IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944

CRL.MC NO. 1898 OF 2013

AGAINST ST 4129/2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I,THIRUVANANTHAPURAM

PETITIONERS:

1 **PRAKASH KARAT**
POLIT BUREAU MEMBER & GENERAL SECRETARY,
CPI (M), A.K.G. BHAVAN,
NEW DELHI.

2 **V.S.ACHUTHANANDAN**
OPPOSITION LEADER, GOVERNMENT SECRETARIAT,
STATUE, THIRUVANANTHAPURAM.

3 **PINARAYI VIJAYAN**
STATE SECRETARY, C.P.I (M),
A.K.G. CENTRE, PALAYAM,
THIRUVANANTHAPURAM.

4 **VAIKOM VISWAN**
L.D.F. CONVENOR, A.K.G. CENTRE,
PALAYAM, THIRUVANANTHAPURAM.

5 **P.K.SREEMATHI**
FORMER MINISTER FOR HEALTH,
C/O. A.K.G. CENTRE, THIRUVANANTHAPURAM.

6 **ANTHALAVATTOM ANANDAN**
MEMBER, C.P.I (M) STATE SECRETARIAT,
PALAYAM, THIRUVANANTHAPURAM.

7 **PRABHATH PATNAIK**
VICE PRESIDENT, PLANNING COMMISSION,
NEW DELHI.

8 **M.VIJAYAKUMAR**
FORMER MINISTER FOR LAW,
C/O. A.K.G. CENTRE,
THIRUVANANTHAPURAM.

9 V.SURENDRAN PILLAI
M.L.A., M.L.A. QUARTERS, PALAYAM,
THIRUVANANTHAPURAM.

10 KADAKAMPALLI SURENDRAN
DISTRICT SECRETARY, C.P.I (M),
DISTRICT COMMITTEE OFFICE,
THIRUVANANTHAPURAM.

11 V.SIVANKUTTY
C/O. A.K.G. CENTRE,
THIRUVANANTHAPURAM.

12 C.JAYAN BABU
C/O. A.K.G. CENTRE, THIRUVANANTHAPURAM.

BY ADVS.
SRI.ALAN PAPALI
SRI.M.K.DAMODARAN SR.
SRI.GILBERT GEORGE CORREYA
SRI.SOJAN MICHEAL
SRI.P.K.VIJAYAMOHANAN

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

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

2 NEYYATTINKARA P.NAGARAJ
S/O S.P. THYAGARAJAN,
AYYAPPA NIVAS, OPP: COURT COMPLEX,
NEYYATTINKARA P.O.-695 121,
THIRUVANANTHAPURAM.

BY ADVS.

SRI.T.A SHAJI, SR. DIRECTOR GENERAL OF PROSECUTION
SRI.P.NARAYANAN, SENIOR G.P.
SRI.SAJJU.S., SENIOR G.P.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26.09.2022, THE COURT ON 13.10.2022 PASSED THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.M.C. No.1898 of 2013

Dated this the 13th day of October, 2022

ORDER

The Association of South East Asian Nations (ASEAN) was formed between ten nations of South East Asia. On 13.08.2009, India entered into a trade agreement with the ASEAN countries. The signing of the agreement was not well received by a few of the political parties. In a bid to compel the Union Government to withdraw from the ASEAN free trade agreement, the Communist Party of India (Marxist) decided to form a Statewide human chain in Kerala to be lined up on the sides of the National Highway. The human chain is alleged to have been created over a distance of 500 kilometres, from Kasaragode in the north to Thiruvananthapuram in the south.

2. An Advocate practising in the courts at Thiruvananthapuram preferred a private complaint before the Judicial First Class Magistrate Court, Thiruvananthapuram alleging that the human chain formed on 2nd October 2009 between 5 p.m. to 8 p.m. at the behest of accused 1 to 12 and 10,000 other identifiable persons resulted in the commission of offences under sections 143, 147, 149 and 283 of the Indian Penal Code,1860 apart from section 38 r/w section 52 of the Kerala Police Act, 1960.

3. The complaint also refers to another incident on the same day at 3 p.m., when the Sub Inspector of Police attached to the Museum Police Station, Thiruvananthapuram, noticed ten young men constructing an open stage on the road and footpath in a manner causing obstruction to the right of way of the public. According to the complainant, despite the police commanding them to desist from the construction, the young men proceeded to set up an open platform and enabled accused 1 to 12 to address the party workers as part of the human chain. The complaint further alleged that though Crime No.626 of 2009 was registered

against ten identifiable persons, no steps were initiated to arrest the accused or to remove the stage constructed and that the acts of those accused constituted a violation of the decisions of this Court in Peoples Council for Social Justice v. State of Kerala (1997 (2) KLT 301) as well as Kerala Vyapari Vyavasayi Ekopana Samithi v. State of Kerala (2004 (2) KLT 857). On the above allegations, the complainant sought to prosecute the accused.

4. The sworn statement of the complainant was taken, and his witnesses were also examined. Thereafter, the learned Magistrate took cognizance of the offence as S.T. No.4129 of 2012 and issued process to the accused. Later, by order dated 14.11.2012, the case was transferred to the Chief Judicial Magistrate's Court, Thiruvananthapuram and renumbered as C.C. No.1530 of 2012.

5. Petitioners are accused 1 to 12. All of them claim to be leaders of the Communist Party of India (Marxist). They have approached this Court under section 482 of Cr.P.C, alleging that the complaint is filed with malafide intentions and for oblique motives and that the offences alleged are not made out.

6. Sri. Gilbert George Correya, the learned counsel for the petitioners contended that the accused, which include the present Chief Minister of Kerala, the former General Secretary of the Communist Party of India (Marxist), as well as the former Chief Minister of Kerala and other senior leaders of the Communist Party of India, have never acted contrary to law. It was submitted that no one had come forward with any personal grievance or inconvenience or even prejudice that was caused on account of the human chain programme organised by the Communist Party of India (Marxist). The learned counsel submitted that the human chain was formed in exercise of their right under Article 19 of the Constitution of India as a measure of showing their protest against an act that they presumed to be contrary to their beliefs. According to the learned counsel, the offences alleged are not made out against the petitioners, and hence the private complaint is liable to be quashed.

7. Sri.T.A.Shaji, the learned Director General of Prosecution, assisted by Sri. K. A Noushad, the learned Public Prosecutor submitted that the offences alleged are not made out

and further that the allegations are politically motivated. It was also submitted that, even if the entire proceedings are continued, the trial cannot end in the conviction of the accused for more reasons than one. The learned Director General of Prosecution also submitted that this is a fit case where the jurisdiction of this Court under section 482 ought to be invoked to quash the proceedings.

8. Though notice to the defacto complainant was served, it is seen from the records that except for a request to file an objection to the stay petition on 26.02.2015, there has not been any representation for the second respondent thereafter.

9. Political leaders of the Communist Party of India (Marxist) face indictment under sections 143, 147, 149 and section 283 of the Indian Penal Code 1860, apart from sections 38 and 52 of the Kerala Police Act, 1960. Section 143 of IPC deals with punishment for unlawful assembly, while section 147 deals with punishment for rioting. Section 149 makes an act committed by any member of the unlawful assembly in prosecution of their common object punishable as if the same was done by every

member of the assembly. Section 283 makes danger or obstruction in a pathway punishable. Sections 38 and 52 of the erstwhile Kerala Police Act make the failure to conform to lawful and reasonable directions of police officers penal and punishable.

10. True that the accused are the leaders of a political party. However, the leadership of a political party is not an immunity against prosecution. Even if the accused are leaders of the society, if an offence is made out from the complaint, they are liable to face prosecution. But on the other hand, if the offences alleged are not made out from the complaint, the position of the accused shall not deter the Court from interfering in an unnecessary prosecution. Thus the question to be considered is whether, from the allegations in the private complaint, the offences alleged are made out or not.

11. Of the offences alleged, one of the main allegations relates to unlawful assembly, which is the basis for the offences under sections 143, 147 and 149 of the IPC. The term unlawful assembly comes under chapter VIII, dealing with public

tranquillity. The term is defined in Section 141 of the IPC and reads as follows:

> *"141. Unlawful assembly.—An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -*
> *First - To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or*
> *Second - To resist the execution of any law, or of any legal process; or*
> *Third - To commit any mischief or criminal trespass, or other offence; or*
> *Fourth - By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*
> *Fifth - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.*
> *Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.*

12. A reading of the above provision reveals that the ingredients of unlawful assembly are:

(i) there must be an assembly of five or more persons,

(ii) the members of the assembly must have a common object,

(iii) the common object must be any one of the following five:

(a) to overawe by criminal force or show of criminal force, the Government or any public servant,

(b) to resist the execution of any law or legal process, or

(c) to commit mischief or criminal trespass or other offences,

(d) by criminal force or show of criminal force to take or obtain possession of any property or deprive enjoyment of a right of way or use of water or other incorporeal rights

(e) by criminal force or show of criminal force to compel any other person to do what he is legally not bound to do or omit to do that which he is legally bound to do.

13. A reading of the section indicates that every assembly of five or more persons by itself will not become an unlawful assembly. An assembly of five or more persons will become unlawful only when they have a common object and the said object falls within the categories mentioned as first to fifth in section 141 IPC. When the common object of the assembly does not fall within any of the five categories specified in section 141,

even if the number of the assembly is more than five, the act alleged will not attract the offence of unlawful assembly. Thus the essence of the offence of unlawful assembly lies in the consensus of purpose of more than five persons to commit an act specified in section 141 of IPC.

14. It is apposite to notice that of the five categories in the provision, three of them have criminal force as a necessary ingredient. Force is defined in section 349 IPC, while criminal force is defined in section 350 IPC. The intentional use of force for committing an offence or for causing injury, fear or annoyance is an essential requirement of criminal force. The remaining two facets require resistance to the execution of law or of legal process or the commission of the offence of mischief or criminal trespass.

15. The principles constituting the offence of unlawful assembly have been succinctly analysed by the Supreme Court in **Masalti v. State of Uttar Pradesh** (AIR 1965 SC 202) and also in **Akthar Alam alias Aktarul Sheikh and Others v. State of West Bengal** [(2009) 7 SCC 415]. Reference to the decision in

Aravindan v. State of Kerala (1983 KLT 193) is also relevant. In Aravindan's case this Court observed that "*the mere fact that an assembly consists of five or more persons is likely to disturb the public peace does not prove that the common object of the assembly is one of those enumerated in the Section. But there, S.151 of the Indian Penal Code may come in and it has been held that the common object must be an immediate one and not to be carried out at some future time"*.

16. On a perusal of the complaint, it is seen that though the complainant alleges that more than five persons had assembled together, there is no mention of any of the ingredients that can attract any one of the five facets described as 'first to fifth' of section 141 IPC. The complainant has no case that the accused had a common object to commit any offence or, for that matter, any of the offences specified in section 141 IPC.

17. The assembly was apparently, as alleged by the complainant himself, formed only to express their protest against the Government signing an agreement with the ASEAN Countries. No criminal force or show of criminal force is alleged to have been

committed by any one of the accused or, for that matter, by any of the assembly of 10,000 and more persons. There is not even a whisper in the complaint about any resistance to the execution of any law or legal process. There is also no allegation of any mischief or criminal trespass committed by any member of the assembly or even any deprivation of the right of way by the use of criminal force. There is also no allegation of compelling any person to do that which he is not legally bound to do by use of criminal force.

18. As mentioned earlier, section 141 IPC significantly uses the words ‘criminal force’ in the three facets of the provision. Thus, a protest or an assembly of persons without any criminal force or show of criminal force would not make the assembly unlawful. An assembly of more than five persons gathered for a peaceful protest cannot fall within the term unlawful assembly. The right to protest peaceably is an essential ingredient of the fundamental right under Article 19(1)(a) and 19(1)(b) of the Constitution of India. An assembly of persons without arms or without criminal force or without any intent to commit an offence

can only be a lawful assembly, which is not prohibited. Such an assembly is a formation in the exercise of the right to freedom of every citizen guaranteed under Article 19(1) of the Constitution.

19. In this context, it is appropriate to observe that the right to freedom of speech and expression and the right to form an assembly guaranteed under the Constitution will be a dead letter if every assembly is regarded as offensive conduct. The right to dissent and the freedom to air views contrary to the views of the government is not an offensive conduct. In fact, the right to dissent is the core of every democratic establishment. The constitutional scheme of our Country embodies the salutary principle of the right to dissent. When the dissent is expressed without causing any harm or even a significant inconvenience, it would be too puerile to proceed criminally against the dissenters. Merely because the dissent is not acceptable to the majority, that is not a reason to initiate criminal action unless the dissent was coupled with violent, disorderly or damaging conduct by any member of the assembly.

20. In this context, I am mindful of the decision in **Amit Sahni (Shaheen Bagh, In Re) v. Commissioner of Police and Others** [(2020) 10 SCC 439], where the Supreme Court had while upholding the right to dissent, directed the protests to be carried out only in designated areas. In the said decision, the Court was concerned with the indefinite and long periods of protests being held at Shaheen Bagh, causing absolute inconvenience to the public. The situation is different in the present case.

21. In the instant case, there is no allegation of any criminal force used by any of the accused or any of the members of the said assembly. There is no allegation of any common object for committing an offence or that the human chain lasted indefinitely. There is also no case that there was any inconvenience or obstruction to the public for an extended period of time. The complainant has not alleged that the normal life of the community was crippled or paralysed. There is not even an allegation that the complainant was obstructed. In such circumstances, I am of the view that the conduct alleged against

the petitioners does not satisfy the ingredients of section 141, IPC, i.e. unlawful assembly.

22. When the allegations do not satisfy the ingredients of unlawful assembly, the offences under sections 143, 147 and 149 IPC cannot be attracted. Therefore, petitioners cannot be prosecuted for the aforesaid offences.

23. Another allegation in the complaint is that under section 283 IPC, which reads as follows.

> *"**283. Danger or obstruction in public way or line of navigation**.- Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees."*

24. The complaint alleges that the obstruction in the form of constructing a stage or a pandal was carried out by ten other persons and not by the petitioners at all. There is no whisper of an allegation that petitioners 1 to 12 were involved in the construction of the stage or a pandal. The complainant has not alleged any role for the petitioners in constructing the open stage/platform. The allegation is that petitioners had sat and

spoken from inside the pandal. Merely because petitioners sat in the open stage/platform, they cannot be attributed with any overt act in the construction of the said stage/platform. In this context, it is relevant to notice that the complainant himself alleged that Crime No.626 of 2009 of the Museum Police Station was registered against the ten persons found to be constructing and supervising the construction of the said stage. It was submitted across the Bar that the said crime was investigated, and a report was submitted referring the crime as 'undetected'. In the absence of any allegation against petitioners 1 to 12, proceeding in a criminal action against them for the offence under section 283 IPC is an abuse of the process of law.

25. As far as the offences under sections 38 and 52 of the Kerala Police Act 1960 are concerned, they relate to the failure to abide by the lawful directions of the police. There is no allegation that petitioners had failed to abide by any lawful directions of the police. On the contrary, the said allegation is specifically raised against ten other persons and not the

petitioners. The averments in the complaint, thus, are not sufficient to proceed against the petitioners for the said offences.

26. Perceived from the angle of section 95 of IPC also, this Court is of the view that the proceedings against the petitioners are liable to be quashed. 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"*. The intention behind the aforesaid provision is to avoid penalising negligible wrongs or trivial offences. There are innumerable acts in our daily life which may amount to crimes in the strict sense of the language employed in the statute. However, if prosecution is initiated for every such triviality, the system will crumble. Section 95 comes to the aid in such instances.

27. However, 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”. The principle of *de minimis non curat lex* was applied by this Court in the decision in **Narayanan and Others v. State of Kerala** (1986 KLT 1265) where 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. Similarly, **In Re:Attappa** (AIR 1951 Mad. 759) the Madras High Court held that even if an obstruction is caused, if the harm caused is so slight, section 95 of the IPC will apply.

28. Applying the principle in section 95 IPC, it can unhesitatingly be held that the allegations can at the most reveal some obstructions caused on the public way while the petitioner held their hands for a limited period of time. Even if it is assumed that any slight obstruction was caused to the public, the same was only a trifle. This is evident from the fact that, no one other than

the complainant had any grievance. In this context, the cost of adjudication, the time required to be spent for prosecution, the absence of any harm caused to the complainant or on any other person, absence of any violence and the intention of engaging in a peaceful protest are factors that cannot be lost sight of.

29. Having regard to all the above reasons this Court is of the opinion that continuance of proceedings against the petitioners as C.C. No.1530 of 2012 on the files of the Chief Judicial Magistrate Court, Thiruvananthapuram, is an abuse of the process of court and is liable to be interfered with.

Hence, I quash Annexure-1, and all further proceedings in S.T No. 4129/2012 on the files of the Judicial First Class Magistrates Court-I, Thiruvanathapuram, now renumbered as C.C. No.1530 of 2012 on the files of the Chief Judicial Magistrate Court, Thiruvananthapuram and allow this petition.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF CRL.MC 1898/2013

PETITIONER'S/S' ANNEXURES

ANNEXURE I:	**CERTIFIED COPY OF THE COMPLAINANT DATED 1.12.2009 FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.**
ANNEXURE II:	**CERTIFIED COPY OF THE COURT PROCEEDINGS**
ANNEXURE III:	**CERTIFIED COPY OF THE SWORN STATEMENT GIVEN BY THE 2ND RESPONDENT BEFORE THE COURT BELOW**