAL
SRI.A.VELAPPAN NAIR
SRI.SANGEETHARAJ N.R., PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 09.09.2024, ALONG WITH CRL.MC.370/2016,
3178/2016, THE COURT ON 13.09.2024 PASSED THE
FOLLOWING:**



“CR”

P.V.KUNHIKRISHNAN, J.

Crl.M.C. Nos. 370, 2111 & 3178 of 2016

Dated this the 09th day of September, 2024

O R D E R

These three Criminal Miscellaneous Cases are connected and therefore I am disposing of these cases by a common order.

2. Petitioners and 1st respondents in these cases were Members of the Kerala Legislative Assembly. Petitioners in Crl.M.C. Nos.3178/2016 and 2111/2016 are the accused in C.C. No.1389/2015 on the file of the Judicial First Class Magistrate Court – III, Thiruvananthapuram. The 1st respondent in these cases is the complainant in the above cases. Petitioner in Crl.M.C. No. 370/2016 is the 1st accused in C.C. No.1390/2015 on the file of



the Judicial First Class Magistrate Court – III, Thiruvananthapuram. The 1st respondent in the above case is the complainant in that case. The alleged incident in these cases happened on 13.03.2015 in the Kerala Legislative Assembly.

3. I will narrate the facts in Crl.M.C. Nos.3178/2016 and 2111/2016 which are filed to quash the proceedings in C.C. No. 1389/2015 on the file of the Judicial First Class Magistrate Court – III, Thiruvananthapuram. Petitioners are the accused in the above case. They were the members of the Kerala Legislative Assembly. The gist of the allegation in the complaint filed against the petitioners by the 1st respondent in these cases which is produced as Annexure A in these Criminal Miscellaneous Cases are as follows: The 1st respondent was an MLA representing Kovalam constituency and she is the wife of Dr. A.



Neelalohithadasan Nadar. Her husband was elected as MLA from Kovalam on several occasions earlier and he was a Minister and also a former Member of Parliament. There was a political agitation under the leadership of the Left Democratic Front (LDF) demanding the resignation of the Finance Minister, Sri.K.M. Mani and they had demanded that Sri.K.M. Mani should not present the State Budget 2015-16. The State budget was scheduled to be presented in the Assembly at 9.00 AM on 13.03.2015. As directed by the LDF, in order to obstruct Sri.K.M. Mani from the presenting of Budget, the 1st respondent and fellow members of the Assembly were raising protest slogans in the Assembly. At about 8.45 a.m., the 1st respondent and five other women MLAs stood facing the door through which Ministers usually enter the house, raising slogans. At that time, the 1st respondent saw Sri.K.Sivadasan Nair, MLA (who is



the petitioner in Crl.M.C. No.3178/2016) and some other ruling party MLAs sitting in the back row of the Assembly. The 1st respondent alleges that, after a few minutes, Sri.K.Sivadasan Nair MLA approached her from behind, grabbed her waist with his right hand and exerted force. It is alleged that he pressed on her back with his knee and held her close to his body by applying force. The 1st respondent further claims that she escaped from Sri. Sivadasan Nair by using force. The 1st respondent further alleges that the petitioner in Crl.M.C. No.2111/2016 who was standing nearby called her "പോടീ" and yelled at her that "നീ നിന്റെ നാടാനെപ്പോയി വിളിച്ചുകൊണ്ടുവാടീ". According to the 1st respondent, the above alleged act of the 1st accused was with the intention to outrage her modesty and it is claimed that the 2nd accused aided the 1st accused in committing the



alleged offence, by saying the words mentioned above and the same had caused her a feeling of disgust. The 1st respondent claims that the 1st and 2nd accused acted in unison in furtherance of their common intention. The 1st respondent claims that the Legislative Assembly is a public place, and as a Member of that Assembly, she has freedom of movement inside the House, and this was obstructed by the 1st accused. The 1st respondent also submitted a written complaint before the Speaker of the Assembly immediately after the incident and thereafter a detailed complaint was again made on 19.03.2015. However, no action was taken in the submission. The 1st respondent also approached the Director General of Police with a complaint on 23.03.2015. But no case was registered. Hence Annexure A complaint was filed.

4. According to the 1st respondent, the



incident mentioned in the complaint was watched several people who were inside the House at that time and by numerous persons through a live telecast of the proceedings. Hence it is alleged that the accused committed the offence under Sections 341, 294, 354, 354 A and 509 r/w 34 IPC.

5. The petitioner in Crl.M.C. No. 370/2016 was also a Member of the Legislative Assembly. He challenged the proceedings in C.C. No. 1390/2015 on the file of the Judicial First Class Magistrate Court – III, Thiruvananthapuram which is a private complaint filed by the 1st respondent who was also a member of the Legislative Assembly. Annexure-1 is the complaint filed by the 1st respondent in the above case. The brief allegation in Annexure-1 complaint is that on 13.03.2015, the petitioner herein and another Member of Legislative Assembly obstructed the 1st respondent's way inside the Legislative



Assembly, and the petitioner touched her body at different places and pushed her down. At that time, the 2nd accused in the case assaulted her using his hand. Because of this, the 1st respondent collapsed. It is alleged that the above acts constitute the offences under Sections 341, 354, 509 r/w 34 IPC. Hence it is alleged that the petitioner who is the 1st accused in the above case committed the above said offences.

6. When the above two private complaints were filed before the learned Magistrate, the learned Magistrate after conducting the preliminary enquiry, took cognizance for the offences under Sections 341, 354 r/w 34 IPC. Annexure-E produced in Crl.M.C. Nos.3178/2016 and 2111/2016 is the order taking cognizance in C.C. No. 1389/2015 by the Judicial First Class Magistrate Court – III, Thiruvananthapuram. Annexure-3 produced in



Crl.M.C. No. 370/2016 is the order taking cognizance in C.C. No. 1390/2015 by the Judicial First Class Magistrate Court - III, Thiruvananthapuram. According to the petitioners, even if the entire allegations are accepted in the complaint, no offence is made out and the order taking cognizance is illegal. Hence these Criminal Miscellaneous Cases are filed.

7. Heard Adv. S.Sreekumar, the learned Senior counsel assisted by Adv. Arun B. Varghese and Joseph P. Alex for the petitioners in Crl.M.C. Nos.3178/2016 and 2111/2016, Adv. Gilbert George Correya, the learned counsel appearing for the 1st respondent/complainant in Crl.M.C. Nos.3178/2016 and 2111/2016, Adv. George Poonthottam, the learned Senior counsel assisted by his retaining counsel for the petitioner in Crl.M.C. No.370/2016, Adv.M. Rajagopalan Nair, the learned counsel appearing for the 1st



respondent/complainant in CrI.M.C. No. 370/2016 and the learned Public Prosecutor.

8. The learned Senior counsel Adv. S. Sreekumar submitted that, even if the entire allegations are accepted, no offence under Sections 341, 354 r/w 34 IPC is made out. The Senior counsel submitted that, in the complaint it is admitted that the complainant and others were going to obstruct the Minister who is constitutionally bound to present the Budget. The Senior counsel submitted that the intention of the 1st respondent/complainant was to obstruct the same. Therefore the offence under Sections 341 and 354 IPC are not attracted. The Senior counsel also relied on the judgments of **Prasanth v. State of Kerala** [2020 (2) KHC 78], **Vijayan v. State of Kerala** [2020 KHC 803], **Sasidharan v. State of Kerala** [2005 KHC 981], **Kapil Ray v. State of M.P.** [2024 KHC 2968] and



Ratiram v. State of M.P. [2018 KHC 3140]. The learned Senior counsel, Adv. George Poonthottam also submitted that, no offence is made out, even if the entire allegations in Annexure-1 r/w Annexure-2 sworn statement are accepted in toto. The learned Senior counsel submitted that the ingredients of Sections 341 and 354 IPC are not made out in the complaint.

9. Adv. Gilbert George Correya who appeared for the 1st respondent in Crl.M.C. Nos.3178/2016 and 2111/2016 filed a compilation of judgments relied on by him. I will consider those judgments separately. The counsel takes me through the ingredients of Sections 354 and 341 IPC and submitted that this is a clear case in which the offences are made out. Adv. Gilbert George Correya submitted that the learned Magistrate had only taken cognizance of the offence and it is at the preliminary stage. The



counsel submitted that the duty of the Magistrate at the time of taking cognizance is only to find out whether *prima facie* the offences are made out. The learned Magistrate passed a detailed order while taking cognizance. The counsel also submitted that the witnesses were examined at the pre-cognizance stage. Those evidences were not produced before this Court. Therefore, it is submitted that these Criminal Miscellaneous Cases are to be dismissed. The counsel submitted that the contentions are all matters of evidence. Adv. Rajagopalan Nair who appeared for the 1st respondent in Crl.M.C. No. 370/2016 submitted that the accused has no right to obstruct the complainant. The counsel takes me through the complaint and the sworn statement and submitted that the offences are made out.

10. This Court considered the contentions of the petitioners and the party respondents.



Admittedly the alleged incident happened in the Kerala Legislative Assembly on 13.03.2015. The Apex Court in **State of Kerala v. K Ajith and Others** [AIR 2021 SC 3954] considered the application of Article 194 of the Constitution of India in connection with another incident that happened in the Kerala Legislative Assembly on the same date. The Apex Court, while interpreting Article 194 of the Constitution, observed that acts of vandalism cannot be said to be manifestations of the freedom of speech and be termed as “proceedings” of the Assembly. The Apex Court also observed that it was not the intention of the drafters of the Constitution to extend the interpretation of ‘freedom of speech’ to include criminal acts by placing them under a veil of protest. Hence, it is observed that the Constitution only grants the members the freedom of speech that is necessary for their active participation in meaningful



deliberation without any fear of prosecution.

11. In the light of the above principle, this Court has to find out whether any criminal acts are done by the petitioners in these cases. If it is found that there is any criminal activity from the side of the petitioners, the petitioners are not entitled to the protection under Article 194 of the Constitution. To find out whether any criminal activity is there from the side of the petitioners as per the complaints filed against them, this Court has to consider the offences for which the learned Magistrate had taken cognizance and the ingredients to attract those offences.

12. Admittedly the learned Magistrate had taken cognizance for the offences under Sections 341 and 354 r/w Section 34 IPC in C.C.No.1389/2015 and C.C. No.1390/2015. Therefore, this Court has to consider whether the alleged acts amount to the



offences under Sections 341 and 354 IPC.

13. First, I will consider Section 341 IPC. Section 341 IPC says that whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. Wrongful restraint is defined in Section 339 IPC. Section 339 IPC is extracted hereunder:

“339. Wrongful restraint.— Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.”

14. In order to attract Section 341 IPC, the following ingredients of Section 339 IPC are necessary:

- i) The accused obstructed any person.
- ii) The obstruction is so as to prevent that person



from proceeding in any direction in which that person has a right to proceed.

If these two ingredients exist, there is wrongful restraint, which is punishable under Section 341 IPC. Therefore, mere obstruction of any person alone will not attract wrongful restraint. The obstruction should be to prevent that person from proceeding in any direction in which that person has a right to proceed.

15. In the light of the above definition, the averments in the complaint in C.C.No.1389/2015, which is produced as Annexure-A in Crl.M.C. Nos.3178/2016 and 2111/2016 and the averments in the complaint in C.C.No.1390/2015, which is produced as Anneuxure-1 in Crl.M.C. No.370/2016, are to be considered.

16. The averments in Annexure-A complaint in C.C.No.1390/2015 can be considered first. The admitted case of the complainant is that there was a



political agitation under the leadership of LDF demanding the resignation of the Finance Minister Sri.K.M. Mani and they had demanded that Sri.K.M. Mani should not present the State Budget 2015-2016. The State Budget was scheduled to be presented in the Assembly at 9 am on 13.03.2015. It is the definite case of the complainant that as directed by LDF, in order to obstruct Sri.K.M.Mani from the presenting of Budget, the complainant and fellow members of the Assembly were raising protest slogans in the Assembly. It is the definite case of the complainant that at 8.45 am, the complainant and five other women MLAs stood facing the door through which the Ministers usually enter the house raising slogans. At that time, the accused wrongfully restrained the complainant is the admitted case. Whether the same amounts to an obstruction voluntarily caused by the accused so as to prevent



that person from proceeding in any direction in which that person has a right to proceed? Whether the 1st respondent MLA has a right to proceed and obstruct a Minister from presenting a Budget in the Legislative Assembly? I am of the considered opinion that there can be protest in a democratic manner even in the assembly against the presentation of budget by the Finance minister. But there cannot be any obstruction from the side of the 1st respondent in presenting a Budget in a State Assembly by a Finance Minister. That is a constitutional duty of the Finance Minister. There is no law to the effect that, a finance minister against whom a case is registered under the Prevention of Corruption Act cannot present a budget in the Legislative assembly. But the minister can decide himself whether his conscience permits for the same. This is a country where Lal Bahadur Shastri, the then railway minister in 1956 resigned from the



post of railway minister for a railway accident taking moral responsibility of the same. Those days are only history. Moral responsibility is a concept based on ethics, integrity and personal values rather than a legal requirement. But if the Finance Minister decided to present the budget, even if he is an accused in a corruption case, nobody can restraint him, but of course there can be protest in a democratic manner. But here the admitted case in the complaint is that there is a decision to obstruct the finance minister in presenting the budget. As I mentioned earlier presenting budget in assembly is a constitutional duty of the finance minister. None has a right to obstruct him. Therefore, I am of the considered opinion that even if the petitioners obstruct the complainant from proceeding in the direction in which the Minister is coming to present the Budget, the complainant has no right to proceed in that way,



because the Finance Minister is doing his constitutional duty. In the complaint, it is specifically stated that there was a decision to obstruct the Minister from presenting the Budget. The relevant portion of the complaint is extracted hereunder:

"3. ഈ സാഹചര്യത്തിൽ കേരളത്തിലെ പ്രതിപക്ഷ രാഷ്ട്രീയ കക്ഷികൾ ഇടതുപക്ഷ ജനാധിപത്യ മുന്നണിയുടെ നേതൃത്വത്തിൽ ശ്രീ. കെ.എം. മാണി രാജിവയ്ക്കണമെന്നാവശ്യപ്പെട്ട് പ്രതിഷേധ പ്രക്ഷോഭങ്ങൾ നടത്തി വരികയായിരുന്നു. ശ്രീ. കെ.എം. മാണി 2015-2016-ലെ സംസ്ഥാന ബഡ്ജറ്റ് അവതരിപ്പിക്കാതെ തന്നെയിരുന്നു ഒരു പ്രധാന ആവശ്യം.

4. കേരള നിയമസഭയിൽ 13.03.2015-ന് രാവിലെ 9.00 മണിക്ക് ബഡ്ജറ്റ് അവതരിപ്പിക്കാൻ നിശ്ചയിച്ചിരുന്നു. എന്നാൽ ശ്രീ. കെ.എം. മാണി പ്രസ്തുത ബഡ്ജറ്റ് അവതരിപ്പിക്കുന്നത് തടയാൻ ഇടതുപക്ഷ



ജനാധിപത്യ മുന്നണി നിർദ്ദേശിച്ചതിനെത്തുടർന്ന് അന്നേ ദിവസം രാവിലെ ഞാൻ ഉൾപ്പെടെ ഉള്ള അംഗങ്ങൾ സഭയിൽ പ്രതിഷേധ മുദ്രാവാക്യം വിളിച്ചിരുന്നു.

5. രാവിലെ 08.45 മണിയോടെ ഞാനും എന്റെ സഹ വനിതാ എം.എൽ.എ.മാരായ കെ.കെ. ലതിക, കെ. എസ്. സലീഖ, ഇ.എസ്. ബിജിമോൾ, ഐഷ പോറ്റി, ഗീതാ ഗോപി എന്നിവരും ചേർന്ന് ധനകാര്യ മന്ത്രിയും മറ്റും സാധാരണ സഭയിലേക്ക് കടന്നുവരുന്ന വാതിലിന് അഭിമുഖമായി നിന്ന് മുദ്രാവാക്യം വിളിക്കുകയായിരുന്നു. ആ സമയം ശ്രീ. കെ. ശിവദാസൻ നായർ എം.എൽ.എ.യും മറ്റ് ചില ഭരണകക്ഷി എം.എൽ.എ.മാരും സഭയുടെ പിൻസീറ്റുകളിൽ ഇരിക്കുന്നത് കണ്ടു.”(underline supplied)

17. From the above it is clear that the complainant and other MLAs were trying to obstruct the Minister from presenting the Budget in the



Legislative Assembly. The Members of Legislative Assembly have no right to obstruct the Finance Minister in presenting a budget except to demonstrate a peaceful protest against the same, if they are aggrieved. In such circumstances, I am of the considered opinion that Section 341 IPC is not attracted in the facts and circumstances of the case.

18. The Senior Counsel Sri.S. Sreekumar relied on the judgment of this Court in **Prasanth's case** (supra). This Court considered the ingredients of the offence under Section 341 IPC in that case. In **Madhanagopal N.S. v. K. Lalitha** [2022 KHC 7202] the apex court considered the ingredients of the Section 341 IPC. It will be better to extract the relevant portion of that judgment:

"10. S.341 of the IPC talks about punishment for wrongful restraint. S.341 reads thus: "341. Punishment for wrongful restraint - Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may



extend to one month, or with fine which may extent to five hundred rupees or with both."

11. The complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. In order to attract application of S.341 which provides for punishment for wrongful restraint, it has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant.

12. The averments made in the complaint according to us are not sufficient to even constitute the offence of wrongful restraint. In the overall view of the case, we are convinced that no case is made out against the appellants herein as alleged by the complainant.

13. Taking cognizance of an offence under S.190(1) of the Cr.P.C. and issue of process under S.204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of



process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process.”

19. In the light of the above principle, I am of the considered opinion that even if the entire allegations in Annexure-A complaint produced in Crl.M.C. Nos.3178/2016 and 2111/2016 are accepted in toto, no offence under Section 341 IPC is made out.

20. Same is the allegation in Annexure-1 complaint produced in Crl.M.C. No.370/2016. There also the complainant was proceeding to obstruct the



Minister from presenting the Budget. It is stated that it was the decision of the LDF to obstruct the Minister from presenting the Budget and therefore, the LDF MLAs were staying in the Assembly from 12.03.2015 onwards to obstruct the Minister. As I discussed earlier, I am of the considered opinion that the same would not attract the offence under Section 341 IPC and therefore, the offence under Section 341 IPC is not made out in Annexure-1 complaint in C.C.No.1390/2015 on the file of the Judicial First Class Magistrate Court-III, Thiruvananthapuram.

21. The other offence alleged is under Section 354 IPC. Section 354 IPC is extracted hereunder:

“354. Assault or criminal force to woman with intent to outrage her modesty.—

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but



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which may extend to five years, and shall also be liable to fine.”

22. To attract the offence under Section 354 IPC, the following ingredients are necessary:

- i) The accused assaults or uses criminal force to any woman.
- ii) The intention of assault or use of criminal force to any woman should be to outrage or knowing it to be likely that he will thereby outrage her modesty.

The above two ingredients are necessary to attract the offences under Section 354 IPC. The ingredients of Section 354 IPC is considered by this Court in **Prasanth’s case** (supra). The relevant portion is extracted hereunder:

“.....Similarly, a case of assault or criminal force to a woman with intent to outrage her modesty under Section 354 of the Indian Penal Code arises only when a case of assault or use of criminal force by the



accused intending to outrage or knowing it to be likely that he will thereby outrage her modesty is made out. The facts of the case need to be analysed in the light of the scope of the offences attributed against the accused as explained.”

23. In **Vijayan’s case** (supra) also this Court considered the ingredients of Section 354 IPC. It will be better to extract the relevant portion of that judgment :

“14. In the case on hand, the trial court acquitted the accused for the offences punishable under S.323, S.341 and S.447 of the IPC. The allegation is that the accused caught hold of her nighy and attempted to outrage her modesty. Essentials of offence under S.354 of the IPC are, 1) that the assault must be on a woman, 2) that the accused must have used criminal force on her, and 3) that the criminal force must have been used on the woman intending thereby to outrage her modesty. The act will amount to outraging of modesty if it is such which could be perceived as one capable of



shocking sense of decency of a woman. Modesty of a woman is her sex, it is a virtue which attaches to a female owing to her sex. The offence of outraging the modesty is committed when a person assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. For a conviction under S.354 of the IPC, it is not enough merely to show that the accused assaulted a woman; it must further be proved beyond doubt, that he did so either with the intention to outrage her modesty, or with the knowledge that it was likely that he will thereby outrage her modesty.....”

24. In **Sasidharan’s case** (supra) also, this Court considered the ingredients of Section 354 IPC.

The same is extracted hereunder:

“ 8. The next question to be considered is whether the acts alleged against the petitioner constitutes an offence under Section 354 of Indian Penal Code. The learned counsel appearing for the petitioner has relied on the decisions reported in Ram Das v. State of W.B., AIR 1954 SC 711, and



State of Punjab v. Major Singh, AIR 1967 SC 63, and argued that even if the entire evidence is accepted as such, no offence punishable under Section 354 is established in this case. Section 354 of Indian Penal Code reads as follows:--

"354. Assault or criminal force to woman with intent to outrage her modesty.--

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

Section 354 and Section 376 are two sections in the Indian Penal Code intending to protect women against the sexual lust of men. Section 354 is enacted in the interest of decency and morals. It is not the act of outraging the modesty that is made an offence under this Section. In order to constitute an offence under the Section, there must be an assault or use of criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged. So, in order to convict a person for an offence under Section 354 of the Indian Penal Code, the prosecution has to prove that



the accused assaulted or used criminal force and that assault or criminal force was used with an intention to outrage the modesty of the victim. In Ram Das' case (supra) it was held as follows:--

"Where an accused is tried for an offence under Section 354, and an assault is proved, the next question to be considered is whether he did so with intent to outrage the woman's modesty, or with the knowledge that it would be outraged".

It is also well settled position of law that the reaction of the victim is not the sole criteria to decide the nature of the offence. The essence of a woman's modesty is her sex and the culpable intention of the accused is the crux of the matter. The reason of a woman to the act of the accused can be rejected. In Major Singh's case (supra), it was held that the test of outrage of modesty must be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman."



25. From the above, it is clear that the test of outrage of modesty is to be determined by thinking whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. This Court perused the complaints in these cases. The intention of the petitioners in all these cases is to see that the complainants in these cases are not obstructing the Finance Minister from presenting the Budget in the assembly. Admitted case of the complainants is that, there is a decision by the LDF that the Finance Minister Sri. K.M. Mani shall not present the Budget. The complainants in these two cases and other LDF MLAs were admittedly going to obstruct the Minister from presenting the Budget as per the decision of the LDF. At that stage, the petitioners touched the body of the complainants in these cases is the admitted case. The petitioner in



Crl.M.C. No.3178/2016 wrongfully restrained the complainant and grabbed her waist with his right hand and applied force. It is alleged that, he pressed on her back with his knee and held her close to his body by applying force. Whether the action of the petitioners can be justified, need not be discussed here. The Apex Court in **K. Ajith's** case (supra) observed that the act of vandalism committed by legislators cannot be said to be manifestations of freedom of speech and be termed as proceedings of the Assembly. But, the question to be decided in these cases is whether the offence under Section 354 IPC is made out in the facts and circumstances of these cases.

26. As I observed earlier, to attract the offence under Section 354 IPC, assault or use of criminal force to any woman is necessary. It cannot be said that, if the averments in the complaint are accepted,



no assault or use of force is used by the petitioners in these cases against the complainants who are women. Assault is defined in Section 351 IPC. The same is extracted hereunder:

“351. Assault. — Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation. — Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.”

27. Force is defined in Section 349 IPC. A person is said to use force to another if he caused motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of



that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects others sense of feeling. Criminal force is defined in Section 350 IPC. The same is also extracted hereunder:

“350. Criminal force. — Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

28. In the light of the definition of force and assault as per Sections 349 and 351 of IPC, I am of the considered opinion that, there is *prima facie* case in the complaints in these cases that the petitioners assaulted and used force on the complainants, who



are women.

29. The next question to be decided is whether the act is intended to outrage or knowing it to be likely that he will thereby outrage her modesty. Therefore, the intention to outrage or knowing it to be likely that he will thereby outrage her modesty is necessary. Admittedly, the complainants in these cases were trying to obstruct the Finance Minister of the State from presenting the Budget which is his constitutional duty. A reading of the complaint would show that the intention of the petitioners is only to see that the Finance Minister present the Budget. It is also a fact to be noted that the petitioner in Crl.M.C. No.3178/2016 is aged 67 years. He has been admittedly a Member of the Legislative Assembly for the last several years. As I mentioned earlier, the admitted case of the complainants is to obstruct the Minister and the same is obstructed by



the petitioners. From the facts it is clear that, the intention of the petitioners is to see that the Finance Minister present the Budget. The test of outrage of modesty is to be determined by thinking whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. I am of the considered opinion that, even if there is assault or use of force from the side of the petitioners towards the complainants, the offence under Section 354 IPC is not made out.

30. The learned counsel appearing for the 1st respondent in Crl.M.C.Nos.2111/2016 and 3178/2016 relied on the judgment of the Apex Court in **Vidyadharan v. State of Kerala** [2004 (1) SCC 215]. The counsel takes me through the relevant paragraph of the above Judgment and submitted that the offence is attracted. It will be better to extract



paragraph Nos.9 and 10 of the above judgment:

“9. In order to constitute the offence under S.354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outraged alone for its object. There is no abstract conception of modesty that can apply to all cases. (See *State of Punjab v. Major Singh* (AIR 1967 SC 63)). A careful approach has to be adopted by the court while dealing with a case alleging outraged of modesty. The essential ingredients of the offence under S.354 IPC are as under: (i) that the person assaulted must be a woman; (ii) that the accused must have used criminal force on her, and (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

10. Intention is not the sole criteria of the offence punishable under S.354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation



and indignation is in the same position as an injured witness and her witness should receive same weight.....”

31. It is true that the Apex Court observed that the intention is not the sole criteria of the offence punishable under Section 354 IPC and it can be committed by a person assaulting or using criminal force to any woman if he knows that by such an act, the modesty of the woman is likely to be affected. The facts in the above case is that, when the victim was alone in her house on 01.10.1992 at about 02.00 PM, the accused entered her house and went to the kitchen where she was cooking and attempted to get hold of her hand and when she attempted to escape from him by running to the front room and was attempting to close the door, the accused followed her, opened the door forcibly and caught hold of her and grasped her and when she made a hue and cry, her brother PW3 and other witnesses



including PW2 came there and at that time, the accused left PW1 and pushed down PW3 from the verandah and went along with his parents who came there hearing the hue and cry. In the background of the above facts, the Apex Court observed like this.

32. The factual situation in these cases is entirely different. The incident in this case happened in a Legislative Assembly where the complainants tried to obstruct the Minister from presenting the Budget for the financial year. At that time, when the complainants were proceeding to obstruct the Minister, the petitioners obstructed them. In such situation, it cannot be said that there is an intention to outrage the modesty, but the intention is to see that the Finance Minister present the Budget, which is his constitutional duty.

33. The counsel for the 1st respondent also relied the judgment of the Apex Court in **Rupan**



Deol Bajaj v. Kanwar Pal Singh Gill [1995(6) SCC 194]. That was also a case in which the incident happened at a dinner party. The factual situation in that case is different from the factual situation in these cases.

34. The counsel appearing for the 1st respondent in CrI.M.C. Nos.3178/2016 and 2111/2016 submitted that, this Court may not interfere with the order taking cognizance invoking the powers under Section 482 of Cr.P.C. The counsel relied on the decisions of this Court in **K.B. Ganesh Kumar v. State of Kerala** [2023 (6) KLT 477] and **Nagawwa v. Veeranna Shivalingappa Konjalgi & Others** [1976 (3) SCC 736]. It is a settled principle that at the stage of issuing process under Section 204 Cr.P.C., the duty of the Court is only to find out whether there is sufficient ground for proceeding with the case, whether the allegation made in the



complaint or the statement of the witnesses recorded in support of the same taken at their face value, make out a case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused. In **Nagawwa's** case (supra), the Apex Court considered this in detail. It will be better to extract paragraph No.5 of the above judgment:

"5. Mr Bhandare laid great stress on the words "the truth or falsehood of the complaint" and contended that in determining whether the complaint is false the court can go into the question of the broad probabilities of the case or intrinsic infirmities appearing in the evidence. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter



and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;



(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

35. I am of the considered opinion that the complaints in these cases do not disclose the essential ingredients of the offences which are alleged against the accused. In such circumstances, this Court is justified in quashing the proceedings invoking the powers under Section 482 Cr.P.C. The counsel also relied on the judgment of the Apex Court in **Bhushan Kumar v. State (NCT of Delhi)** [2012 (5) SCC 424]. There also the powers of the



Magistrate at the stage of 204 Cr.P.C. is considered in detail. But, it is a fact that, if no ingredients of the offence are made out in the complaint, this Court can interfere under Section 482 Cr.P.C.

36. The counsel appearing for the 1st respondent in CrI.MC No.370/2016 submitted that the petitioner has not produced the statement recorded by the learned Magistrate before taking cognizance. The learned counsel made available a copy of the statement. This Court perused the same. As I mentioned above, the complaint and the statement recorded at the pre-cognizance stage would not attract the offence under Section 341 or 354 of IPC. In such circumstances, I am of the considered opinion that the order taking cognizance under Sections 341 and 354 IPC is illegal.

The upshot of the above discussion is that these Criminal Miscellaneous Cases are to be allowed.



Therefore, these Criminal Miscellaneous Cases are allowed in the following manner:

1. Crl.M.C. Nos. 3178/2016 and 2111/2016 are allowed quashing all further proceedings against the petitioners in C.C. No. 1389/2015 on the file of the Judicial First Class Magistrate Court-III, Thiruvananthapuram.
2. Crl.M.C. No.370/2016 is allowed. All further proceedings against the petitioner in C.C. No.1390/2015 on the file of the Judicial First Class Magistrate Court-III, Thiruvananthapuram are quashed.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**



APPENDIX OF CRL.MC 2111/2016

PETITIONER ANNEXURES

- ANNEXURE A CERTIFIED COPY OF CMP NO.1557/2015 BEFORE THE COURT OF JFCM-III, THIRUVANANTHAPURAM.
- ANNEXURE B CERTIFIED COPY OF STATEMENT DTD.12.6.2015 MADE BY 1ST RESPONDENT IN CMP NO.1557/2015 BEFORE THE COURT OF JFCM-III, THIRUVANANTHAPURAM.
- ANNEXURE C COPY OF COMPLAINT DTD.13.3.2015 SUBMITTED BY 1ST RESPONDENT BEFORE THE HON'BLE SPEAKER, KERALA LEGISLATIVE ASSEMBLY.
- ANNEXURE D COPY OF COMPLAINT DTD.23.3.2015 SUBMITTED BY 1ST RESPONDENT BEFORE DIRECTOR GENERAL OF POLICE.
- ANNEXURE E CERTIFIED COPY OF THE ORDER DTD.19.9.2015 IN CMP NO.1557/2015 BEFORE THE COURT OF JFCM-III, THIRUVANANTHAPURAM.



APPENDIX OF CRL.MC 3178/2016

PETITIONER EXHIBITS

- A1 . TRUE COPY OF THE CMP NO.1557/2015
BEFORE THE COURT OF JMFC-III,
THIRUVANANTHAPURAM.
- A2 TRUE COPY OF THE STATEMENT DATED
12/6/2015 MADE BY THE 1ST
RESPONDENT IN CMP NO.1557/2015
BEFORE THE COURT OF JMFC-III,
THIRUVANANTHAPURAM.
- A3 . TRUE COPY OF THE COMPLAINT DATED
13/3/2015 SUBMITTED BY THE 1ST
RESPONDENT BEFORE THE HONOURABLE
SPEAKER, KERALA LEGISLATIVE
ASSEMBLY.
- A4 . TRUE COPY OF THE COMPLAINT DATED
23/3/2015 SUBMITTED BY THE 1ST
RESPONDENT BEFORE THE DIRECTOR
GENERAL OF POLICE
- A5 . TRUE COPY OF THE ORDER DATED
19/9/2015 IN CMP NO.1557/2015
BEFORE THE COURT OF JMFC-III,
THIRUVANANTHAPURAM.



APPENDIX OF CRL.MC 370/2016

PETITIONER ANNEXURES

ANNEXURE 1- TRUE COPY OF THE COMPLAINT DATED 6-5-2015 PREFERRED BEFORE THE COURT.

ANNEXURE 2- TRUE COPY OF THE DEPOSITION MADE BY THE FIRST RESPONDENT BEFORE THE COURT.

ANNEXURE 3- TRUE COPY OF THE ORDER DATED 19-9-2015 PASSED BY THE COURT BELOW IN C.M.P.NO. 1862 OF 2015.

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE