

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

Cr1.MC.No. 802 of 2015

AGAINST C.C NO.553/2011 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT III, PALAKKAD

CRIME NO. 636/2011 OF PALAKKAD TOWN SOUTH POLICE STATION,
PALAKKAD

PETITIONERS/ACCUSED NOS 2,4 TO 12:

1. PRATHEESH, AGED 28 YEARS,
S/O.BALAN, MANNADI HOUSE, VENNAKKARA,
PALAKKAD
2. BAVADASAN, AGED 32 YEARS,
S/O.VELAYUDHAN, KALATHODI HOUSE, KAVASSERI P.O,
ALATHOOR, PALAKKAD
3. SARAVANAN, AGED 30 YEARS,
S/O.KUMARASWAMY, RADHA NIVAS, PALAYAM,
THIRUNELLAI, PALAKKAD
4. VINEETH, AGED 24 YEARS,
S/O.KUNJAN, PIDIYAKKAL HOUSE, POTTASSERI P.O,
KANJIRAPUZHA, PALAKKAD
5. ANEESH, AGED 28 YEARS,
S/O.MADHAVAN, MUNDAYATHODU, EZHAKKAD,
MUNDOOR, PALAKKAD
6. GURUVAYOORAPPAN, AGED 32 YEARS,
S/O.APPA KUTTY, THIRUNELLAI, PALAYAM,
PALAKKAD
7. AYYAPPADAS, AGED 26 YEARS,
S/O.VELU, THIRUNELLAI, PALAYAM,
PALAKKAD
8. VINOD, AGED 31 YEARS,
S/O.MOHAN KUMAR, VISHNU NILAYAM, KRISHNAPURAM GRAMAM,
NENMARA, PALAKKAD
9. SANTHOSH, AGED 32 YEARS,
S/O.VASU, PUTHEN VEEDU, KALPPAMCHERRY,
AYILOOR, NENMARA, PALAKKAD.

10. MANOJ, AGED 34 YEARS,
S/O.MADHAVAN, PARAKKAL HOUSE, CHATHAMANGALAM,
NENMARA, PALAKKAD

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS/RESPONDENTS:

1. THE S.H.O.,
PALAKKAD TOWN SOUTH POLICE STATION,
PALAKKAD - 678014
2. STATE OF KERALA
REP BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682031

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 802 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1:- COPY OF THE FIR IN CRIME NO 636/2011 OF PALAKKAD
TOWN SOUTH POLICE STATION

ANNEXURE A2:- COPY OF THE FINAL REPORT IN CRIME NO 636/2011 OF
PALAKKAD TOWN SOUTH POLICE STATION

ANNEXURE A3:- COPY OF THE ORDER IN CRL.M.C NO 4214/2011 ON THE
FILE OF HON'BLE HIGH COURT OF KERALA, DTD 21/12/2011

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.802 of 2015

Dated this the 26th day of February, 2015

O R D E R

The petitioners herein are the accused Nos.2 and 4 to 12 in Crime No.636/2011 of the Palakkad Town South Police Station, registered under Sections 143, 147, 188, 294(b), 283 and 353 r/w 149 of the Indian Penal Code. The crime was registered suo motu by the police on the allegation that these petitioners and others obstructed a public road in connection with a protest march to alert the municipality and the state administration to the pathetic condition of the public road which was at that time totally damaged. The police allegation is that the mob consisting of these petitioners and others did not disperse inspite of direction, and when the police proceeded to remove them they used criminal force and thus prevented the discharge of duty by the police. After investigation the police submitted final report in court, and the case is now pending as C.C No.553/2011 before the Judicial First Class Magistrate Court III, Palakkad. The case against accused Nos.1 and 3 stands

quashed by this Court as per the order dated 21.12.2011 in Crl.M.C No.4214/2011. Now the other accused also seek such orders quashing the prosecution.

2. On a perusal of the entire prosecution records including the FIR and the final report I find that the main offence alleged against the petitioners is one punishable under Section 353 of the Code of Criminal Procedure. As regards Section 294 (b) of the Code of Criminal Procedure I find no essentials or ingredients constituting the said offence or the essentials of obscenity as defined under the law. As regards the offence under Section 188 of the Indian Penal Code there is bar of cognizance under the law. As regards the offence of unlawful assembly, the allegation is that they formed such an assembly to obstruct discharge of duty by the police. But the FIR itself shows that the official duty was well discharged by the police by using reasonable force. It is not known what duty was obstructed in such a situation. The final report does not contain the essential details against the different accused. There is only a casual or general allegation that the accused formed an unlawful assembly. Thus, I find that the FIR and the final report do not contain the necessary elements and ingredients to prosecute these petitioners under the sections alleged. When

the police is definite in the FIR itself that official duty was well discharged, and the mob gathered there was dispersed by using reasonable force, there is no scope to proceed under Section 353 of the Indian Penal Code. If so, there cannot be an allegation of unlawful assembly to commit such an offence. Thus I find that continuance of prosecution in such a situation against the petitioners will be a sheer waste of time. It appears that the police registered such a crime with some object, but they did not probably think what will happen when it comes in court. Thus I find that the case against the petitioners is liable to be quashed as done by this court against accused Nos.1 and 3.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioners in C.C No.553/2011 of the Judicial First Class Magistrate Court III, Palakkad will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

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