

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 06TH DAY OF NOVEMBER 2020 / 15TH KARTHIKA, 1942

Crl.MC.No.7029 OF 2018(G)

CC 1411/2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, ERNAKULAM

CRIME NO.1462/2016 OF Ernakulam Central Police Station , Ernakulam

PETITIONER/3RD ACCUSED

DOMINIC PRESENTATION
AGED 68 YEARS
S/O FELIX,
VALIYATHACHIL HOUSE,
SUNORO CHURCH ROAD,
ELAMKULAM

BY ADVS.
SRI.K.L.JOSEPH
SMT.P.SAREENA GEORGE

RESPONDENTS/RESPONDENTS

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM
682031
- 2 STATION HOUSE OFFICER,
CENTRAL POLICE STATION, ERNAKULAM - 682018

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
06.11.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated : 6th November, 2020

1. This Crl.M.C has been filed under Sec.482 Cr.P.C by the 3rd accused in C.C.966/2016 on the files of Judicial First Class Magistrate-II, Ernakulam to quash the proceedings.
2. The Central police registered crime No.1462/2016 against three persons including the petitioner and 200 identifiable persons under Secs 143, 147, 283 r/w 149 IPC. Subsequently final report was filed before the Judicial Magistrate of First Class-II, Ernakulam against five persons in which the petitioner is the 3rd accused. The case was numbered as C.C.966/2016. Subsequently 4th accused on 30.7.2018 pleaded guilty and he was sentenced to pay fine of Rs.300/-. Thereafter the case was renumbered as C.C.1411/2018.
3. The prosecution case is that on 27.6.2016 at about 6 pm at Shanmugham road, Menaka Junction, petitioner/3rd accused along with four others led about 200 workers forming themselves into an unlawful assembly knowing

that they are all members of the said assembly and in prosecution of the common object of the assembly caused obstruction to the general public and vehicles by conducting the procession in allegiance to the human rights protection procession led by V.M.Sudheeran KPCC president in protest of arrest of two 'dalith' girls in Thalssery, by police. Thereby petitioner and others committed offence under Secs 143, 147, 283 r/w 149 IPC.

4. Notice was issued to the respondent and learned public prosecutor appeared on behalf of the respondents. Heard both sides.
5. According to the learned counsel for the petitioner the final report in C.C.1411/2018 pending before the Judicial Magistrate of First Class-II, Ernakulam do not reveal any prima facie case against the petitioner. On the face of the allegations of the final report, no offence is made out. The allegations in the FIR and the final report would not prima facie establish the commission of offence under Secs.143, 147, 283 r/w 149 IPC. It is also the contention of the learned counsel that holding a peaceful and orderly demonstration by way of protest is an exercise of

fundamental rights guaranteed under Article 19(1)(a) and 19(1)(b) of the Constitution of India. Thus the accused in the above case have not committed any offence at all. Hence the case.

6. The learned public prosecutor on the other hand, would contend that the materials produced from the side of the prosecution would prima facie attract the offence alleged against the petitioner and hence no intervention at the instance of this court is required at this stage.
7. The learned counsel for the petitioner firstly would content that the entire allegations in the FIR and final report even if accepted, it would not constitute the offence U/S141 IPC. To substantiate the contention the learned counsel drew my attention to Sec.141 of IPC which reads as follows :

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 – 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

Fourth – 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.

8. According to him, prosecution has no case that this procession has been conducted to overawe by criminal force or show of criminal force or against any law or to

resist the execution of any law or to commit any offence or to compel any person to do anything which he is not legally bound to do by criminal force. Hence Sec.141 IPC will not come into play.

9. The learned counsel in this context placed reliance upon Poulose K.K. v. State of Kerala (2013 (4) KHC 539) wherein an identical issue was considered while dealing with Sec.143, 145, 147, 283, 188 r/w 149 IC. That was a case in which meeting was conducted in public road and direction given by the police officers to not to obstruct traffic has been violated and crime was registered and 212 persons were arrested and charge-sheet was filed. They approached this court for quashing the proceedings. While disposing that case it has been held that mere allegation that a meeting was organized by a group of persons blocking traffic is not sufficient, to prosecute persons having unlawfully assembled, the ingredients thereof has to be satisfied. It is discussed there in that the question to be examined is whether the assembly was unlawful. The unlawful assembly has been defined under Sec.141 IPC. One of the five situations covered by that

Section has to be satisfied to hold that the assembly consisting of more than one person was an unlawful assembly.

10. In this case also apart from making an allegation that a procession was conducted in allegiance to the Procession conducted by the KPCC President, there is no whisper either in the FIR or the final report that there was any show of criminal force, any resistance to execution of any law or commission of any criminal offence etc.
11. Fourth clause of S.141 though states about deprivation of the enjoyment of right of way, it should also be by means of criminal force. In other words exercise of some criminal force or illegal act is a condition precedent to attract the ingredients of unlawful assembly.
12. So prima facie from the final report and the FIR there is nothing to attract the offence under any of the limbs of Sec.141 IPC so as to constitute an unlawful assembly.
13. The learned counsel in this context also placed reliance on an unreported decision in Crl.M.C.7503/2018 dated 8.11.2018. That was a case filed by the petitioners

therein to quash the proceedings in C.C.1108/2017 on the file of Additional Chief Judicial Magistrate Ernakulam. They alleged to have committed the offence punishable under Secs 143, 147, 188 and 283 r/w 149 IPC. The prosecution case was that protesting against the failure of the authority concerned to maintain and repair a road, they caused obstruction to the traffic. In the said circumstance it has been held by this Court that respondent has no dispute that the petitioners were doing a service to the Society and their object was not unlawful and it was only to compel the authority to repair and maintain a public road. Even if it might have caused obstruction, that cannot be a ground to say that the petitioners are members of unlawful assembly and accordingly the proceedings in C.C.1108/2017 was quashed.

14. The learned counsel would next contend that the entire allegation even if accepted as true the offence under S.283 will not be attracted. No single person whose way has been obstructed has been cited as witness. The statements of police officials are general in nature without

referring to specified persons or vehicle.

15. The allegation in the FIR and also the charge is that the petitioner along with others obstructed the way to the general public and vehicles. To substantiate the contention that offence under Sec.283 IPC will not attract against the petitioner, the learned counsel drew my attention to the final report and the statements of the SCPO and CPO and another independent witness. On going through the statements of the police officials what could be gathered is that they have made a general statement that under the leadership of the petitioner and others about 200 workers conducted procession at Shanmugham road near Menaka junction Ernakulam and caused obstruction of way to the vehicles and general public. It is also stated that apprehending that if they are arrested, law and order problem will arise, the Sub Inspector did not arrest them and controlled and made the traffic easy and they aided the Sub Inspector in that duty. So the statements of police officials itself would show that without arresting the accused and others they could control the traffic. The independent witness who is one

from Ottapalam, Palakkad District alleged to be living on rent near Ayyappankavu stated that he is an autorikshaw driver and he saw the procession conducted under the leadership of the petitioner and others and due to that, obstruction was caused to the general public and vehicles and the police was controlling the traffic. The learned counsel would content that the independent witness cited also has no case that his movement was obstructed and only a general statement has been given by him.

16. The learned counsel in this context took my attention to Preetha K.K. and Others v. State of Kerala and Another (2016 (2) KLT 482). That was an identical case of charging the accused under Sec.283 IPC and question as to obstruction of public way arose for consideration. It has been held that in order to attract Sec.283 IPC, there should be a clear and cogent material to disclose that obstruction was caused to any person in public way. Paragraph 4 of the said judgment was highlighted by the learned counsel which reads as follows :

“As far as the offence under S.283 of the IPC is

concerned, there should be some clear and cogent material to disclose that obstruction was caused to any person in any public way. In none of the statements and materials, which are accompanying the impugned Annexure-I final report/charge-sheet is there even a remote whisper anywhere therein as to any alleged obstruction caused by anyone of the accused to persons who are using the public way. Not even a single person so alleged to be obstructed by any such alleged act of the accused is even arrayed as witness in Anneuxe-I proceedings.”

17. In this case though an independent witness has been cited as witness he has no case that his way has been obstructed by the act of the accused and others. Even the statement of the police constables would reveal that the Sub Inspector controlled the traffic and made it easier till the procession was over. The independent witness also made a general statement of causing obstruction to the vehicles and also the pedestrians and none of the pedestrians nor operators of the vehicles who actually met with such obstruction has been cited as

witness. So in effect there is no clear and cogent material to disclose that obstruction was caused to any person in the public way due to the alleged procession led at the instance of the petitioner and others. So the offence under Sec. 283 IPC prima facie is not attracted.

18. The learned counsel for the petitioner also seeks protection under Article 19(1)(a) and (1)(b) and would contend that peaceful and orderly demonstration would fall within the freedom guaranteed under the Constitution. According to him, demonstration is a visible manifestation of feelings and sentiments of an individual and hence it is a form of speech or expression.

19. The learned counsel placed reliance on Wadhwa v. State (2000 KHC 362) wherein while dealing with Articles 19 (1)(a) and (1)(b) it has been held that march held by lawyers so long as it remained peaceful and non violent, it would be a legitimate exercise of fundamental rights. In this context the learned counsel also drew my attention to Kameshwar Prasad and Others v. State of Bihar and Another (1962 KHC 560 = AIR 1962 SC 1166). In that decision also while dealing with Article 19(1)(a) and (1)

(b), it has been held that a demonstration is a visible manifestation of the feelings of sentiments of an individual or a group. It is in effect therefore a form of speech or form of expression because speech need not be vocal since signs made by a dumb person would also be a form of speech. It was ultimately held that there are peaceful and orderly demonstrations which would fall within the freedoms guaranteed under this Articles.

20. The learned public prosecutor in this context would contend that Article 19(1)(a) and (1)(b) is subject to sub clause 19(2) and (3) of the Constitution of India . Sub clause (2) provides that nothing in sub clause (a) or clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Sub-clause (3) provides that nothing in sub-clause (b) of the said clause

shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

21. In Wadhwa v. State (2000 KHC 362) also it has been stated that the demonstration may take various forms such as noisy and disorderly or peaceful and orderly but the Apex court clarified that a violent and disorderly demonstration would not fall within Article 19(1)(a) or (1) (b). In AIR 1962 SC 1166 also it has been stated that there are forms of demonstration which would fall within the freedoms guaranteed by article 19(1) a and 1 (b). It is also stated that from the very nature of things a demonstration may take various forms which may be noisy and disorderly for instance stone throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within article 19 (1) (a) or (1) (b).

22. Some meetings may be peaceful in the beginning and subsequently may turn violent. So a blanket

protection cannot be given to all processions or marches under the guise of freedom of speech and expression and peaceful assembly under Article 19(1)(a) and (1)(b) of the Constitution. Each case has to be examined based on its own facts. In this particular case as has been rightly pointed by the learned counsel for the petitioner the statements produced along with the charge of the CPO and SCPO or that of the independent witness would not give any indication of the procession turned disorderly. The only statement of the witnesses is that the procession caused obstruction to the vehicles and the pedestrians. Admittedly by the prosecution none of the leaders or workers were arrested and removed. The only allegation is that until the procession was over the traffic was controlled. So in the particular fact situation of this case there is nothing to show from the records produced that the procession led had become disorderly or noisy. In other words it appears to be a peaceful and non violent procession led by the petitioner and others. Hence their acts are well protected under Article 19(1)(a) and 19(1)(b) of the Constitution of India. So the ends of justice

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demands that the further proceedings in C.C.1411/2018 to be quashed.

23. In the result, Crl.M.C allowed and further proceedings in CC 1411/2018 in crime 1462/2016 of Central police station, pending before the Judicial Magistrate of First Class-II, Ernakulam, is hereby quashed.

Sd/-

M.R.ANITHA

Judge

Mrcs/30.10.

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APPENDIX

PETITIONER'S EXHIBIT

ANNEXURE A1

**CERTIFIED COPY OF FINAL REPORT IN C.C
966/206 FILED BY THE 2ND RESPONDENT
BEFORE JUDICIAL FIRST CLASS MAGISTRATE
COURT 11 ERNAKULAM**

True copy