



2024/KER/13180

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

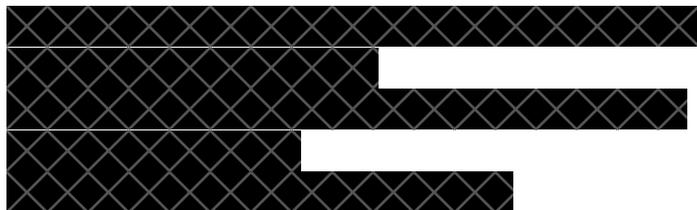
WEDNESDAY, THE 21ST DAY OF FEBRUARY 2024 / 2ND PHALGUNA,
1945

CRL.MC NO. 9593 OF 2023

AGAINST CC NO.156/2021 OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE (EO), ERNAKULAM

PETITIONER/COMPLAINANT:

M. P. CHOTHY



BY SRI.M.P.CHOTHY (Party-In-Person)

RESPONDENT/ACCUSED:

- 1 ANILKUMAR
AGED 65 YEARS, S/O VASUDEVAN NAIR,
SECURITY SUPERVISOR,
INDIAN OIL CORPORATION,
PANAMPILLY AVENUE, PANAMPILLY NAGAR P.O,
KOCHI, PIN - 682036
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031

BY ADVS.

SRI.M.C.ASHI, PUBLIC PROSECUTOR

SRI.GOPIKRISHNAN NAMBIAR M.

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN



2024/KER/13180

CrI.M.C. No.9593 /23

-:2:-

SRI .KURYAN THOMAS
SRI .PAULOSE C. ABRAHAM
SRI .RAJA KANNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
14.02.2024, THE COURT ON 21.02.2024 PASSED THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****-----
Crl.M.C. No.9593 of 2023
-----**Dated this the 21st day of February, 2024**ORDER**

Petitioner is the complainant in C.C. No.1564 of 2021 on the files of the Additional Chief Judicial Magistrate (EO), Ernakulam. He filed a private complaint, alleging offences under sections 506(i) and section 192 of the Indian Penal Code, 1860 (for short 'IPC') apart from sections 7(1)(b) and 12 of the Protection of Civil Rights Act, 1955 (for short 'the Act'). The learned Magistrate took cognizance only for the offence under section 506(i) of IPC. Petitioner challenges the refusal of the Magistrate to take cognizance of other offences alleged.

2. Petitioner belongs to the scheduled caste community. He alleged that he is a consumer of Indane Gas and had raised certain complaints against the dealer of Indane Gas with the office of the Indian Oil Corporation (for short 'IOC'). Since his complaints were not redressed, petitioner decided to meet the Area Manager of IOC, and for that purpose, he went to the office



of the said officer on 30.06.2020. However, the accused, who was the security supervisor of IOC, refused permission for the petitioner to enter the Office. Later, the accused gave a telephone number of a person to be contacted. When the petitioner contacted that person over phone, on the number provided by the accused, the response from the other end was by a lady who was annoying and aggressive. Therefore petitioner decided to visit the office of the Area Manager of IOC personally to complain. When the petitioner reached the office and informed the accused of the purpose of his visit, the accused attempted to attack the petitioner and he felt threatened, attracting the offence under section 506 IPC.

3. Petitioner also alleged that when he made a written complaint to the Senior Area Manager, a reply was issued by the General Manager, which was unsatisfactory. Therefore petitioner applied under the Right to Information Act, enquiring whether there was any restriction in permitting anyone to enter the office of the Area Manager. The reply issued did not inform about any such restriction, and hence, the petitioner alleges that he came to the knowledge that there was no restriction in permitting anyone inside the office of the Area Manager, and the decision



not to let the petitioner inside the office was taken by the accused himself.

4. Petitioner further alleged in his complaint that the refusal to permit him to meet the Area Manager amounts to obstruction, annoyance and insult, thereby committing the offences under sections 7(1)(b) of the Act. Petitioner also alleges that when General Manager enquired with the accused about his behaviour, he had replied that his behaviour to the petitioner was courteous, which is false, and thereby, the offence under section 192 IPC has also been allegedly committed. On the basis of the above allegations, the petitioner sought to initiate criminal proceedings against the accused.

5. The learned Magistrate took cognizance of the offence under section 506(i) IPC alone. Petitioner challenges the proceedings taking cognizance of the offence under section 506(i) IPC alone and contends that the omission to take cognizance of the offences under the Protection of Civil Rights Act 1955 is illegal, and he seeks to set aside the order taking cognizance for the offence under section 506(i) IPC alone.

6. I have heard Sri. M.P. Chothy - the petitioner, who appeared as a party in person, Sri. Ashi M.C, learned Public



Prosecutor as well as Sri.M.Gopikrishnan Nambiar, learned counsel for the first respondent.

7. The allegation raised in the complaint is that the accused had refused to permit the petitioner to enter the Area Manager's office to lodge a complaint. Petitioner has nowhere pleaded that he was granted permission by the Area Manager of IOC to visit him in his office. He had no prior appointment or permission even to claim a right of access to the Area Manager's office. Though it was contended that the petitioner had a right of access to the Area Manager's office, petitioner could not, during the course of his arguments, point out any provision of law or any mandate which conferred him a right to enter the Area Manager's office. The office room of any officer of an establishment is his private space, and in the absence of prior permission, no one can claim a right of entry into such offices.

8. Section 7(1)(a) & (b) of the Protection of Civil Rights Act, 1955 reads as follows:

**"7.Punishment for other offences arising out of
"untouchability"**

(1) Whoever—

(a) prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under Article 17 of the Constitution; or

(b) molests, injures, annoys, obstructs or causes or



attempts to cause obstruction to any person in the exercise of any such right or molests, injures, annoys or boycotts any person by reason of his having exercised any such right; or

(c) xxx xxx xxx xxx

(d) xxx xxx xxx xxx

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

9. A perusal of the above provision indicates that the annoyance, obstruction or insult must be done as part of the right that accrues to a person by reason of the abolition of untouchability. Petitioner has not averred that he was doing anything on account of his right accruing to him by virtue of the abolition of untouchability. Unless the obstruction or annoyance was committed by the accused while the petitioner was exercising any right that accrues to him by reason of the abolition of untouchability, section 7(1)(b) of the Act would not be attracted. The object of the Act itself is to prescribe punishment for the preaching and practice of untouchability, for the enforcement of any disability arising therefrom. A mere obstruction or annoyance to a person cannot give rise to the said offence. The offence will be attracted only when the complainant was doing something in pursuance of the abolition of



untouchability. There is absolutely nothing to indicate that petitioner was doing any act in the exercise of the right that accrued to him due to the abolition of untouchability.

10. Further, the presumption under section 12 of the Act also cannot be attracted. Nowhere in the complaint filed by the petitioner has he pleaded that the accused was aware that the petitioner belonged to a member of the Scheduled Castes. The presumption under section 12 of the Act can apply only if the accused was aware or informed that petitioner belongs to scheduled caste community.

11. Apart from the above, an Office of an establishment is not a place where the public can have a right of access. The access can only be with permission. A mere denial of entry into an office cannot amount to an offence under the Act unless those were done as part of untouchability, and the place is one where the public has a right of access.

12. In view of the above, the refusal of the learned Magistrate to take cognizance of the offence under section 7(1) (b) of the Protection of Civil Rights Act, 1955, is justified and does not warrant any interference.

13. Before parting, it is necessary to mention that misuse



of the provisions of the Act, as in the present case, can dilute the purpose for which the Act was enacted. Such attempts ought not to be permitted, which may even affect genuine complaints. This is an instance where the petitioner ought to be mulcted with costs for attempting to misuse the provisions of the Act. However, in the peculiar circumstances, this Court refrains from doing so.

This Criminal Miscellaneous Case is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX

PETITIONER 'S/S' ANNEXURES

- ANNEXURE 1 TRUE PHOTOCOPY OF THE CASTE CERTIFICATE
OF THE PETITIONER DATED 15/11/2022
- ANNEXURE 2 TRUE COPY OF THE COMPLAINT BEFORE THE
HON'BLE ACJM-4 DATED 7-12-2020
- ANNEXURE 3 TRUE COPY OF THE CMP FILED ON 14-07-2023
BY THE PETITIONER/COMPLAINANT
- ANNEXURE 4 TRUE PHOTOCOPY OF THE ORDER IN C.C.
156/2021 DATED 07.10.2023