

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.MC.No. 3927 of 2013 ()

CRIME NO. 1423/2013 OF MUVATTUPUZHA POLICE STATION, ERNAKULAM DISTRICT.

.....

PETITIONER/ACCUSED IN CRIME NO. 1423/2013.:

**JOHN KURIAKOSE,
S/O. KURIAKOSE, MANAGING DIRECTOR,
DENTCARE DENTAL LABEL (PVT) LTD.,
NAZ ROAD, ERNAKULAM, RESIDING AT
PUTHENKARAYIL HOUSE, MARADI VILLAGE,
MUVATTUPUZHA.**

**BY ADVS.SRI.C.S.AJITH PRAKASH,
SRI.PAUL C THOMAS.**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**
- 2. MR. ABHILASH. K. S., (DEFACTO COMPLAINANT),
INSPECTOR LEGAL METROLOGY,
MUVATTUPUZHA, MUVATTUPUZHA-686 673.**

*** ADDL. R3 IMPEADED**

- 3. REGIONAL PASSPORT OFFICER,
KOCHI.**

*** ADDL. R3 IS IMPEADED AS PER ORDER DATED 17/09/2015 IN
CRL.MA. NO.1647/2014.**

**R1 BY PUBLIC PROSECUTOR SRI.P.V.ELIAS.
R2 BY ADV. SRI.S.MUHAMMED HANEEFF**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANX.A1. A TRUE COPY OF THE FIR NO. 1453/2013 DATED 30-07-2013
ALONG WITH FI STATEMENT.**
- ANX.A2 A COPY OF THE CERTIFICATE OF INCORPORATION.**
- ANX.A3 A TRUE PHOTOGRAPH OF THE DISPLAY BOARD, SHOWING
FOOT WEAR PROHIBITED.**
- ANX.A4 A TRUE PHOTOGRAPH OF THE INTERIOR ARRANGEMENT OF
THE LAB.**
- ANX.A5. A TRUE PHOTOGRAPH OF THE PRE-CLINIC.**
- ANX.A6. A TRUE COPY OF THE CERTIFICATE OF VERIFICATION OF LEGAL
METROLOGY DEPARTMENT.**
- ANX.A7 A TRUE COPY OF BILL SHOWING THE PURCHASE OF BALANCER.**
- ANX.A8 A TRUE COPY OF THE PHOTOGRAPH SHOWING THE ILLEGAL ACT OF
MR. ALIYAR (DRIVER).**
- ANX.A9. A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE LADY STAFF
BINDU BIJOY TO WHOM MR. ALIYAR (DRIVER)**
- ANX.A10 A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE BABY PAUL.**
- ANX.A11 A TRUE COPY OF THE COMPLAINT SUBMITTED TO THE SYSP.**
- ANX.A12. A TRUE COPY PHOTOGRAPH OF THE BALANCER KEPT IN
THE PRE-CLINIC.**
- ANX.A13 A TRUE PHOTOGRAPH OFFERING TEA.**
- ANX.A14 A TRUE COPY OF THE CERTIFICATES DATED 28-11-2012 AND
16-07-2013 ISSUED BY THE TEL STAR, WHO SUPPLIED 84
DIGITAL CAMERA.**
- ANX.A15. A TRUE COPY OF THE ORDER IN ANTICIPATORY
BAIL APPLICATION NO. 1535/2013.**
- ANX. A16. TRUE COPY OF THE CERTIFICATE OF IMPORTER EXPORTER
LICENSE ISSUED BY THE DIRECTOR GENERAL OF FOREIGN
TRADE, MINISTRY OF COMMERCE, DATED 14/06/2007.**

- ANX. A17 TRUE COPY OF THE TRAVEL DETAILS FORWARDED BY THE EMIRATES INDIA THE FLIGHT OPERATOR DETAILING HIS FOREIGN TRAVELS FOR THE PRIOD FROM 08/03/2008 TO 01/12/2013.**
- ANX. A18 TRUE COPY OF THE 1ST AND LAST PAGE OF THE ABOVE MENTIONED PASS PORT NO.H5843054.**
- ANX. A19 TRUE COPY OF THE PASSPORT APPLICATION DETAILS RECEIVED THROUGH ON-LINE.**
- ANX. A20 TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT ISSUED ON 03/01/2014 WITH NO.Z2723583.**
- ANX. A21 TRUE COPY OF THE SHOW CAUSE NOTICE.**
- ANX. A22 TRUE COPY OF THE EXPLANATION DATED 06/02/2014.**
- ANX. A23 TRUE COPY OF THE SURRENDER CERTIFICATE ISSUED BY THE REGIONAL PASSPORT OFFICE, KOCHI.**
- ANX. A24 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C).NO.26084/2013 DATED 13/11/2013.**
- ANX. A25 TRUE COPY OF THE CIRCULAR NO.A3 17013/79 DATED 26/12/1979.**
- ANX. A26 TRUE COPY OF THE G.O.(RT) NO.25/08/CAD DATED 14/03/2008.**
- ANX. A27. TRUE COPY OF THE CIRCULAR NO.10802/67 DATED 08/11/1967.**
- ANX. A28. TRUE COPY OF THE RELEVANT PAGE OF THE KERALA LEGAL METRO LOGY (ENFORCEMENT) RULES 2012.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Dated this the 17th day of September, 2015.

ORDER

The petitioner is the sole accused in the impugned Anx-A1 Crime No.1423/2013 of Muvattupuzha Police Station registered for offences under Secs.353, 294(b) and 506(i) of the IPC. The impugned crime was registered at the behest of a complaint lodged by the 2nd respondent-defacto complainant, who is the Inspector of Legal Metrology Department, Muvattupuzha. The brief of the allegations in the crime is that on 30.7.2013 at about 1:30 p.m. when the 2nd respondent and his team of officials of the Legal Metrology Department had come for a search in the petitioner's establishment namely, Dent Care Dental Lab (Ltd) and had attempted to seize an electronic balancer, the petitioner had thrown away the electronic balancer which was kept by the 2nd respondent after verification for its seizure and that the petitioner had used abusive language and threatened to kill the 2nd respondent if he does not leave the place, etc. The main contention of the petitioner

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is that the impugned criminal proceedings does not disclose any cognizable offences and further that the impugned criminal proceedings amount to frivolous and vexatious initiation of proceedings and is liable to be quashed by resort to the powers conferred under Sec.482 of the Code of Criminal Procedure.

2. It is pointed out that the petitioner is conducting a dental lab with the name and style, Dent Care Dental Lab (Pvt.) Ltd., which is engaged in the production and designing of artificial teeth and implants and that the products of the petitioner's establishment/factory are used by the dentists in the cosmetic field and prosthesis for medical purposes and that in order to prepare a mould for taking impression from the oral cavity, the lab is preparing a gypsum paste and it is only to assess the weight of the gypsum paste so used that the electronic balancer is kept in the lab and that the dental cast is not a product for sale and further that the artificial teeth or dentures cannot be sold on the basis of weights or measures and that the petitioner is not conducting any sale or transaction or protection activity as envisaged in the

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provisions contained in Secs.2(r), 2(u), 2(k), etc. of the Legal Metrology Act, 2009 (hereinafter referred to as 'the Act').

3. It is further pointed out that in the petitioner's laboratory, there is a pre-clinic and sterilized room where the electronic balancer is placed. The foot wears are strictly prohibited in the lab, that when the officers of the Legal Metrology Department under the leadership of the 2nd respondent had entered into the pre-clinic they had used chappals and therefore the staff of the petitioner's establishment were constrained to request the 2nd respondent and his team members to keep the foot wear outside and this agitated the 2nd respondent and his team members which prompted them to raise false allegations which led to the initiation of the instant impugned crime. It is in the background of these facts and circumstances that the petitioner has instituted the above Crl.M.C praying for an order from this Court by invoking the powers under Sec.482 of the Cr.P.C for quashing the impugned Anx-A1 Crime No.1423/2013 of Muvattupuzha Police Station pending against the petitioner and all further proceedings arising therefrom.

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4. Heard Sri.C.S.Ajith Prakash, learned counsel appearing for the petitioner and Sri.C.S.Muhammed Haneef, learned counsel appearing for the 2nd respondent and the learned Public Prosecutor appearing for the 1st respondent.

5. During the course of submissions Sri.C.S.Ajith Prakash, learned counsel for the petitioner, has made elaborate submissions and made detailed reference to the various provisions contained in the Act and the Rules and the orders issued thereunder to contend that the very search that was sought to be conducted by the 2nd respondent was not justified as per those provisions and that therefore the 2nd respondent cannot claim that the so called inspection or search that was sought to be conducted by him was having any official colour. For this purpose, the learned counsel for the petitioner has pointed out that Sec.15 of the Act authorises inspection and seizure only if the competent officer has reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to

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which any trade and commerce has taken place or it intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation, etc. The petitioner has made reference to the provisions contained in Secs.28 and 30 of the Act, and would contend that the said provisions contained under Secs.28 & 30 can be invoked only if there is a “transaction” as envisaged in the Act. On the other hand the learned counsel appearing for the 2nd respondent would point out that the contraventions alleged against the petitioner are in relation to those under Secs.24, 25 & 33 of the Act, for which separate proceedings has now recently been initiated against the petitioner and that it is only in the background of these aspects that the search and seizure was conducted in the petitioner's establishment on the day of incident in question which led to the registration of the impugned crime. Secs.24, 25 & 33 of the said Act reads as follows:

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“Sec.24. Verification and stamping of weight or measure:–

(1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.”

“Sec.25. Penalty for use of non-standard weight or measures:– Whoever used or keeps for use any weight or measure or makes use of any numeration otherwise than in accordance with the standards of weight or measure or the standard of numeration, as the case may be, specified by or under this Act, shall be punished with fine which may extend to twenty-five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.”

“Sec.33. Penalty for use of unverified weight or measure:– Whoever, sells, distributes, delivers or otherwise transfers or uses any unverified weight or measure shall be punished with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.”

Sec.2(k) dealing with protection, Sec.2(r) dealing with sale, Sec.2(u) dealing with transaction and Sec.2(v) which deals with verification as envisaged under the said Act provides as follows:

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'Sec.2. Definitions.- In this Act, unless the context otherwise requires,-

(a)

(k) "protection" means the utilisation of reading obtained from any weight or measure, for the purpose of determining any step which is required to be taken to safeguard the well-being of any human being or animal, or to protect any commodity, vegetation or thing, whether individually or collectively.

(l)

(r) "sale", with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods.

(t)

(u) "transaction" means,-

- (i) any contract, whether for sale, purchase, exchange or any other purpose, or
- (ii) any assessment of royalty, toll, duty or other dues, or
- (iii) the assessment of any work done, wages due or services rendered.

(v) "verification", with its grammatical variations and cognate expressions, includes, in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms to the standards established by or under this Act and also includes re-verification and calibration.'

6. On the basis of the provisions contained under Secs.2(u), 2(r), 2(k) and 2(v), the petitioner would contend that none of the offences under Secs.24, 25 & 33 occurred in the instant case and further that at any rate, there was no proper objective reasons for the 2nd respondent to believe about any such provision as envisaged under Sec.15 of the Act and that the condition for the very exercise of the power under Sec.15 of the Act for conduct of search and seizure has been violated and therefore the search amount to vexatious search as envisaged under Sec.42 of the Act. For this purpose, the learned counsel for the petitioner would submit that there is no element of sale or purchase as envisaged under Sec.2(u) or 2(r) of the Act in the instant case, as the dental cast is not a product for sale and artificial teeth or dentures are not sold on the basis of weights or measures. Further, it is pointed out that these implants could be made in a artificial teeth/implants are made by the process of proper mixing of gypsum with water and that as the sale of the product is not on the basis of weight or measure, there is no legal requirement to have a weighing balancer

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in such process and that the petitioner's establishment is keeping such electronic balancer only for knowing the accuracy of the gypsum paste that is used. It is further pointed out that gypsum used is one imported from Germany and costs to the range of Rs.200/- per kilogram and more than 2700 staff are employed in the establishment. That the weighing process is done only to make sure that gypsum product is rationally used so that there is no wastage or carelessness in the use of costly raw material like gypsum. Therefore, it is pointed out that neither there is any sale, transaction or protection as per Sec.2(k) of the Act as the said process of weighing is done by the petitioner's establishment not to protect the commodity that is produced in the lab but, only for rationalisation in the actual use of the costly raw material of gypsum used in the production of the dentures or the dental implants. Therefore, it is pointed out that since the factual elements of transaction or sale or protection does not arise in the making of the product concerned in the petitioner's establishment, the provisions contained in Sec.24 of the Act does not come into play at

all. It is pointed out that Sec.24(1) mandates that every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be used by him in any transaction or for protection and so unless there is transaction or protection as envisaged therein, the provisions contained in Sec.24 cannot be pressed into service at all. Consequently, it is argued by the learned counsel for the petitioner that the offence under Sec.33 of the Act also does not come into play as the said provision can be invoked in the instant case only if the 2nd respondent can establish that there is use of any unverified weight or measure shall be punished with fine and as the provision contained for verification under Sec.24 of the Act does not come into play, the offence under Sec.33 of the Act will not lie. For these reasons, the petitioner would also point out that since the implants made in the petitioner's lab is not sold on the basis of its weights or measure, the offence under Sec.25 of the Act will not also lie. Per contra, the learned counsel for the 2nd respondent pointed out that the

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petitioner had registered one of his electronic balancer with the Legal Metrology Department on 23.1.2006 and later renewed on 21.2.2007 and last renewal was on 19.6.2009 and thereafter, it was included in the default register of the Department for non-registration of the electronic balancer on 30.6.2010 onwards and since it was endorsed in the default register, the impugned search was duly conducted by the 2nd respondent and his team members. In this regard, the petitioner would contend that merely because the petitioner had sought registration of his electronic balancer in 2006 will not necessarily lead to disclosure of any offence under the Act until and unless the 2nd respondent can establish that there is a sale or transaction or protection activity as envisaged in the provisions of the Legal Metrology Act in the activity of the petitioner's establishment, etc., and therefore no offence is actually made out. Moreover, the petitioner points that the aforestated weighing machine has been discarded and that Anx-A6 dated 9.1.2013 is the verification certificate issued by the Department of the electronic weighing machine used in the petitioner's lab.

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7. The petitioner would also rely strongly on Anx-A25 Circular dated 26.12.1979 issued by the Legal Metrology Department, Anx-A26 Government Order dated 14.3.2008 and Anx-A27 Circular dated 8.11.1967 issued by the said Department as well as Anx-A28 Gazette Notification regarding the publication of the Kerala Legal Metrology (Enforcement) Rules, 2012, especially Rule 21 thereof. In Anx-A27 Circular dated 8.11.1967, it has been held by the Department that since wearing of uniform by the personnel of the Weights and Measures Department (predecessor of the Legal Metrology Department) has been made compulsory as per Government Notification dated 5.7.1966, that the Inspectors concerned shall wear the prescribed uniform while on duty, either in office or in the field and it has however come to the notice of the Authorities that Inspectors of that Department are not wearing uniforms, as per the Government Notification and this is highly irregular and cannot be allowed, etc. In Anx-A25 Department Circular dated 26.12.1979, it has been held that no official of the Department should conduct any inspection or

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perform any other duties without wearing uniform and that while inspecting trade or commercial establishments, it is mandatory for the inspector of the Department to wear uniform and that any inspections conducted by the officers without wearing uniform will not have no legal sanctity at all, etc. Anx-A26 Government Order dated 14.3.2008 mandates compulsory wearing of uniform by the departmental personnel, etc. As per Rule 21 of Anx-A28 Kerala Legal Metrology (Enforcement) Rules framed under the enabling provisions of Legal Metrology Act, 2009, it is mandated that Assistant Controller of Legal Metrology, Senior Inspector of Legal Metrology and Inspector of Legal Metrology shall wear the uniform prescribed in the said Rules while on duty either in office or in the field and the details of the various uniforms that are prescribed in the Rules are also given in the said Rule. Accordingly, it is pointed out by the petitioner that the impugned inspection was conducted by the 2nd respondent without wearing official uniform and that therefore the said inspection itself has no legal sanctity and therefore it cannot be contended that the 2nd respondent was

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purporting to discharge official duty as envisaged under Sec.353 of the IPC, etc. These submissions have been made by the petitioner to mainly show that the impugned inspection conducted by the 2nd respondent on the day of the incident of the crime was not in accordance with the provisions of law and therefore there cannot be any legal sanctity to the inspection at all and therefore the main case sought to be raised under Sec.353 of the IPC which deals with the offence of assault or criminal force to discharge official duty will fall to the ground, etc. Moreover, it is pointed out by the learned counsel for the 2nd respondent that the Legal Metrology Department officials initiated proceedings dated 17.8.2015 in the matter of transaction against the petitioner as per the provisions contained in Secs.24, 25 & 33 of the Act and accordingly submitted report in that regard before the jurisdictional Magistrate concerned. It is also pointed out by the learned counsel for the petitioner that the petitioner herein has filed a separate Writ Petition as W.P(C).No.27520/2015 challenging the said proceedings dated 17.8.2015 in which this Court has already

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granted interim stay as per order dated 11.9.2015. Therefore, it is not necessary to enter into the aforesaid issues raised by the parties.

8. The crux of the allegations raised in the impugned crime is the one contained in the First Information Statement given by the 2nd respondent as detailed out in the Anx-A1 FIR and the said impugned FI statement reads as follows:

“എന്നെ ഇന്ന് 30/07/2013 തീയതി പകൽ 1.30 മണിക്ക് മുവാറ്റുപുഴ ദത്ത കേയർ ഡെൻറൽ ലാബ് പ്രൈവറ്റ് ലിമിറ്റഡ് സ്ഥാപനത്തിൽ പരിശോധനക്കായി ചെന്ന സമയം. എന്നെയും, എന്റെ കൂടെ ഡ്യൂട്ടിയിൽ ഉണ്ടായിരുന്നവരെയും അതിന്റെ ഉടമ ജോൺ കുര്യാക്കോസ് ചീത്ത വിളിച്ച് ഡ്യൂട്ടിയ്ക്കു തടസ്സമുണ്ടാക്കിയ വിവരം പറയുവാൻ വന്നതാണ്. ഞാൻ **Inspector, Legal Metrology** യാണ്. മുവാറ്റുപുഴയിലാണ് ഓഫീസ്. ഇന്ന് ഞാനും, ഇൻസ്പെക്ട്രിംഗ് അസിസ്റ്റന്റ് മാത്യു, ഓഫീസ് അറ്റൻറർ ജഗതി, ഡ്രൈവർ അലിയാർ എന്നിവർ ഒന്നിച്ച് ലീഗൽ മെട്രോളജി ഇൻസ്പെക്ഷനായി സ്ഥാപനത്തിൽ ചെന്നു. അപ്പോൾ ഞങ്ങൾ സ്ഥാപനത്തിൽ **Inspection** നടത്തുന്ന സമയം സ്ഥാപനത്തിന്റെ **M.D.** ജോൺ കുര്യാക്കോസ് എന്നയാൾ ഞങ്ങളുടെ സമീപം വന്ന് ഞങ്ങൾ പരിശോധിച്ച് സി.സി ചെയ്യൂ എടുക്കുന്നതിനായി വച്ചിരുന്ന ഇലക്ട്രോണിക് ബാലൻസർ അയാൾ എടുത്തെറിഞ്ഞു, അതിനുശേഷം അയാൾ എന്നെ അസഭ്യവാക്കുകൾ വിളിച്ച് കൊന്നു കളയുമെന്നു പറഞ്ഞു ഭീഷണിപ്പെടുത്തി അവിടെ നിന്നും ഇറങ്ങി പോയില്ലെങ്കിൽ എന്നും പറഞ്ഞു. തുടർന്ന് ഞങ്ങൾക്ക് അവിടെ തുടർന്നുള്ള ഔദ്യോഗിക കൃത്യനിർവ്വഹണത്തിന് തടസ്സം സംഭവിച്ചിട്ടുള്ളതുമാണ്. ഞാനും പാർട്ടിയും, അയാളുടെ സ്ഥാപനത്തിൽ നിയമാനുസരണമുള്ള പരിശോധന നടത്തി നിയമപ്രകാരം ഉപയോഗിയ്ക്കുവാൻ പാടില്ലാത്തതായ ഇലക്ട്രോണിക് ത്രാസ്റ്റ് ഞാൻ കണ്ടെടുത്തതിലുള്ള വിരോധം കൊണ്ടാണ് അയാൾ എന്നെയും, മറ്റുള്ള സഹപ്രവർത്തകരെയും, അസഭ്യവാക്കുകൾ വിളിച്ചു ഭീഷണിപ്പെടുത്തി ഞങ്ങളുടെ തുടർന്നുള്ള ഔദ്യോഗിക കൃത്യ നിർവ്വഹണത്തിന് തടസ്സം

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ഉണ്ടാക്കിയത്. സംഭവം എന്റെ കൂടെ ഉണ്ടായിരുന്നവർ കണ്ടിട്ടുണ്ട്. സംഭവ സ്ഥലം സ്റ്റേഷനിൽ നിന്നും 1/2 K.M. തെക്കുമാറിയാണ്. എന്റെ ഫോൺ നമ്പർ 9895442783 എന്നാണ്. ഞാൻ Kerala Legal Metrology Department ലെ Inspector ആണ്.”

The rough English translation of the said impugned FI statement has been made available by the petitioner which reads as follows:

“I have come to give information regarding the use of abusive language by John Kuriakose, who is the owner of Dental Care Dental Lab Private Limited in Muvattupuzha, against me and other persons, who were along with me, while we came there for inspection and the obstruction of duty caused by him on 30.7.13 at 1:30 pm. I am an Inspector in Legal Metrology. The Office is at Muvattupuzha. I along with Inspecting Assistant Mathew, Office Attender Jagathy, Driver Aliyar reached the said establishment for legal metrology inspection. At the time when we were conducting inspection in the establishment, its M.D. John Kuriakose came near to us and had thrown away the electronic balancer which was kept by us after verification for taking it under custody by conducting I.C. He used abusive language against me and threatened to kill me if not leave the place. Thereafter, there was obstruction to the further performance of our official duty. He used abusive language against us and threatened me and my colleagues and caused obstruction to the performance our official duty due to his objection to the fact that I and party conducted inspection in his establishment in accordance with law and found out an electronic balancer which, could not be used as per law. The incident was witnessed by the persons, who were along with me. The place of occurrence is at a distance of ½ km towards southern direction from the station. My phone number is 9895442783. I am an Inspector in the Kerala Legal Metrology Department.”

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The main contents of the impugned complaint raised by the 2nd respondent in the impugned Anx-A1 Crime is that the petitioner had allegedly obstructed the official duty of conduct of a search by the 2nd respondent after the 2nd respondent had seized the electronic weighing balancer and thereupon the petitioner had thrown away the said balancer which the 2nd respondent had intended to seize and further that the petitioner abused the 2nd respondent and his team members and thus caused threat to their life, etc. From a reading of the said statement of the 2nd respondent it can be seen that there are no serious or substantial allegations on the petitioner having used criminal force or assault against the 2nd respondent. In this regard, it would be pertinent to note the relevant provisions contained in that regard in the IPC. Sec.349 IPC dealing with force, Sec.350 dealing with criminal force, Sec.351 dealing with assault and Sec.353 dealing with assault or criminal force to deter public servant from discharge of his official duty provides as follows:

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“Sec.349. Force.–A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

- First.– By his own bodily power.
- Secondly.– By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.
- Thirdly.– By inducing any animal to move, to change its motion, or to cease to move.

Sec.350. Criminal force .–Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Sec.351. Assault.–Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Sec.353. Assault or criminal force to deter public servant from discharge of his duty.– Whoever assaults or used criminal force to any person being a public servant in the execution of his duty as such public

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servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Apart from the allegation that after the 2nd respondent had taken the electronic weighing balancer for its seizure, the petitioner had allegedly thrown away the said weighing balancer, there are no other serious allegations made out in the impugned FI statement, other than the petitioner had used abusive language and that he had rather used the words in threatening to kill the officials concerned, etc. From an overall reading of the contents of the impugned FI statement, it can be seen that the 2nd respondent has no clear cut case that the petitioner had used criminal force which led to prevention of his discharge of duty, etc. This Court in the case as in Durga Prasad and Ors. v. State of Kerala reported in 2014 (3) KHC 704 and Devaki Amma v. State of Kerala reported in 1981 KLT 475 has dealt with almost similar cases. In Durga Prasad's case (supra), the accused persons allegedly entered the Police Station and had

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shouted when the Police Officer was recording statement of a witness in another criminal case, that the accused had picked up with a quarrel with the Police Officer and prevented him from discharging his duty. Therefore, a case was registered for offence under Sec.353 r/w 34 of the IPC. Thereupon, the accused persons had filed a petition under Sec.482 of the Cr.P.C to quash the impugned FIR on the ground that even if the entire transaction is accepted, the offence punishable under Sec.353 is not attracted since the basic elements required were not mentioned in the final report therein, etc. After appreciating the various aforesaid provisions contained in the IPC, this Court in Durga Prasad's case (supra) had relied on an earlier decision of this Court in Devaki Amma v. State of Kerala reported in 1981 KLT 475. Reference to paragraphs 3 & 4 of the decision of this Court in Devaki Amma's case (supra) would be profitable, which reads as follows:

“3. It is not disputed before me that the petitioners are residing alone in a house in the compound which the Taluk Surveyor and the Revenue Inspector wanted to survey. The counsel appearing for the petitioners and the learned Public Prosecutor took me through the first

information statement, charge-sheet and all the relevant documents which the prosecution wants to rely on in support of its case against the petitioners. Admittedly there is no allegation or averment either in the first information statement or the statements recorded under S.161 Cr. P.C. or in the charge-sheet that the petitioners assaulted witness Nos. 1 and 2 or used any criminal force against them. It is also not disputed that the only overt act attributed to the petitioners is that they closed the gate of the compound thereby obstructing witness Nos. 1 and 2 from entering the property. But the learned Public Prosecutor relying on the definition of force in S.349 IPC. strongly contended that force need not be used against any person to attract S.353 IPC. but it is enough if force is used against any substance as contemplated under S.349 IPC. The argument advanced is that by closing the gate, witness Nos. 1 and 2 had to go back without entering the compound for surveying the property and therefore there was cessation of motion as contemplated under S.349 IPC. The learned Public Prosecutor appears to have forgotten the fact that assault or use of criminal force to any person is an essential ingredient of an offence punishable under S.353 IPC. and that there is a clear distinction between 'force' defined under S.349 and 'criminal force' defined under S 350 IPC. We are here in this case only concerned with the ingredients of an offence punishable under S.353 IPC. Even the definition of 'force' under S 349 will not apply to the facts of this case. It was relying on the second part of the definition of 'force' under S.349 IPC.; namely, "if a person causes to any substance such motion or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body" that the learned Public Prosecutor submitted that force has been used in this case by the petitioners by closing the gate. The prosecution has no case that by locking or closing the gate, any part of the gate came into contact with the body of witness Nos. 1 or 2. The cessation of motion contemplated under the section is not that of the person but that of the substance. As stated earlier, the records in the case do not disclose that the petitioners have committed any assault on or used criminal force as defined under

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S.350 IPC. against witness Nos. 1 and 2 or any other public servant. No doubt the records produced in this case and relied on by the prosecution primarily and essentially disclose an offence punishable under S.186 IPC. for which a complaint as contemplated under S.195 (1) (a) Cr. PC. is necessary. The bar contemplated under S. 195 (1) (a) is one affecting the jurisdiction which goes to the very root of the matter. No complaint in writing as contemplated under S.195 (1) (a) Cr.P.C, has been filed in this case and there is considerable force in the contention of the petitioners that this is a clear attempt to get over the bar under S.195 (1) (a) Cr. P.C. by giving the label of S.353 IPC. to the facts of the case. The counsel pointed out that such practice has been deprecated by decisions of High Courts and also of the Supreme Court.

4 The wording of S.353 IPC. makes it clear that assault or use of criminal force to a public servant while he was doing his duty as such is a necessary ingredient of that offence. Under S.349 IPC., a person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, etc. What is contemplated under S.353 IPC. is not merely use of force but use of criminal force to any person mentioned therein. Even under S.349 IPC., cessation of motion contemplated was that of the substance which was caused to move. This again indicates that what was mainly intended under the section was use of force to any person. To attract the definition of 'criminal force' under S.350 IPC., there must be intentional use of force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used. In other words, the criminal force contemplated under this section is intended to mean criminal force as applied to a person and not as applied to an inanimate object or substance. There is an essential distinction between the offences punishable under S.353 and 186 IPC.

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The ingredients of the two offences are distinct and different. While the former is a cognizable offence, the latter is not. A mere obstruction or resistance unaccompanied by criminal force or assault will not constitute an offence under S.353 IPC. Where an accused voluntarily obstructs a public servant in the discharge of his duties, S.186 IPC. is attracted. But under S.353, there must be in addition to the obstruction use of criminal force or assault to the public servant while he was discharging his duty. It may also be noted that the quality of the two offences is also different. While S.186 occurs in Chapter X dealing with contempts of the lawful authority of public servants, S.353 appears in Chapter XVI which deals with offences affecting the human body. This is also a clear indication that use of criminal force contemplated under S.353 IPC. is against a person and not against any inanimate object. There is considerable force in the contention of the counsel for the petitioners that the offence really disclosed from the records is only one punishable under S.186 IPC. and that by giving a label of S.353 IPC. the prosecution wanted to circumvent the salutary provisions in S.195 (1) (a) Cr. P. C. In support of his contention, the counsel relied on the decision in *Durgacharan v. State of Orissa* (AIR. 1966 SC 1775), where the Supreme Court held that the provisions of S.195 cannot be evaded by resorting to devices or camouflages of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Penal Code, though in truth and substance the offence falls in the category of the offences mentioned in S.195. This is a clear instance where the prosecution wanted to evade the provisions in S.195 by charging the petitioners under S.353 IPC. In *Dr. S. Dutt v. State of U. P.* (AIR. 1966 SC. 523= 1966 (1) S. C. R.493) while dealing with a similar question, the Supreme Court held that it is not permissible for the prosecution to drop a serious charge and select one which does not require the procedure under S.195 Cr. P. C.; and that if the offence was under

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S.186 IPC, a complaint in writing was necessary Admittedly in the instant case there is no complaint in writing of the public servant made to the court as contemplated under S.195 (1) (a) Cr. P. C. In the absence of a complaint as contemplated under S.195 (1), although an offence under S.186 IPC. is disclosed from the records, prosecution against the petitioners cannot be continued, as there is a specific prohibition to take cognizance of the offence punishable under S.186 IPC., except upon a complaint in writing under S.195 (1) (a) Cr. P. C.”

Therefore, it is clear that the mere allegation of obstruction or resistance will not constitute the offence under Sec.353 of the IPC as held by this Court in Devaki Amma's case (supra). In such circumstances, at the most offence under Sec.186 of the IPC may be attracted. Apart from obstruction to the official duty of the public servant there must be in addition serious factual allegations which clearly discloses that obstruction was there on account of use of criminal force or assault while he was discharging duty. As held by this Court, Sec.186 IPC is included in Chapter X of the Cr.P.C which deals with contempts of the lawful authority of public servants whereas Sec.353 of the IPC is included in Chapter XVI thereof which deals with offences affecting the human body. Therefore, the use of criminal force contemplated under Sec.353 is

against a person and not against any inanimate object. The main import of the allegations is that after the 2nd respondent had taken the electronic weighing balancer and kept it aside for its seizure and then the petitioner had allegedly thrown away the weighing balancer, etc. A person is said to use force on another person as per Sec.349, if he causes motion or change of motion or cessation of motion to that other person, or if he causes motion, change of motion or cessation of motion to that other person, or if he causes to any substance such motion or change of motion or cessation of motion as brings that substance into contact with any part of that other person's body, etc. Therefore, the "substance" or material concerned should be alleged to have come into contact with any part of the other persons's body. In the instant case, there are no allegations that the "substance" concerned (weighing balancer) that was thrown had come into contact with the body of any members of the inspection team or that it was thrown with the intention to use criminal force by coming into contact with the body of any such person. The offence under Sec.186 of the IPC is clearly not

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maintainable in the facts of this case, as the impugned criminal proceedings is not on the basis of a complaint of the public servant as mandated in Sec.195 Cr.P.C.

10. From an overall appreciation of averments in Anx-A1, there are no specific material allegations therein that the said act of throwing the object was done with the intention of trying to threaten the officials concerned. The allegations that the petitioner had attempted to threaten the officers are made by projecting the allegation that the petitioner had allegedly used abusive words and had told the officials that he would kill them, etc. Therefore, the act of throwing away of the electronic weighing balancer is not made so as to disclose any intention to cause any criminal force or assault on the 2nd respondent or his team members. Therefore, in the act of the alleged throwing away of the balancer there is neither an element of criminal force or assault that could be attributed against the petitioner. Thus, no specific and concrete case is alleged as against the petitioner in the matter of his having committed any criminal force or assault on the person of the 2nd respondent or his

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team members.

11. Devaki Amma's case (supra) has been relied on by this Court in Durga Prasad's case (supra) wherein this Court held that offence under Sec.353 is not attracted in the facts of that case and accordingly quashed the impugned criminal proceedings therein. It is also to be noted that the Division Bench of this Court in the case Mathew v. State of Kerala reported in 1992 KHC 369 = 1992 (2) KLT 413 has held in paragraph 12 therein as follows:

'12. While the Explanation makes it clear that mere utterance of words does not amount to assault, it clarifies that such words when associate with a gesture can turn into an assault. One of the illustrations given to the Section is worth extracting in this context:

"A takes up a stick saying to Z "I will give you a beating". Here, though the words used by A could in no case amount to an assault and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault. According to Lord Goddard, pointing a gun at a person is an assault (vide Kwaku Mensah v. The King - AIR 1946 P.C. 20). However, showing a knife or chopper by itself may not amount to an assault in all situations. But, if the person who shows the knife or chopper utters words conveying the threat that hurt would be caused with it, such "gesture would amount to assault". The distance between the aggressor and the target may have a bearing on the question whether the gesture amounted to assault. No precise yardstick can be provided to fix such distance, since it depends upon the situation, the weapon used, the background and the degree of the thirst to attack etc.'

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In the light of the aforestated legal aspects referred to in the Division Bench judgment of this Court in Mathew's (supra), this Court is of the considered opinion that allegations raised in the impugned Anx-A1 does not constitute vital ingredients of assault as envisaged in Secs.351 & 353 of the IPC. Therefore, in the light of these aspects, this Court is of the considered opinion that the offence under Sec.353 of the IPC is not warranted in the facts and circumstances of this case.

12. The surviving other offence alleged against the petitioner is under Sec.294(b) of the IPC which reads as follows:

“Sec.294. Obscene acts and songs.—Whoever, to the annoyance of others –

(a)

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

Therefore the alleged use of the abusive words must have been occurred in a public place in order to attract the offence under Sec.294(b) of the IPC. Indisputably, the place in question where the

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incident has occurred is a place inside the lab of the petitioner's establishment/factory which is a private premises and not a public place. Therefore, in view of this vital aspect, the offence under Sec.294(b) of the IPC is not attracted. Moreover, the only allegation raised in Anx-A1 is that the petitioner had abused the 2nd respondent and his team members. It can only be presumed from the overall case projected in Anx-A1 that the petitioner had used vulgar and abusive words in a hot tempered manner. It has been held by this Court in the case Latheef v. State of Kerala reported 2014 (2) KLT 987, based on the earlier rulings of this Court as in P.T Chacko v. Nainan Chacko reported in 1967 KLT 799 and Sangeetha Lakshmana v. State of Kerala reported in 2008 (2) KLT 745 that abusive words or humiliating words or defamatory words will not as such amount to obscenity as envisaged in Secs.292 and 294(b) of the I.P.C. To make the words obscene, as punishable under Section 294 (b) IPC, it must satisfy the definition of obscenity and that being a continuation of the subject dealt with under Sec.292 I.P.C., the definition of obscenity under Sec.292(1) IPC can be applied in a

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prosecution under Sec.294(b) of the I.P.C., as there is no separate definition for obscenity in Sec.294. That to make it punishable the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or should deprave and corrupt persons. That the alleged words uttered must be capable of arousing sexually impure thoughts in the minds of its hearers and thus to make the alleged words of obscene it must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons and defiling morals by sex appeal or lustful desires. That merely because the words are abusive, defamatory or humiliating will not make it obscene so as to attract offence under Sec. 294(b) of the I.P.C. The legal position in this regard was laid down by this Court in paragraph 5 of Latheef's case supra, which reads as follows:

'5. Abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under Section 294(b) IPC, it must satisfy the definition of obscenity. Section 294 IPC does not define obscenity. Being a continuation of the subject dealt with under Section 292 IPC the definition of obscenity

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under 292(1) IPC can be applied in a prosecution under Section 294 IPC also. To make punishable, the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. In P.T Chacko V. Nainan Chacko reported in (1967 KLT 799) this Court held that, " the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." In Sangeetha Lakshmana V. State of Kerala reported in (2008(2) KLT 745) this Court held thus, "in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers." Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code. I find that the conviction against the revision petitioner under Section 294 (b)IPC in this case, on the basis of the above words alleged to have been used by him, is liable to be set aside, and the revision petitioner is entitled to be acquitted.'

13. In the instant case also, from a mere perusal of the materials available on record, it can be seen that the only allegation raised by the defacto complainant is that the petitioner accused has used humiliating and abusive words and not even a remote whisper is anywhere therein that the words used contained lascivious elements or prurient elements or using sexual thoughts or feelings or that the words must have the effect of depraving persons, and defiling morals by sex

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appeal or lustful desires, etc. Therefore, offence under Sec.294(b) is not made out in the facts of this case.

14. The only other surviving offence is under Sec.506(i) of the IPC which indisputably is a non-cognizable offence. There is no prosecution case that prior sanction of the Magistrate has been secured as envisaged under Sec.155 of the Cr.P.C. Moreover, the overall contents of Anx-A1 does not disclose a serious case of any intimidation as envisaged under Sec.156(1) of the IPC.

15. In the light of these aspects, the impugned criminal proceedings for offences alleged under Secs.353, 294(b) and 506(i) of the IPC are not sustainable or tenable. In this view of the matter, the impugned criminal proceedings in Anx-A1 Crime No.1423/2013 of Muvattupuzha Police Station pending against the petitioner herein and all further proceedings pending against the petitioner stand quashed.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-