

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

THURSDAY, THE 10TH DAY OF MARCH 2022 / 19TH PHALGUNA, 1943

CRL.MC NO. 3601 OF 2021

**AGAINST THE ORDER/JUDGMENT IN CP 5/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I
(FOREST OFFENCES),TPA**

PETITIONER/ACCUSED No.1:

**K.P.SASIKALA
AGED 57 YEARS
W/O.VIJAYAKUMAR, RESIDING AT GOKULAM, MARUTHUR P.O., PATTAMBI,
PALAKKAD DISTRICT-679306.
BY ADVS.
SAJITH KUMAR V.
VIVEK A.V.
GODWIN JOSEPH
APARNA CHANDRAN
REMYA VARMA N.K.
P.VIJAYA BHANU (SR.)**

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM THROUGH INSPECTOR OF POLICE, THODUPUZHA POLICE
STATION, IDUKKI DISTRICT-682031.**
- 2 DIRECTOR GENERAL OF POLICE(STATE POLICE CHIEF)
POLICE HEAD QUARTERS, VELLAYAMBALAM, THIRUVANANTHAPURAM-695001.**
- 3 THE DEPARTMENT OF HOME,
REPRESENTED BY ITS SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 4 T.R.SOMAN,
AGED 55 YEARS
S/O.RAMAKRISHNAN, RESIDING AT THOLADDIPARACKAL HOUSE, CHITTOOR
KARA, MANAKKAD VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT-685608.**

OTHER PRESENT:

SR.PP - SRI. HRITHWIK C.S.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10.03.2022, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

O R D E R

Petitioner is the 1st accused in C.P. No. 5 of 2021 on the file of the Judicial First Class Magistrate's Court, Thodupuzha which arose from the final report in Crime No. 14 of 2019 of Thodupuzha police station where offence punishable under Sections 143, 147, 148, 188, 341, 294(b), 323, 506(ii), 308 read with 149 of the IPC is alleged against the petitioner and eight others.

2. It is alleged that petitioner who is the President of the 'Hindu Aikya Vedi' had exhorted through media for observing hartal, following which accused Nos. 2 to 9 formed an unlawful assembly and in prosecution of their common object on 02.01.2019 at 6.30 PM, near the Gemini Tourist Complex building at Manakkad junction in Thodupuzha town, wrongfully restrained CW1 who was moving on his scooter, abused him and also manhandled him; he was attacked on his

head with a stone, had he not twisted the head that would have resulted in his death and thus the crime was registered and on conclusion of investigation, the above-stated charge-sheet was laid.

3. I heard Sri. Sajith Kumar, the learned counsel for the petitioner and also the learned Public Prosecutor.

4. According to the learned counsel for the petitioner this is the aftermath of series of cases registered against the petitioner on the decision rendered by the Hon'ble Supreme Court touching entry of women in Sabarimala; more than three hundred cases have been registered against the petitioner in different parts of the State, who is the president of the 'Hindu Aikya Vedi', none of the witnesses has stated that the petitioner was present at the place of occurrence and therefore she cannot said to have shared the common object of the unlawful assembly which had been allegedly acting in prosecution of the common object. The learned counsel submitted that neither the petitioner had participated in the alleged commission of crime

nor there is allegation that she had abetted the same or entered into any criminal conspiracy or instigated the other accused persons to commit the crime in particular. Her name has been unnecessarily dragged in to large number of criminal cases. Her name was not in the FIR. No particular overt act is alleged against her. None of the witnesses has spoken her name in the alleged commission of the crime.

5. Moreover, referring to Annexure-J order the learned counsel submitted that all the cases that were registered in connection with women entry issues in Sabarimala have been decided to be withdrawn by the Government. Still, the Public Prosecutor concerned has not withdrawn the same and therefore he seeks to quash the proceedings invoking jurisdiction under Section 482 of the Cr.P.C.

6. I also heard the learned Senior Public Prosecutor Sri. Hrithwik who strongly opposed the application. According to him, it was the public statement issued by the petitioner through media that had kindled numerous acts of violence all

around the State. So he pleaded for directing the petitioner to undergo trial.

7. After going through the final report it is very patent that the petitioner was nowhere in the picture. None of the witnesses has stated that she had abetted or instigated the commission of the crime. Her presence has not been seen by any of the witnesses. Therefore it cannot be said that she had shared the common object of an unlawful assembly in committing the crime. There is no allegation that she had abetted the crime or indulged in any act of conspiracy with the other accused.

8. From the report dated 20.03.2019 adding the name of the petitioner as accused it is obvious that she has been made an accused on the basis of an observation made by this Court that leaders of political parties who call hartals also should be made accused. Further details of the observations made by this Court are wanting in the report. But it is a basic principle of criminal jurisprudence that there must be legal evidence to

inculcate a person in a crime. Apart from the said report of the Sub Inspector dated 20.03.2019, there is nothing to say that the petitioner had made any statement through media exhorting to commit violence or that the other accused were doing something in furtherance of such calls.

9. It is also settled that where the allegations in the materials relied on by the prosecutor, even if taken on its face value and accepted in its entirety do not prima facie constitute any offence or make out a case against the accused, this Court would be justified in invoking the extra ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of the Cr.P.C. to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

10. Moreover as rightly pointed out by the learned counsel for the petitioner Annexure-J Government order permits the Public Prosecutors concerned to withdraw cases relating to women entry in Sabarimala in which serious criminal activities were not involved. Considering all these

aspects I feel that the continuation of the proceedings against the petitioner is an idle exercise, that cannot end in conviction, and an abuse of the process of the Court. Therefore, proceedings in C.P. No. 5 of 2021 against the petitioner on the file of the Judicial First Class Magistrate's Court, Thodupuzha are quashed and the petitioner shall stand exonerated.

The Criminal Miscellaneous Case is allowed as above.

Sd/-

**K. HARIPAL
JUDGE**

PETITIONER ANNEXURES

- Annexure A** THE CERTIFIED COPY OF THE FIR IN CRIME NO.14/2019 DATED 03.01.2019 OF THE THODUPUZHA POLICE STATION.
- Annexure B** THE CERTIFIED COPY OF THE FINAL REPORT NO.651/2019 DATED 15.04.2019 PENDING BEFORE THE HON'BLE FIRST CLASS JUDICIAL MAGISTRATE COURT, THODUPUZHA.
- Annexure C** A TRUE COPY OF THE ADDITIONAL REPORT DATED 20.03.2019 SUBMITTED BY THE SUB INSPECTOR OF POLICE, THODUPUZHA POLICE STATION, BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA.
- Annexure D** A TRUE COPY OF THE ORDER NO.U4-4368/2019/PHQ DATED 05.03.2019 ISSUED BY THE 2ND RESPONDENT.
- Annexure E** A TRUE COPY OF THE STATEMENTS BY CW2 SHRI.SHIYAS.
- Annexure F** A TRUE COPY OF THE STATEMENTS BY CW3 SHRI.ETHIN JOSEPH.
- Annexure G** A TRUE COPY OF THE STATEMENTS BY CW4 SHRI.BINUMON.
- Annexure H** A TRUE COPY ADDITIONAL STATEMENT DATED 17.02.2019 BY THE 4TH RESPONDENT/DE-FACTO COMPLAINANT.
- Annexure I** A TRUE COPY OF THE GAZETTE NOTIFICATION DATED 02.12.2019.
- Annexure J** A TRUE COPY OF THE G.O(CRL.)NO.70/2021/HOME DATED 26.02.2021 ISSUED BY THE 3RD RESPONDENT.
- Annexure K** A TRUE COPY OF THE JUDGMENT IN WP(C)NO.32502 OF 2017 DATED 10.02.2020 BY THE HON'BLE DIVISION BENCH OF THE HIGH COURT OF KERALA.
- Annexure L** A TRUE COPY OF THE ORDER DATED 11.05.2021 IN CRL.MC NO.2398/2021 OF THIS HON'BLE COURT.

TRUE COPY

P . A . TO JUDGE