

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
ERNAKULAM
(Special court for the trial of criminal cases against sitting and former MPs/MLAs
of the State)**

Present : Smt.Naina K.V., Additional Chief Judicial Magistrate

Wednesday, 2nd day of August, 2023/11th Sravana 1945 S.E

CC. No:18/2021

Complainant : State represented by Sub Inspector of Police, Central Police
Station, Ernakulam in Cr.No.886/2020
(By Sri. Namitha Jathavedan, Assistant Public
Prosecutor Grade II (In-charge))

Accused : 1. Hibi Eden

2. T.J. Vinod

3. V.D Satheeshan

4. Anwar Sadath

5. Roji M. John

6. V.P. Sajeendran

7. M.O. John

108,

8. Tony Chammani

(By Adv.Sri. Mohammed Siyad)

Offence : U/ss. 143, 147 r/w 149, 269 and 271 of the Indian Penal
Code, s.118(e) of Kerala Police Act and ss.4(2)(a), 4(2)(e) r/

w s.5 of Kerala Epidemic Disease Ordinance, 2020
Plea : Not Guilty
Finding : Not Guilty
Sentence or Order : Accused persons are acquitted u/s 248(1) of the Criminal Procedure Code of the offences punishable u/ss. 143 , 147 r/w 149, 269 and 271 of the Indian Penal Code, s.118(e) of Kerala Police Act, 2011 and ss.4(2)(a), 4(2)(e) r/w s.5 of Kerala Epidemic Disease Ordinance, 2020. The bail bonds of the accused persons shall stand cancelled and they are set at liberty.

DESCRIPTION OF ACCUSED

Name	Father's Name	Calling	Residence	Age
Hibi Eden	George Eden	Member of Parliament	Ambatt House, 35/326 B, George Eden Road, Deshabhimani Road, Kaloor - 682 017, Ernakulam, Kerala	38/2022
T.J. Vinod	T.M. Joseph	Member of Legislative Assembly	Thyvelikkakath House, Naroath Road, Thammanam P.O., Kochi	57/2022
V.D. Satheshan	Damodharan	Leader of Opposition	Devaragam, Kesari Junction, North Paravur, Ernakulam, Kerala	72/2022
Anwar Sadath	Abdul Sathar	Member of Legislative Assembly	Oolikkara House, Perumbayam, Nedumbassery P.O., Chengamanad, Aluva Taluk, Pin 683 585	72/2022
Roji M. John	John M.V	Member of Legislative Assembly	Mullanmadackal House, Ayroor P.O., Ernakulam, Pin : 683 579	39/2022
V.P. Sajeendran	Padmanabhan	Social worker	Anicad House, Vallothiamala, Kolenchery, Ernakulam	52/2022
M.O. John	Ouso	Social worker	Manjali House, New Lane Road,	72/2022

			Thottakkattukara P.O., Aluva – 683 108, Ernakulam	
Tony Chammini	Thomas	Social worker	Mullanmadackal House, Ayroor P.O., Ernakulam, Pin : 683 579	51/2022

DATE OF

Occurrence	Complaint	Apprehension	Release on bail
19.06.2020	19.06.2020	25.10.2021-A1 12.03.2021 – A2 to A6, A8 15.11.2021-A7	25.10.2021-A1 12.03.2021 – A2 to A6, A8 15.11.2021-A7
Commencement of trial	Close of trial	Sentence or Order	Delay, if any
25.10.2021-A1 23.11.2021-A2 18.11.2021-A3, A4, A8 07.12.2021-A5, A6 15.11.2021-A7	31.07.2023	02.08.2023	No delay

This case came up for consideration today and the court on the same day passed the following:

J U D G M E N T

1. This case arose upon a final report filed by the Sub Inspector of Police, Central Police Station in Cr. No.886/2020 alleging commission of offences punishable u/ss.143, 147 r/w 149, 269 and 271 of the Indian Penal Code, s.118(e) of Kerala Police Act and ss.4(2)(a), 4(2)(e) r/w s.5 of Kerala Epidemic Disease Ordinance, 2020 by the accused Nos.1 to 8.

2. The prosecution case in brief is as below:

On 19.06.2020 from 10.15 hours till 12.20 hours, the accused Nos.1 to 8 organized themselves into an unlawful assembly alleging that the Kerala Government had been ignoring expatriates. They assembled near Menaka bus

stop beside Shanmugham road in Ernakulam village, in prosecution of their common object to spread COVID 19. They did so in violation of the government order and the guidelines of health department restraining public assembly, unnecessary journeys and conducting public functions. They acted negligently so as to spread COVID 19 and to cause danger to public safety. They violated the provisions of Kerala Epidemic Disease Ordinance, 2020. Therefore the accused are alleged to have committed the aforesaid offences.

3. The First Information Report in this case was registered by Sri. Shaji P.A., then Sub Inspector of Police, Central Police Station, Ernakulam. Later Sri. Joseph T.S, another Sub Inspector of above said Police Station took charge of the investigation and filed final report alleging commission of offences punishable u/ss.143, 147 r/w 149, 188, 269 and 271 of the Indian Penal Code, s.118(e) of Kerala Police Act and s.4(2)(a) r/w s.5 of Kerala Epidemic Disease Ordinance, 2020. Cognizance was not taken for the offence punishable u/s.188 of Indian Penal Code, since the procedures under s.195 of Criminal Procedure Code was not complied with.

4. On issuance of process, all the accused persons entered appearance and were released on bail. Copies of the relevant records relied on by the prosecution were served on them. Heard. Charge was framed for the offences punishable u/ss.143, 147 r/w 149, 269 and 271 of the Indian Penal Code, s.118(e) of Kerala Police Act and s.4(2)(a), 4(2)(e) r/w s.5 of Kerala Epidemic

Disease Ordinance, 2020 read over and explained to which all the accused persons pleaded not guilty and claimed to be tried.

5. Three witnesses were cited in final report among whom CW1 and CW2 were examined as PW1 and PW2 and Exts.P1 series were marked. The learned Assistant Public Prosecutor gave up the examination of CW3 stating that he was not the investigating officer and filed an additional witness list citing the investigating officer as additional witness. Though process was issued to the said witness, the prosecution failed to produce him at court and reported that he could not be produced. So the evidence was closed. Thereafter, the accused were examined u/s. 313(1)(b) of the Criminal Procedure Code regarding the incriminating circumstances made out against them in the prosecution evidence. They denied all the incriminating circumstances levelled against them and submitted that a false case was registered due to political motivation.

6. No oral or documentary evidence was adduced by the accused.

7. Heard both sides.

8. The points that arose for consideration are: -

- 1 Did the accused persons form themselves into an unlawful assembly on 19.06.2020 from 10.15 hours till 12.20 hours near Menaka bus stop beside Shanmugham road in Ernakulam village, as alleged?
- 2 Did the accused persons commit rioting as alleged?
- 3 Did the accused persons act in prosecution of their common object to spread COVID-19 and thereby

committed offences punishable under sections 143, 147 r/w 149 of the Indian Penal Code as alleged?

- 4 Did the accused negligently act so as to spread COVID 19 disease which is dangerous to life and thereby committed offence punishable u/s.269 of Indian Penal Code as alleged?
- 5 Did the accused disobey the order of government and guidelines of health department and thereby committed the offence punishable u/s.271 of Indian Penal Code as alleged?
- 6 Did the accused persons fail to keep social distancing and violated the provisions in Kerala Epidemic Diseases Ordinance, 2020 as alleged ?
- 7 Did the accused persons act in such a way to cause danger to public or failure in public safety thereby committed offence punishable u/s. 118(e) of Kerala Police Act, 2011 as alleged?
8. Are the accused guilty?
9. What shall be the sentence or order to be passed?

9. **Point Nos. 1 to 3 :-** For the sake of brevity and to avoid repetition of discussion on facts and evidence, these points are being considered together.

10. The prosecution allegation was that on 19.06.2020 from 10.15 hours till 12.20 hours, the accused Nos.1 to 8 organized themselves into an unlawful assembly near Menaka bus stop beside Shanmugham road in Ernakulam village, in prosecution of their common object to spread COVID 19. It was also alleged that the accused committed rioting.

11. The defence version of the case was that a false case was registered against the accused who are the leaders of political party named Congress so as to suppress protests against the government.

12. At the time of hearing, the learned Assistant Public Prosecutor has argued before this court that the evidence adduced by the prosecution would prove the formation of an unlawful assembly by the accused in prosecution of their common object to spread COVID 19.

13. The learned counsel for the accused has argued that the prosecution could not succeed in proving the allegations against the accused persons. According to him, no specific acts alleged to be committed by the accused had been stated in the prosecution records and no evidence was adduced. He stated that there is nothing to prove that the accused have committed any of the acts specified in s.141 of the Indian Penal Code.

14. PW1 is the then Sub Inspector and PW2 is the then Civil Police Officer respectively of Central police station who are alleged to have witnessed the incident involved in this case.

15. PW1 has deposed that on 19.06.2020 he along with PW2, while on law and order patrol duty reached the bus stop at Menaka beside Shanmugham road at 10.15 hours. They saw a strike conducted by about 50 members of the political party named Congress including V.D Satheesan, Anwar Sadath, Sajeendran, Vinod and Tony Chemmani. According to him, the accused No.1 to

8 led a sathyagraha demanding the government to bring expatriates to Kerala in the event of outbreak of COVID-19. According to him, the accused conducted a strike in violation of the orders of the government and guidelines of the health department. They did not obey the order to disperse and later dispersed at 12.20 hours on their own. As there was possibility to spread COVID 19, they were not arrested. He registered Ext.P1 First Information Report on the basis of Ext.P1(a) suomotu report. He deposed that the investigation was conducted by another officer. According to him, he could identify the accused persons.

16. He was cross examined thoroughly by the learned counsel for the accused. He deposed that he enquired and collected the names of accused from them. When he was asked about the absence of that fact in Ext.P1 series, he replied that he enquired the matters with other members of the party and not with the accused. Admittedly, he has previous acquaintance with the accused persons, but he stated that he mentioned the names as told to him by the members. He admitted that he did not state that he has previous acquaintance with the accused persons.

17. When questioned regarding the place of occurrence he deposed about the presence of a stage. Admittedly, he did not specify the acts of the accused in Ext.P1(a) suomotu report. He also admitted that he did not mention or produced documents to prove the social distance to be kept on 19.06.2020. He also admitted that he did not produce documents to prove that COVID protocol

was in existence on that particular day. Admittedly, he did not mention the distance kept by the accused in Ext.P1 series. He also deposed that the accused were not shown to the investigating officer by him and that the investigating officer did not show the accused to him for the purpose of identification. He denied the suggestion of the learned counsel for the accused that a false case was registered against the accused for the purpose of suppressing protests against the State government.

18. PW2 deposed in tune with the deposition of PW1. He mentioned about the presence of V.D. Sadeeshan, T.J. Vinod and Tomy Chemmani. He also deposed that he could identify the accused persons. During cross examination he deposed that he saw the First Information Report prepared by PW1. According to him, he gave his statement to the investigating officer before the registration of First Information Report. Though he deposed that he stated the names of accused, that was not seen in the statement recorded u/s 161 of the Criminal Procedure Code. When asked about that, he deposed that he did not have anything to say. He admitted that he did not mention the specific acts done by the accused. He did not reply specifically as to whether the accused were later shown for identification. He deposed about the presence of a shed (പന്തൽ) and stated that the accused sat on the chairs kept in the shed. When he was questioned regarding his statement that he saw the accused standing at the place of occurrence as a group, he replied that that was not correct. He admitted that

he did not state the social distance to be kept at the relevant time and that he did not state the distance kept by the accused. He also denied the suggestion that a case was registered due to political motivation.

19. The allegation was that the accused organized themselves into an unlawful assembly near Menaka bus stop beside Shanmugham road in Ernakulam village, in prosecution of their common object to spread COVID 19 and committed rioting. To prove the formation of an unlawful assembly by the accused persons the prosecution has to prove that the accused did any of the acts specified in Sec.141 of the Indian Penal Code. As per Section 141 of the Indian Penal Code, “an assembly of five or more persons is designated as an ‘unlawful assembly’, if the common object of the person 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.

20. On going through the evidence of PW1 and PW2, it can be seen that they deposed during chief examination that the accused conducted a strike. They did not mention the specific acts of the accused even though they were thoroughly cross examined by the learned counsel for the accused. There is nothing in their evidence to prove that the accused committed any of the acts specified in s.141 of the Indian Penal Code. When asked about the place of occurrence PW1 mentioned about the presence of a stage. PW2 deposed about the presence of a shed and according to him, the accused sat on the chairs in the said shed. He himself denied his earlier statement that the accused were standing at the place of occurrence in a group to conduct a strike.

21. PW1 has deposed that he has previous acquaintance with the accused persons, but he did not state that in the prosecution records. Though he stated that he has previous acquaintance, he himself has deposed during cross examination that he learned about the names of the accused from other members of the Congress party who were present, which shows that his statement that he has previous acquaintance with the accused is incorrect. This strengthens the

contention of the learned counsel for the accused that a false case was registered against the leaders of the Congress Party. Further the prosecution failed to produce investigating officer at court as a witness which is fatal to the prosecution. Moreover PW1 and PW2 have mentioned the name of a few accused persons and did not mention the specific acts done by them.

22. In *Vayalali Girishan and another v. State of Kerala (2016 KHC 204)*, it was held by the honb'le High Court of Kerala that if there are only vague allegations of an unlawful assembly then there is no reasonable circumstances to find the accused guilty. There is absolutely no evidence to prove that the accused persons have committed rioting as alleged. The prosecution could not adduce evidence in support of their case.

23. Further, though the allegation is that the accused gathered in prosecution of their common object to spread COVID 19, there is no evidence to prove that accused shared such an object.

24. In *Sureshkumar T.M v. State of Kerala (2022KHC 1014)*, the hon'ble High Court of Kerala has held that every assembly of five or more persons will not become an unlawful assembly. Assembly of five or more persons would become illegal only when they have a common object and the said object falls within any of the five categories specified in s.141 of the Indian Penal Code. In the case on hand, the prosecution has not adduced any evidence to prove that the accused committed any of the above acts.

25. In *Prakash Karat and others v. State of Kerala and another (2011(6)KHC 531)*, hon'ble High Court of Kerala has held that the essence of offence of unlawful assembly lies in the consensus of purpose of more than five persons to commit an offence specified in s.141.of Indian Penal Code. When the common object of the assembly does not falls within any of the five categories specified in s.141 Indian Penal Code, even if the number of persons in the assembly is more than five, the act alleged will not attract the offence of unlawful assembly. In the instant case, the common object of the accused as projected by the prosecution was to spread COVID-19. The prosecution could not adduce evidence to prove that the accused did not keep social distance or that they violated the orders of government and guidelines of the health department.

26. *In Rasheed and others v. State of Kerala (2015(4)KLJ 70)*, the honourable High Court of Kerala has held that there has to be evidence on record of unlawful assembly having reached consensus of purpose of achieving any of the various objectives enumerated in sec.141 of the Indian Penal Code.

27. There is absolutely no evidence to prove that the accused formed themselves into an unlawful assembly and committed rioting. Hence, I find that prosecution has failed to prove that the accused persons have committed the offences punishable u/s.143, 147 r/w 149 of the Indian Penal Code. Hence these points are found against the prosecution.

28. **Point No.4** :- It was alleged that the accused acted negligently by

unlawfully assembling near Menaka bus stop on 19.06.2020, so as to spread COVID 19. Though the prosecution examined PW1 and PW2, whose evidence was discussed in Point No.1 to 3, there is no evidence to prove that the accused assembled or acted negligently. The prosecution could not adduce cogent and convincing evidence to prove the allegation. Hence, I find that the prosecution has failed to prove the commission of offence punishable u/s.269 of the Indian Penal Code by the accused persons. This point is found against the prosecution.

29. **Point No.5 & 6:** The prosecution has alleged that the accused persons violated the order of the government and guidelines of the health department which was with respect to the prevention of the spread of COVID 19 and thereby committed the offence punishable u/s.271 of the Indian Penal Code. It was also alleged that the accused persons violated the provisions of the Kerala Epidemic Diseases Ordinance, 2020. The prosecution could not adduce any evidence to prove the social distance to be kept on the date of occurrence of the alleged incident. Admittedly no documents were produced to prove the social distance or no documents were produced to prove that orders or guidelines restraining public gathering were in existence. So it can be seen that the social distance to be kept at the relevant time at the place of occurrence is not proved. I find that there is no evidence to prove that the accused persons have committed the offence punishable u/s.271 of the Indian Penal Code and ss.4(2)(a), 4(2)(e) r/w s.5 of the Kerala Epidemic Diseases Ordinance, 2020. These points are found

against the prosecution.

30. **Point No.7:** - Commission of offence punishable u/s.118(e) of the Kerala Police Act, 2011 was also alleged against the accused persons stating that they gathered near Menaka bus stop without keeping social distance and acted so as to cause danger to public or failure in public safety. According to the prosecution the accused assembled with the intention to spread COVID 19. Sec.118(e) of the Kerala Police Act, 2011 provides that “any person who knowingly does any act which causes danger to public or failure in public safety shall on conviction be punishable with imprisonment for a term which may extend to three years or with fine not exceeding Rs.10,000/- or with both. I have already discussed in Point Nos.1 to 3 that the formation of an unlawful assembly or a gathering by the accused persons is not proved . Likewise there is no evidence to prove that the accused failed to keep social distance. There is no evidence to prove that the accused acted so as to spread COVID 19. There is nothing in the evidence adduced by the prosecution to prove that the accused have committed any act which was dangerous to public or which would cause failure in public safety. Hence, I find that the prosecution has failed to prove that the accused persons have committed the offence punishable u/s.118(e) of the Kerala Police Act, 2011. This point is found against the prosecution.

31. **Point No.8:**:- In view of my findings on point nos.1 to 7, I find that the accused persons are not guilty of the offences punishable u/ss. 143 , 147

r/w 149, 269 and 271 of the Indian Penal Code, s.118(e) of Kerala Police Act, 2011 and ss.4(2)(a), 4(2)(e) r/w s.5 of Kerala Epidemic Disease Ordinance, 2020.

This point is found against the prosecution.

32. **Point No.9** : In the result, the accused persons are acquitted u/s 248(1) of the Criminal Procedure Code of the offences punishable u/ss. 143 , 147 r/w 149, 269 and 271 of the Indian Penal Code, s.118(e) of Kerala Police Act, 2011 and ss.4(2)(a), 4(2)(e) r/w s.5 of Kerala Epidemic Disease Ordinance, 2020. The bail bonds of the accused persons shall stand cancelled and they are set at liberty.

Dictated to the Confdl. Asst. transcribed by her, corrected and pronounced by me in open court on this the 2nd day of August, 2023.

Sd/-

NAINA K.V.

Additional Chief Judicial Magistrate

Appendix

Witnesses examined for the Prosecution:

- PW1 : Shaji P.A., Aged 52/22, S/o P.K. Aliyar, Kanayanoor, examined on 19.01.2022
- PW2 : Krishna Kumar, Aged 34/22, S/o.Dasan V., Cherthala examined on 19.01.2022

Exhibits marked for the prosecution:

- P1 : First Information Report dated 19.06.2020 proved through PW1 on 19.01.2022
- P1(a) : Suomotu Report dated 19.06.2020 proved through PW1 on

19.01.2022

Witnesses and Exhibits for the defence: Nil

Material objects marked: Nil

Sd/-

NAINA K.V.

Additional Chief Judicial Magistrate