

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 17TH DAY OF OCTOBER 2022 / 25TH ASWINA, 1944

CRL.MC NO. 4477 OF 2019

CC 543/2019 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS -I,

THODUPUZHA

CRIME NO.249/2019 OF KARIMANNOOR POLICE STATION

PETITIONER/ACCUSED:

P.V.MATHAI, AGED 58 YEARS
S/O VARGHESE, POTHUMURI HOUSE, EROOR SOUTH,
TRIPUNITHURA, ERNAKULAM, PIN-682 306.

BY ADV C.P.UDAYABHANU

RESPONDENTS/COMPLAINANT:

- 1 THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
(ON BEHALF OF THE INVESTIGATING OFFICER IN CRIME
NO.249/2019 OF KARIMANNOOR POLICE STATION).
- 2 RASHEEDA P.I., AGED 46 YEARS
W/O NAZER, AGRICULTURE OFFICER,
KARIMANNOOR, IDUKKI DISTRICT, PIN-685 581.

OTHER PRESENT:

SMT T V NEEMA -SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17.10.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

This CrI.M.C. has been preferred to quash all further proceedings in C.C.No.543 of 2019 on the files of the Judicial First Class Magistrate Court-I, Thodupuzha (for short 'the court below').

2. The petitioner is the accused. The 2nd respondent is the de facto complainant.

3. The offence alleged against the petitioner is punishable under Section 353 of IPC.

4. The second respondent was an Agriculture Officer, working at Karimannor Agriculture Office. The prosecution case, in short, is that on 06.04.2019 at about 10.15 a.m., the petitioner entered into her office, abused the office staff in loud voice and further deterred her from discharging her official duty.

5. Heard Shri.Navaneeth N.Nath, the learned counsel for the petitioner. Even though, notice has been served

to the 2nd respondent, there is no appearance.

6. Shri.Navaneeth N.Nath, the learned counsel for the petitioner submitted that even if the entire allegation in the FIS together with the materials collected during the investigation are believed *in toto*, no offence under Section 353 of IPC is made out.

7. Section 353 of IPC deals with an offence of assault or criminal force to deter a public servant from discharge of his official duty, which reads as follows:-

“Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

8. A reading of the above provision would make it clear that in order to attract the offence, the prosecution is required to establish that there was assault or use of criminal force and such assault or use of criminal force was made on a public servant while he

was acting in the execution of his duty or with intent to prevent or deter him from discharging his duty or in consequence of anything done or attempted to be done by him in the discharge of his duty. There is no doubt that the second respondent is a public servant and at the time of the alleged incident, she was discharging her official duty. But the crucial question is whether the petitioner has assaulted the second respondent or used any criminal force and whether the alleged act was done by the petitioner with intent to prevent or deter the second respondent from discharging her official duty.

9. The word 'assault' has been defined under Section 351 of IPC as follows:-

“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. “

The explanation says that mere words do not amount to an

assault.

10. A reading of Section 351 of IPC would show that the victim must apprehend that he who makes that gesture or preparation was about to use criminal force to the victim.

11. The word 'criminal force' has been defined under Section 350 of IPC as follows:-

“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. “

12. The word 'force' has been defined under Section 349 of IPC as follows:-

A person is said to use force to another if he causes 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 that other’s sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of

motion in one of the three ways hereinafter described.

13. In the case on hand, the prosecution has no case that the petitioner has used any force on the 2nd respondent. On the other hand, the case of the prosecution in short is that, after entering into the office room of the petitioner, the accused asked as follows:- “Who asked you to enter into my property, who is your authorized officer, who gave you the authority to enter into my land.” Apart from uttering these words, there was absolutely no use of force or even an attempt to use force. Apart from the vague allegation that the official time of the 2nd respondent was lost on account of the alleged acts of the petitioner, there is no specific allegation that the above mentioned words were uttered by the petitioner with the intent to deter the 2nd respondent from discharging her duty.

14. A Single Bench of this Court in *Jaidas v. State of Kerala and Another* [2017 (1) KHC 669] has held that entering into a public office in order to ventilate one's

grievance with an intention to enquire about the status of application one has submitted, does not amount to an offence of criminal trespass. Another Single Bench of this Court in *Hariprasad and another v. State of Kerala* [I.L.R. 2017 (2) Kerala 395] has held that in order to attract an offence under Section 353 of IPC, the prosecution has to prove that the accused had used criminal force with the intention to cause injury, fear or annoyance to the public servant. Yet another Single Bench recently in *Rilgin V. George and Another v. State of Kerala and Another* [2021 (4) KHC 223] has held that to attract Section 353 of IPC, one of the main ingredients is that the assault or criminal force should be to deter the public servant who was discharging his official duty.

15. As stated already, there is absolutely no allegation that the petitioner has assaulted the 2nd respondent or used any criminal force nor is there any specific allegation that the alleged act was done by the

petitioner to deter the 2nd respondent from discharging her official duty. In the absence of such allegation, offence under Section 353 of IPC would not be attracted. Hence, no purpose will be served in proceeding with the matter any further. Accordingly, all further proceedings in C.C.No.543 of 2019 on the files of the Judicial First Class Magistrate Court-I, Thodupuzha are hereby quashed.

The Crl.M.C is allowed.

Sd/-

DR.KAUSER EDAPPAGATH, JUDGE

AS

APPENDIX OF CRL.MC 4477/2019

PETITIONER'S ANNEXURES:

ANNEXURE 1 A CERTIFIED COPY OF THE FINAL REPORT
TAKEN ON THE FILE OF JFCM COURT-1,
THODUPUZHA, MUTTOM AS C.C.543/2019.

ANNEXURE II A COPY OF THE STATEMENT OF R2.