

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Crl.MC.No. 4186 of 2015

ST 1/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA

PETITIONER(S)/LONE ACCUSED IN C.C:

**MUKESH KUMAR, AGED 28 YEARS,
S/O.RAJARAM PRASAD, MUSTAFABAD, (MOHALLA)
RAMPUR P.O., GAYA DIST, BIHAR.**

BY ADV. SRI.T.C.GOVINDA SWAMY

RESPONDENT(S)/COMPLAINANT IN CC:

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN: 682 031.**
- 2. THE UNION OF INDIA, REPRESENTED BY
THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI,
TAMIL NADU-600003.**
- 3. V.R.AJAYAN,
ASST. SUB INSPECTOR, RAILWAY PROTECTION FORCE,
RAILWAY STATION-ALAPPUZHA, ALAPPUZHA,
KERALA - 688 001.**

**R1 BY PUBLIC PROSECUTOR SMT.SAREENA
R2,R3 BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 15-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' ANNEXURES

- A1: THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE ASSISTANT SUB INSPECTOR OF THE RAILWAY PROTECTION FORCE, ALLEPPEY IN C.C: ST: 01/2014 PENDING TRIAL BEFORE THE HON'BLE CHIEF JUDICIAL MAGISTRATE COURT OF ALAPPUZHA, ELABORATING THE SEQUENCE OF EVENTS ALLEGED TO HAVE TAKEN PLACE ON 1/10/2013.**
- A2: THE TRUE COPY OF SECTION 175(C) OF THE RAILWAYS ACT, 1989 WRITTEN BY SRI.P.HARI RAO AS IT IN THE FIFTH EDITION OF 2001 OF ORIENT PUBLISHING COMPANY, NEW DELHI AND ALLAHABAD**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

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Crl.M.C. No.4186 of 2015
.....

Dated this the 15th day of September, 2015

ORDER

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A train has reached the railway station. The station master initially in discharge of his duty, called the gate keeper, who is the petitioner herein, over the phone for directing him to close the railway gate. The station master attempted to contact the petitioner over the phone because of the fact that there was signal at the railway station which shows the gate remained open. The petitioner has allegedly not cared to lift the phone as he might not have been present. Consequently, Rajadhani train, which had to pass through the railway gate, had to be stranded at the railway station for 15 minutes. According to the prosecution, the petitioner has not even called back the station master.

2. It is the case of the petitioner that an offence under Section 175(c) of the Railways Act, 1989 alleged in

Annexure-A1 complaint is not legally sustainable even if the entire incident is admitted. It is the case of the petitioner that he did not hear the telephone bell and that is the reason why he could not attend the phone. The explanation offered by the petitioner is not at all believable. He should have been present at the cabin attached to the railway gate. Had he been present there, he would have answered the telephone call. He has no case that the telephone was defective or not working.

3. Section 175 of the Railways Act, 1989 reads:-

“175. Endangering the safety of persons – If any railway servant, when on duty, endangers the safety of any person-

(a) by disobeying any rule made under this Act; or

(b) by disobeying any instruction, direction or order under this Act or the rules made thereunder; or

(c) by any rash or negligent act or omission,

he shall be punishable with imprisonment for a

term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

4. In order to invite an offence under Section 175(c) of the Railways Act, the railway servant on duty, by any rash or negligent act or omission, has to endanger the safety of any person. Here in this particular case, it cannot be said that the petitioner by not responding to the telephone call has not endangered the safety of any person. According to the railways, the petitioner has endangered the safety of the passengers of Rajadhani train as well as others on the road, who were about to cross the railway gate, by keeping the railway gate open and by not responding to the telephone call of the station master. It is the specific case of the railways that the train had to be stranded at the railway station for 15 minutes as the petitioner had not responded to the telephone call and had kept the railway gate open. In such case, it cannot be said that he had endangered the life

of any person as the train had to be stranded at the railway station itself. It was after ensuring the closure of the railway gate, the train proceeded from the railway station. Matters being so, a criminal liability as the one under Section 175(c) cannot be fastened to the alleged omission from the part of the petitioner. At the same time, it is a serious matter that has to be looked into while proceeding with the disciplinary action against the petitioner. The matter has to be viewed very seriously by the Indian Railways and stringent disciplinary action has to be taken against the petitioner, in case he had committed any such act or omission.

In the result, this CrI.M.C. is allowed. Annexure-A1 complaint and the proceedings in ST.1/2014 of the Chief Judicial Magistrate's Court, Alappuzha are quashed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/15/09

// True Copy //

PA to Judge