



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 20TH DAY OF NOVEMBER 2024 / 29TH KARTHIKA, 1946

CRL.MC NO. 7951 OF 2024

CRIME NO.699/2017 OF NORTH PARAVUR POLICE STATION, ERNAKULAM

C.C. NO.403 OF 2020 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III,

NORTH PARAVOOR

PETITIONERS/ACCUSED 1 TO 3:

- 1 SIMIL,
AGED 43 YEARS, S/O THULASIDHARAN,
KOTTIYADATH HOUSE,
MANNAM KARA, JARAPADDY,
NORTH PARAVOOR VILLAGE, PIN - 683520
- 2 PHIJO,
AGED 32 YEARS, S/O JOHNY,
PAYYAPILLY HOUSE,
MALAVANAKARA, PUTHENVELIKARA VILLAGE,
ERNAKULAM DISTRICT, PIN - 683594
- 3 SUMESH DAYANANDAN,
AGED 35 YEARS, S/O DAYANANDAN,
PERINGOTT HOUSE,
CHERIYA PALLAMTHURUTH KARA,
NORTH PARAVOOR VILLAGE, PIN - 683512

BY ADVS.
SRI.M.VIVEK
SMT.RENEETA VINU

RESPONDENT/COMPLAINANT:

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



Crl.M.C No.7951/24

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2024:KER:86736

BY SRI.C.N. PRABHAKARAN, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
29.10.2024, THE COURT ON 20.11.2024 PASSED THE FOLLOWING:**



"C.R."

BECHU KURIAN THOMAS, J.**-----
Crl.M.C. No.7951 of 2024
-----**Dated this the 20th day of November, 2024**ORDER**

Protests are essential for an effective democracy as they are the external manifestations of democratic sentience. Peaceful protests aid in strengthening such governance rather than weakening it. Petitioners marked their protests by waving black flags on a matter that they perceived to be unjust. The mode of protests adopted by the petitioners has entangled them in a criminal prosecution. They challenge the prosecution initiated against them in this proceeding under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Petitioners are accused 1 to 3 in C.C.No.403 of 2020 on the files of the Judicial First Class Magistrate Court-III, North Paravur. The prosecution alleges that the accused had, on 09.04.2017, in violation of the orders of the Hon'ble High Court of Kerala and with the intention to defame the Chief Minister, waved a black flag at the convoy of the Chief Minister, and when the police personnel tried to restrain them from proceeding towards the convoy, the accused used criminal force by pushing the police and thereby committed the offences under sections 283, 188, 500 and 353 r/w section 34 of the Indian Penal Code, 1860 (for short 'IPC').



3. Sri. M. Vivek, the learned counsel for the petitioners, contended that the prosecution allegations do not make out any of the offences alleged. It was submitted that for taking cognizance of the offence under Section 188 IPC, the authority who issued the order must file the complaint as stipulated in Section 195(2) Cr.P.C. It was also submitted that the offence of defamation cannot be initiated on the basis of a police report, and therefore, those two sections are not attracted at all. It was further submitted that as uncontroverted allegations do not indicate that any obstruction was caused in any public way, Section 283 IPC is also not attracted. Further, according to the learned Counsel, Section 353 IPC is also not attracted, as the accused did not use any force, much less any criminal force, and that the duty of the Police Officers was never intercepted, as is evident from the prosecution allegations itself. The learned Counsel submitted that no injury was caused to any police officer, and their duty was not at all deterred even according to the final report and the provision has been included without any basis. According to the learned counsel, proceedings against the petitioners are liable to be quashed by exercising the inherent powers of this Court.

4. Sri. C.N. Prabhakaran, the learned Public Prosecutor, on the other hand, submitted that the contentions raised are all matters which require to be considered after evidence is adduced, and it is not proper for this Court to interfere in exercise of the inherent jurisdiction. The learned Public Prosecutor also pointed out that the specific statements of the witnesses including the independent witnesses indicate that the Police Officers while attempting to prevent obstruction being caused to the convoy of the Chief Minister, were



pushed at and their uniforms were pulled, indicating the use of criminal force to deter them from discharging their duty. It was further submitted that even if there was no assault, still use of criminal force being evident from the allegations, the offence under section 353 IPC is attracted.

5. I have considered the rival contentions.

6. Petitioners are facing prosecution for the offences under sections 188, 500, 283 and 353 IPC. Section 188 IPC deals with disobedience to an order duly promulgated by a public servant. Cognizance for the offence under section 188 IPC can be taken only as provided under section 195(1)(a)(ii) Cr.P.C. As per the latter provision, no court shall take cognizance of the offence under section 188 IPC unless the complaint is filed in writing by the public servant who issued the order or by a person who is administratively subordinate to such public servant. In the instant case, petitioners are alleged to have violated an order issued by the Hon'ble High Court of Kerala and the complaint is filed by the Sub-Inspector of Police of North Paravur Police Station. The said officer is not a duly authorised person to initiate proceeding under section 188 IPC for violating an order of the Hon'ble High Court. Hence cognizance could not have been taken for the offence under section 188 IPC.

7. Apart from the above, a perusal of the final report reveals that the alleged order issued by the Hon'ble High Court of Kerala has not even been produced nor is it mentioned in the final report as to the nature of the order allegedly issued by the court. In the absence of the order alleged to have been issued by the Hon'ble High Court and even without any reference to the details of such an order, cognizance of the offence could not have been taken.



8. As far as section 500 IPC is concerned, the said provision deals with the offence of defamation. Section 199 Cr.P.C states that no court shall take cognizance of the offence of defamation except upon a complaint made by a person aggrieved. A police report cannot be the basis for taking cognizance of the offence of defamation as it can be taken only on a complaint made by the person aggrieved. Thus, the offence of defamation can be initiated only through a private complaint and not a police report. The said proposition of law is elementary and needs no elaborate discussion. In this context it is appropriate to refer to the decision in **Subramanian Swamy v. Union of India** (2016) 7 SCC 221, wherein it has been reiterated that when the offence of defamation is alleged, neither can an FIR be filed nor can a direction be issued under Section 156(3) Cr.P.C and it is only a private complaint that can be instituted by the person aggrieved. Similarly, in **M.S. Jayaraj v. Commissioner of Excise, Kerala and Others** (2000) 7 SCC 552, it was observed that if a Magistrate was to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", such a trial would be void. Since in the instant case, the offence of defamation has been alleged and cognizance was taken on the basis of a police report, the said proceeding is without legal validity.

9. Apart from the above, the nature of the alleged defamation has also not been specified in the final report. Petitioners are alleged to have waved a black flag at the Chief Minister's convoy. The aforesaid is the only overt act alleged against the petitioners to proceed against them for the offence of defamation. Though signs and visible representations can be a mode of



defaming a person, still, showing or waving a black flag to a person cannot amount to defamation nor is it an illegal act. Even if a black flag was shown to the Chief Minister's convoy, such conduct cannot by any stretch of the language of section 499 IPC be perceived as defamatory. In this context, this Court bears in mind that a black flag can depict different things depending on the context. Waving a flag can be a sign of support or a sign of protest. It is a matter of perception. Generally, a black flag is shown as a mark of protest. If a flag of a particular colour is shown, whatever the reason, including as a mark of protest, as long as there is no law which prohibits the waving of a flag simpliciter, such conduct cannot be mulcted with the offence of defamation.

10. Petitioners are also being prosecuted for the offence under section 283 IPC alleging that they have obstructed a public way. In the context of the charge against the petitioners, the said penal provision can be attracted when an act is done that causes danger, obstruction or injury to any person in any public way. A reading of the final report itself indicates that no obstruction was caused to the Chief Minister's convoy even temporarily, as the police party had blocked and removed the protesters immediately. There is hence, nothing to indicate that any obstruction was caused by the petitioners even temporarily to any person. Thus, the offence under section 283 IPC is not attracted from the allegations in the final report.

11. Section 353 IPC is also alleged against the petitioners. According to the final report, when the police personnel tried to restrain the petitioners from proceeding towards the Chief Minister's convoy, the accused used criminal



force by pushing the police personnel and pulling at their uniforms. The ingredients necessary to attract section 353 IPC are (i) assault or use of criminal force, (ii) such assault or criminal force must have been on a public servant and (iii) it must have been done with intent to prevent or deter that person from discharging his duty.

12. The contention that the allegations are false and have no factual basis cannot be considered in this proceeding as those are matters for trial. Further, the absence of any injury on the police is also of no significance, since, if as a result of the alleged assault or criminal force, hurt or grievous hurt was caused, section 332 or section 333 IPC would have been attracted. Therefore mere absence of injury cannot be a reason to quash the charge under section 353 IPC.

13. However, the final report indicates that while the accused were protesting, the police prevented them from obstructing the Chief Minister's convoy, and in that process, the accused allegedly pushed and pulled at the police uniform. Minimal push and pull is only natural while preventing a person from causing obstructions. The allegations do not indicate any obstruction caused in the discharge of the police duty. The allegations in the final report only indicate a trivial instance of push and pull by the petitioners. The question then arises, should the petitioners be prosecuted for the trivial incident of push and pull especially in the absence of any assault or injury to the police

14. Considering the nature of the allegations, this Court is of the view that the principle embodied in Section 95 IPC can be applied. Section 95 IPC



states that "Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm". The aforesaid section embodies the principle of '*de minimis non curat lex*' meaning that "law does not take into account trifles". It has however, been observed that care must be taken before applying the principle. In **Veeda Menezes v. Yusuf Khan Haji Ibrahim Khan** (AIR 1966 SC 1773), the Supreme Court observed that "whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act was done, and other related circumstances". Similarly in **Narayanan and Others v. State of Kerala** (1986 KLT 1265) it was held that, if the harm caused or intended to be caused is so slight that no person of ordinary sense and temper would complain of such harm, the principle can be applied. The aforesaid principle was also relied upon by this Court in **Prakash Karat and Others v. State of Kerala and Another** (2022 (6) KHC 531).

15. The intention behind section 95 IPC is to avoid penalising negligible wrongs or trivial offences. If prosecution is initiated for every triviality, we will have time only for those. Section 95 comes to the aid in such instances. Considering the circumstances that none of the other offences are attracted and only section 353 IPC remains, this Court is of the view that having regard to the nature of allegations and in the absence of any assault or injury on the police officers and since the duty of the police officers was not deterred, section 95 IPC can be applied to quash the offence under section 353 IPC.



16. Since, none of the offences alleged against the petitioners are attracted, the final report itself is liable to be quashed.

17. In the result, the final report in C.C. No.403 of 2020 on the files of the Judicial First Class Magistrate Court-III, North Paravur, arising out of Crime No.699/2017 of North Paravur Police Station is quashed.

The criminal miscellaneous case is allowed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX OF CRL.MC 7951/2024

PETITIONER'S/S' ANNEXURES

Annexure - A1 **TRUE COPY OF THE CHARGE SHEET DATED
12-04-2017 IN CRIME NO. 699 OF 2024 OF NORTH
PARAVOOR POLICE STATION**

Annexure - A2 **TRUE COPY OF THE FIR IN CRIME NO. 699 OF 2024
OF NORTH PARAVOOR POLICE STATION DATED
09-04-2017**