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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 20TH DAY OF SEPTEMBER 2023 / 29TH BHADRA, 1945

CRL.MC NO. 1895 OF 2023

**AGAINST THE ORDER/JUDGMENT SC 148/2021 OF ADDITIONAL DISTRICT
COURT, THRISSUR**

PETITIONER/S:

ROHIT KRISHNA
AGED 29 YEARS
S/O. UNNIKRISHNAN, KUNNATH (H), ANNAMKULANGARA,
KANIPAYYUR, THRISSUR DISTRICT, PIN - 680502

BY ADVS.
K.N.ABHILASH
SUNIL NAIR PALAKKAT
RITHIK S.ANAND
ANU PAUL
SREELAKSHMI MENON P.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER
KUNNAMKULAM POLICE STATION, THRISSUR DISTRICT, PIN -
680503

OTHER PRESENT:

SREEJA . V PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
20.09.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J

CrI.M.C. No. 1895 of 2023

Dated this the 20th day of September, 2023

O R D E R

Section 95 of the Indian Penal Code says that 'nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.' This is a welcoming section in the Indian Penal Code, which has to be in the mind by every police officer while investigating a case. The facts of this case would show that, at least a minority of the investigating officers fail to remember Section 95 of the Indian Penal Code which has been in existence from 1860!

2. This criminal miscellaneous case is filed to quash Annexure 2 final report which is now pending as S.C No.

148/2021 before the Additional District Court-I, Thrissur. The case was charge sheeted by the Kunnamkulam police, alleging offences punishable under Section 153 of the Indian Penal Code and Section 3(1) of the Prevention of Damages to the Public Property Act ('the PDPP Act' for short).

3. The prosecution case is that on 10.10.2015 at 10:00 PM, the accused in this case in connection with election to Local Self Government Institutions illegally affixed a poster on the electric post with gum and thereby committed mischief to the public property. Hence it is alleged that the accused committed the offence. It is also stated that the above act would affect identification of the post of the consumers of electricity by the Electricity Board and would prevent the Board from resumption of power supply in time. It is also stated that to remove the poster from the electric post, the Board had to spend Rs.63/- and hence it is alleged that the accused committed the offence under Section 3(1) of the PDPP Act and Section 153 of the Indian Penal Code. Subsequently the offence under Section 140 of the Electricity Act, 2003 was also added and the case was

refiled as C.P No.49/2021 by the Judicial First Class Magistrate Court, Kunnamkulam and the matter was committed to the Sessions court and now the case is pending before the Additional District Court-I, Thrissur as S.C No.148/2021.

4. The petitioner submits that even if the entire allegations in the final report are accepted in toto, the offence under Section 153 IPC, 3(1) of PDPP Act and Section 140 of the Electricity Act, 2003 are not attracted.

5. Heard counsel for the petitioner and the learned Public Prosecutor.

6. A perusal of the final report would show that the offences alleged are under Section 153 of IPC, 3(1) of PDPP Act and Section 140 of the Electricity Act. First I will consider whether Section 153 IPC is made out in the facts and circumstances of the case. It will be better to extract Section 153 of the IPC.

“Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such

provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

7. The essential ingredient to constitute the offence under Section 153 IPC are as follows:-

- 1) the accused did an illegal act.
- 2) the act was done malignantly or wantonly.
- 3) the act was done with the intention to provoke or knowing that it will provoke a person to cause the offence of rioting.

8. This court in **Sanjeev S. vs. State of Kerala** [2023(3) KHC 324], considered the scope of Section 153 IPC. It would be better to extract Paragraphs 7, 8 and 10 of the above judgment.

"7. The word malignantly and wantonly are not used synonymously in the Section. The word malignantly is used for the purpose of expressing a higher degree of intensity or ill-will. While the word wantonly means causing harm or damage deliberately. The Oxford Advanced Learners Dictionary defines the word malignantly as 'having or showing a strong desire to harm somebody.' Similarly, the word wantonly is explained as 'in a way that causes harm or damage deliberately and for no acceptable reason.'

8. Both these terms convey that the two expressions 'malignantly' or 'wantonly' used in S.153 IPC indicate that there must be a higher degree of malice or evil that is projected or evident in the act alleged. The provision further requires that the act alleged to be done must be illegal. The word illegal is defined in S.43 of IPC to mean everything which is an offence or which is prohibited by law, or which furnishes a ground for a civil action. As held in *R. Venkatkrishnan v. Central Bureau of Investigation*, 2009 (11) SCC 737, the word has to be given a wide meaning.

10. Further, to bring home the guilt of the offence under S.153 IPC, it is necessary that the act gives provocation to a person and also provoke or is likely to provoke a rioting. Though, for the offence to be attracted, actual rioting need not occur."

9. The prosecution case is that on 10.10.2015, the accused affixed a poster containing the picture of a lotus on an electric post using gum and while doing so the accused made commotion near Annamkulangara Devi Temple. I fail to understand how Section 153 IPC is attracted in the facts, even if the above allegations are accepted. The only overt act attributed to the accused is that he affixed a poster of a lotus, which is a symbol of a political party, on an electric post and made commotion. I am of the considered opinion that even if that act is accepted in toto, the offence under Section 153 IPC

is not made out. Of course, it may be an illegal act to affix a poster on an electric post. But affixing a poster containing the symbol of a recognized political party on an electric post cannot be treated as an act done malignantly or wantonly. In **Sanjeev's** case (supra), this court observed that the word malignantly and wantonly are not used synonymously in the section. The word malignantly is used for the purpose of expressing a higher degree of intensity or ill-will. While the word wantonly means causing harm or damage deliberately. The words malignantly or wantonly used in Section 153 IPC, indicate that there must be a degree of malice or evil that is projected or evident in the act alleged. As I observed earlier, even if the entire allegations are accepted, the offence under Section 153 IPC is not made out.

10. The other offence alleged is under Section 3(1) of the PDPP Act. Section 3(1) of the PDPP Act is extracted hereunder:-

"3. Mischief causing damage to public property.-
(1)Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine."

11. The word mischief used in Section 3(1) of the PDPP Act is not defined in the PDPP Act, but it is stated that the meaning of mischief in Section 425 IPC is applicable. Section 425 of the IPC defines mischief and says that 'whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".'

12. Even if the entire allegations in the final report are accepted, it cannot be concluded that any mischief has been committed by the petitioner. Affixing a poster containing a symbol of a recognized political party on an electric post cannot be treated as mischief in all situation. It is stated that gum is used for fixing the poster and therefore there is mischief. It also stated that a loss of Rs.63/- was incurred for removing the poster. I fail to understand how this amount is assessed by the authorities. Is it the labour charge for tearing the poster from

the electric post and washing the post to remove the gum? If these types of cases are treated as mischief within the meaning of Section 425 IPC, there will not be any end to the mischief committed by the citizens. Citizens should rise to the occasion to avoid such misdemeanors. Social awareness is necessary.

13. Moreover, for the loss of Rs.63/-, an offence under Section 3(1) of the PDPP Act, is registered. When these types of cases are registered stating that there is a loss of Rs.63/- to public property because a poster is affixed on an electric post, a court of law will be wasting its judicial time to try these types of cases. Now, the learned Magistrate has committed the case to the Special Court and the matter is now pending before the Sessions Court, because Sec. 140 of the Electricity Act is also added. Sec.140 of the Electricity Act reads like this:

“140. **Penalty for intentionally injuring works** - *Whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees.*”

14. Sec. 140 of the Electricity Act, 2003 says that

whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees. Even if the entire allegation in Annexure-2 is accepted in toto, where is the evidence to attract the offence under Sec. 140 of the Electricity Act? There is no case to the prosecution that the accused with an intention to cut off the supply of electricity, cuts or injures or attempts to cut or injure any electric supply line or works. In such circumstances, even if the entire allegations in Annexure-2 final report are accepted in toto, the offence under Sec. 140 of the Electricity Act is not attracted.

15. This is a strange situation in which a case is registered for affixing a poster on an electricity post which according to prosecution caused a damage to the tune of Rs.63/- to the Electricity Board. Since, Sec.140 of the Electricity Act is added, the matter has to be considered by the special court, which is a Sessions Court. The Sessions Court has to spend a lot of time to dispose a sessions case. The Sessions

Court has to take cognizance of the offence based on the final report and has to issue process to the accused, the process server or the authority concerned has to serve summons to the accused, the accused has to engage a lawyer, appear before the Sessions Court and get bail, the Sessions Court has to frame charge as per the provisions of the Criminal Procedure Code, the prosecution has to adduce evidence, the defence has to cross examine the witness, thereafter, the statement under Sec. 313 Cr.P.C. is to be recorded, then the defence evidence if any has to be recorded, thereafter, the matter has to be heard. Subsequently, the Sessions Judge has to pronounce a judgment. The allegation in a nutshell is that there is a loss of Rs.63/- to the Electricity Board by affixing a poster of a recognized political party on the electric post using gum. A certificate is issued by the Asst. Engineer, Electric Section, Kunnamkulam to the effect that for removing the poster from the electric post, Rs. 63/- each is necessary. For this purpose, a sessions trial is to be conducted by a court of law. Whether this is to be allowed is the question. A Police Officer has a duty to

decide whether a case is to be charge sheeted or not, in the facts and circumstances of each case. Common sense is to be used by the investigating authority in these types of cases. A Sessions Judge has to spend several days to dispose of these types of cases, when there is pendency of major cases awaiting trial. As I stated earlier, Sec. 95 of the IPC says that nothing is an offence if the harm is so slight that no person of ordinary sense and temper would complain of such harm. For the alleged loss of Rs.63/- because of affixing a poster on an electric post, the investigating officer in this case filed the chargesheet. In effect, the prosecution case is that one single poster is affixed on a single electricity post. If that is the case, for the loss of Rs.63/-, the entire judicial machinery has to work for days. A judicial officer has to spend lot of time to dispose this case. In such situation, it is the duty of the police officers to find out whether such cases are to be charge sheeted or not. A simple warning to the persons who affix the posters is more than enough in such situation. There is a dialogue in a Malayalam movie named "Action Hero Biju" which is like this:

"പാവപ്പെട്ട ആൾക്കാരുടെ ജില്ലാ കോടതിയും ഹൈക്കോടതിയും സുപ്രീംകോടതിയും ഈ പോലീസ് സ്റ്റേഷൻ ആണ്..."

16. It means that as far as the common people are concerned, the Police Station is their District Court, High Court and the Supreme Court. This Court is not endorsing the above dialogue. But, in some situations, common sense is to be invoked by the Police officials while submitting a final report. Several cases can be closed from the Police Station itself. The Police Station is a place where a common man can enter and submit their grievance at any time. In the State of Kerala, several Police stations are declared as "Jana Mythri Police stations". Nowadays, the Police Stations in the State are citizen friendly. Even children's entertainment area is also there in some Police Stations. Several cases can be settled from the Police Station itself without referring the matter to the court of law. That is why I said that a common sense is necessary before submitting a final report. Simply because a Police Officer is having knowledge in law, will not suffice in all situations. The

famous Malayalam Poet Poonthanam who is also known as "Bhakthakavi" in his "Jnanappana" wrote like this, centuries ago:

"വിദ്യകൊണ്ടുറിയേണ്ടതറിയാതെ
വിദ്യാനെന്നു നടിക്കുന്നതു ചിലർ."

17. It means that some do not even know the knowledge of "what" has to be acquired by Education and still act as if they are Vidwans or Scholars. Education alone is not sufficient to act in certain situation. Common sense is also necessary.

18. If this case is allowed to continue, the Sessions Judge has to spend several days to decide this case in which it is alleged that there is a loss of Rs.63/- to the Electricity Board because one poster is affixed on the Electricity post by the accused using gum. I am of the considered opinion that this prosecution has to be quashed. Some refreshment class is necessary for the investigating officers of the police department in this regard. The registry will forward a copy of this judgment to the State Police Chief.

In the light of the above discussion, this CrI.M.C. is

allowed. All further proceedings against the petitioner in SC No. 148/2021 of Addl.District Court-I, Thrissur arising from Crime No. 1903/2015 of Kunnamkulam Police Station are quashed.

**Sd/-
P.V.KUNHIKRISHNAN
JUDGE**

SJ
SKS

APPENDIX OF CRL.MC 1895/2023

PETITIONER ANNEXURES

AnnexureA1 CERTIFIED COPY OF FIR NO. 1903/2015 DATED
11/10/2015 OF THE KUNNAMKULAM POLICE
STATION THRISSUR DISTRICT

Annexure2 CERTIFIED COPY OF THE FINAL REPORT DATED
27/12/2015 IN SC-148/2021 ON THE FILES OF
ADDITIONAL DISTRICT COURT -1, THRISSUR
DISTRICT