

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1585 of 2020

Kailash Vijayvargiya and Ors.

-vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Mr. Sagnik Banerjee.

For the State : Mr. Debasish Roy, Ld. PP.,
Mr. Bitasok Banerjee.

Hearing concluded on : 14.11.2024

Judgment on : 20.11.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceedings being GR Case No.1147 of 2020 arising out of Hastings PS Case No.109 of 2020 dated 08.10.2020 **under Sections 143, 147, 149, 332, 353 and 283 of the Indian Penal Code, 1860 read with Section 51(b) of the Disaster Management Act, 2005 and Section 3 of the Prevention of Damage to Public Property Act, 1984, pending before the Court of the learned Chief Metropolitan Magistrate, Calcutta.**
2. The petitioners' case is that they belong to a particular political party and are representative of the said party being law abiding citizens. The present case has been initiated against the petitioners and other accused persons, on the allegations as follows:

**“G.D. Extra from the Hastings PS Daily
Register
G.D. No. 414**

Dated: 08.10.2020, 15:50 hrs.

Ref: Sec. L1 GDE No. 411 dated 08.10.2020 of date returned to P.S along with 66 arrestee and forces after covering the Law Violation programme organized by BJP styled as Nabanna Abhijan. In connection with said law violation programme a detail police arrangement vide Jt. CP HQ PA No. 793 dated 07.10.2020 was laid down today (08.10.2020) at Hastings Crossing. Accordingly forces were reported at the vintage point and after arrival of superior officers, forces were duly briefed for the said duty. In accordance with the police arrangement, lady police personnel, water cannon, public addressing system, ambulance and other logistics were also kept provided at the site like in all similar programmes. Media personnel with cameras and police camera men from Special Branch were also present.

At about 12:30 hrs a large procession carrying fastoons and banners of BJP consisting of Santosh Yadav, Vivek Kumar, Rahul Shaw, Prem Singh, Arun Kumar Das, Mahesh Ram, John Roy, Nikhil Singh, Amarjit Rabi Das and Manoj Srivastaba being the members and followers of BJP being led by eminent leaders namely Kailash Singh Bijoyborgia, Locket Chatterjee, Arjun Singh, Mukul Roy, Rakesh Singh, Joy Prakash Majumdar, Bharati Ghosh were seen approaching said vantage point at Hastings crossing flouting the directions of pandemic situation of Covid-19 and in contravention to the Disaster Management Act. The vantage point being the main approach way to the Administrative Building of Government of West Bengal namely "Nabanna" which was already cordoned well so as to stop the movement of the procession from going beyond the point that leads to said high security zone. Police personnel on duty were well briefed to keep calm and act professionally and not to come under any influence of provocation. The procession was stopped just before the cordon which was erected temporarily by placing guard rails. Senior Officers addressed the procession and requested them not to proceed further as the approach leads to high security zone and it was constantly relayed over public addressing system. However after reaching the point and being forbade, the eminent leaders, as named earlier, started delivering provocative and anti government slogans and inspired their followers to proceed further and not to follow police instruction. However, police personnel deployed at the front line remained firm and did not allow the procession to proceed further. The procession tried to uproot and remove the guard rails contravening to the repeated warnings and at this point of time IPS D.P. Singh, Commissioner of Kolkata Police (III) having conferred upon him the power of Executive Magistrate, declared the assembly unlawful and asked them to maintain peace and retreat from there.

Sd/-

SI-A Datta of Sec L1”

3. Written note of argument has been filed on behalf of the petitioners. On hearing the learned counsel for the petitioners and the learned Public Prosecutor who has placed the case diary in the present case, raising strong objection it appears from the format FIR that the present case has been initiated against **24 accused** persons and others. From the GD Entry it appears that **66 accused persons were arrested**.
4. The following government **orders/guidelines** are relevant in the present case :-
 - a) Order No. 40-3/2020-DM-I (A) dated 30th September, 2020 by Ministry of Home Affairs, Government of India.
 - b) Guidelines for Re-opening as per order No. 40-3/2020-DM-I (A) dated 30th September, 2020 by Ministry of Home Affairs, Government of India.
5. The relevant extract from the “**guidelines for reopening**” annexed to the said order dated 30.09.2020 is as follows:-

“Guidelines for Re-opening
[As per Ministry of Home Affairs (MHA) Order
No. 40-3/2020-DM-I (A) dated 30th September,
2020]

1. (vii) Social/ academic/ sports/ entertainment/ cultural/ religious/ political functions and other congregations have already been permitted with **a ceiling of 100 persons**, outside Containment zones only. Such gatherings beyond the limit of 100 persons may be permitted, outside containment zones, by State/UT Governments only after 15th October, 2020 and subject to the following conditions:
 - a. In closed spaces, a maximum of 50% of the hall capacity will be allowed, with a ceiling of 200 persons. Wearing of face masks, maintaining social distancing, provision for

thermal scanning and use of hand wash or sanitizer will be mandatory.

- b. *In open spaces, keeping the size of the ground/ space in view, and with strict observance of social distancing, mandatory wearing of face masks, provision for thermal scanning and hand wash or sanitizer.*

State/UT Governments will issue detailed SOPs, to regulate such gatherings and strictly enforce the same.

Sd/-

**Union Home Secretary
And, Chairman, National Executive
Committee”**

6. It thus appears that number of persons prima facie present at the said agitation did not cross the said ceiling as laid down in the said order.
7. **The present case has been initiated under Section 143, 147, 149, 332, 353 and 283 of the Indian Penal Code, 1860 read with Section 51(b) of the Disaster Management Act, 2005 and Section 3 of the Prevention of Damage to Public Property Act, 1984.**
8. **Section 143 of the Indian Penal Code, 1860, lays down:-**

“143. Punishment.—Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Ingredients of offence- The essential ingredients of the offence under sec. 143 are as follows:

- (1) Accused is a member of an unlawful assembly;
- (2) The assembly is of five or more persons;
- (3) Common object of the assembly is one of the five crimes specified in the section;
- (4) Accused knew of the object.”

9. Unlawful assembly is defined under Section 141 of the Indian Penal Code, 1860.

10. Section 141 of IPC, lays down:-

“Section 141- 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:

1. 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
2. To resist the execution of any law, or of any legal process; or
3. To commit any mischief or criminal trespass, or other offence; or
4. 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
5. 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.

Ingredients of offence- The essential ingredients of the offence under sec 141 are as follows:

- 1) The assembly should be of five or more persons;
- 2) Object of assembly must be one of the five objects mentioned in the section;
- 3) Such object is common to all the members;
- 4) Members joined or continued to join such assembly;
- 5) They acted dishonestly;
- 6) They assembled knowingly.”

**Essential Elements of Section 141
Indian Penal Code, 1860 -**

a) Five or more person- The assembly **must** consist of five or more persons.

b) Common object- The members must have a common object which falls under any of the following categories:

- 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.
- To **resist** the execution of any law, or of any legal process.
- To **commit any** mischief or criminal trespass, or other offense.
- 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**.
- 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**.

11. From the materials in the case diary, the G.D. entry, there is no material to show that the petitioners used criminal force, mischief or criminal trespass.
12. Thus the ingredients required to constitute the said offences is prima facie not present in respect of the petitioners herein.
13. **Section 147 of the Indian Penal Code, 1860, lays down:-**

“147. Punishment for rioting.—Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence- The essential ingredients of the offence under Section 147 are as follows:-

- (1) There was an assembly of five or more persons;
- (2) The assembly was unlawful;
- (3) Members of the assembly used force or violence;
- (4) Accused was a member of such assembly; and
- (5) Force or violence was used by the assembly in pursuance of their common object.”

14. There is prima facie no material on record including the case diary to show that the petitioners used any force or violence.

15. **Section 149 of the Indian Penal Code, 1860, lays down:-**

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Ingredients of offence- The essential ingredients of the offence under sec. 149 are as follows:

- (1) There was an unlawful assembly;
- (2) the accused was a member of the said assembly;
- (3) accused joined intentionally or continued in the assembly knowingly;

- (4) accused had the knowledge of the common object;
- (5) the offence was committed by one of the members of the assembly;
- (6) commission of offence was in pursuance of the common object; and
- (7) accused knew, as a member of the unlawful assembly, that such offence is likely to be committed."

16. In *Moti Das & Ors. vs The State of Bihar, AIR 1954 SC 657, on 6th May, 1954*, the Supreme Court held:-

".....7. Now an assembly which was lawful when it assembled can become unlawful subsequently. That is the Explanation to Section 141 of the Indian Penal Code. The law on this point has, in our opinion, been correctly set out in the 18th edition of Ratanlal's Law of Crimes at page 333 in these words:

"An assembly which is lawful in its inception may become unlawful by the subsequent acts of its members. It may turn unlawful all of a sudden and without previous concert among its members. But an illegal act of one or two members, not acquiesced in by the others, does not change the character of the assembly".

Previous concert is not necessary. The common object required by Section 141 differs from the common intention required by Section 34 in this respect....."

17. The Supreme Court in *Allauddin Mian & Ors. Sharif Mian & Anr vs State Of Bihar, 1989 AIR 1456, on 13th April 1989*, held as follows:-

".....(3) Section 149. I.P.C., creates a specific offence. Since this section imposes a constructive penal liability, it must be strictly construed. [509G] 500

(4) *It is not the intention of the legislature in enacting section 149 to render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke section 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly, it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in. prosecution of the common object they would be liable for the same under section 149. I.P.C. [510F-H]*

(5) *What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed, and if it is found that the same was committed to accomplish the common object, every member of the assembly will become liable for the same. [509H; 510A-B].....*

.....We now proceed to consider whether accused Nos. 3 to 6 have been rightly convicted with the aid of Section 149 for the acts of accused Nos. 1 and 2. Section 141, I.P.C., defines an unlawful assembly as an assembly of five or more persons whose common object is to commit any one of the five acts enumerated therein. The explanation to that section makes it clear that an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. 509 Section 142 states: whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. Section 143 sets out the punishment for being a member of an unlawful assembly. Section 144 prescribes

the punishment for joining an unlawful assembly armed with deadly weapons. Section 145 prescribes the punishment for joining or continuing in an unlawful assembly which has been commanded to disperse. Section 146 defines rioting. It says that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. Section 147 then prescribes the punishment for rioting. Section 148 prescribes the punishment for rioting by members of an unlawfully assembly armed with deadly weapons. Then comes Section 149 which reads as under:

"If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or

was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of anyone or more of the five objects mentioned in Section 141 will render his companies constituting the unlawful assembly liable for that offence with the aid of Section 149, I.P.C.....”

18. The Supreme Court in ***Raj Nath v. State of U.P., 2009 (4) SCC 334***, on

16th January 2009, held as follows:

“.....8. A plea which was emphasized by the appellant relates to the question whether Section 149, IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified

in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

9. *Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds*

before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behavior of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one, comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful may subsequently become unlawful. In other words it can develop during the course of incident at the spot co instanti.

10. *Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the*

accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be called out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word 'knew' used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would

be within first part, but offences committed in prosecution of the common object would be generally, if not always, be within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object. (See Chikkarange Gowda and others v. State of Mysore : AIR 1956 SC 731.).....”

19. There is no material to show that the petitioners had knowledge of any common object for commission of offence (allegedly flouting the directions of pandemic situations of Covid-19) in contravention to the Disaster Management Act, hence Section 51 (b) has been added.

20. Section 332 of the Indian Penal Code, 1860, lays down:-

“332. Voluntarily causing hurt to deter public servant from his duty.—Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that 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 three years, or with fine, or with both.

Ingredients of offence— The essential ingredients of the offence under Sec. 332 are as follows:

- (1) Hurt was caused to a public servant;
- (2) It was caused while such public servant was acting in the discharge of his duty as such; or
- (3) It was caused to prevent or deter him from discharging his duty as such public servant; or
- (4) Such hurt was in consequence of anything done or attempted to be done by such public servant in lawful discharge of his duty.”

21. In the present case, there is no materials to show that the petitioners herein caused 'Hurt' to a public servant. As such, the ingredients required to constitute the offences under Section 332 IPC is also prima facie not present against the petitioners herein.

22. Section 353 of the Indian Penal Code, 1860, lays down”-

“353. Assault or criminal force to deter public servant from discharge of his duty.—*Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public 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.*

Ingredients of offence— The essential ingredients of the offence under sec. 353 are as follows:

- (1) Accused assaulted or used criminal force to a public servant;
- (2) Such public servant was then acting in the discharge of his duty;
- (3) Accused assaulted with the intention of preventing or deterring such public servant from discharging his duty, or
- (4) It was used in consequence of anything done or attempted to be done by the said public servant.”

23. The High Court of Madhya Pradesh at Jabalpur in ***Harendrajeet Singh Vs. The State of Madhya Pradesh, Criminal Appeal No. 5697 of 2019, on 11th April 2023,*** held as follows:-

“.....16. *Considering the rival contention of the learned counsel for the parties, it is clear*

that the basic contention has been put forth before this Court that in view of the statement of Ram Swaroop Pandre (PW-1) (Complainant), as has been quoted hereinabove, the offence under Section 353 of IPC is not made out against the appellant. Therefore, to reach to a logical conclusion whether the appellant is guilty of offence under Section 353 of IPC or not, it is apt to consider and analyze the necessary ingredients of Section 353 of IPC, which deals with an offence of assault or use of criminal force to deter a public servant from discharging his official duties. Section 353 of IPC reads as under:-

“353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public 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.”

17. The above Section very categorically provides that in order to attract the offence it is the duty of the prosecution to prove that there was assault or use of criminal force restraining public servant from performing his official duties or causing any act with intent to prevent or deter him from discharging his duty. Therefore, it is evident that to make out a case under Section 353 of IPC, the prosecution must meet essential requirements that a public servant must be assaulted or subjected to criminal force when he was carrying out his responsibilities; or with the goal of preventing or discouraging him from doing his duties.

18. To establish as to whether the appellant has assaulted the complainant or used any

criminal force upon him, it is necessary to examine the definition of 'force', 'criminal force' and 'assault', which are defined in Sections 349, 350 and 351 of IPC, which are as under:-

“Section 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.”

19. A reading of above Section makes it clear that a person is said to use force in any of the three methods mentioned above. The exertion of energy or power that causes a movement or change in the external environment is known as force. The term “force” as defined in this Section refers to force exerted by a person on another human.

“Section 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.”

20. From perusal of the above section, it is clear that the force that has been specified in Section 349 changes into a criminal force when the essential of Section 350 are satisfied. The essentials of Section 350 are intentional/deliberate use of force against any one; without consent, when the claimed assault involves illegal conduct and the force has to be utilized in order to conduct an offence or to cause hurt or fear to another person.

“Section 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.
Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.”

22. In this regard, the Supreme Court in the case of **Manik Taneja (supra)** in para 10 has observed as under:-

“10. So far as the issue regarding the registration of FIR under Section 353 IPC is concerned, it has to be seen whether by posting a comment on the Facebook page of the traffic police, the conviction under that section could be maintainable. Before considering the materials on record, we may usefully refer to Section 353 IPC which reads as follows:

“353. Assault or criminal force to deter public servant from discharge of his duty.— Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public 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."

A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, the ingredients of the offence under Section 353 IPC are not made out."

Further, in the case of P.V. Mathai (supra), the Kerala High Court has also considered this aspect and dealing with material ingredients of Section 353 has also observed as under:-

***"7.** Section 353 of IPC deals with an offence of assault or criminal force to deter a public servant from discharge of his official duty, which reads as follows:-*

"Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public 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."

***8.** A reading of the above provision would make it clear that in order to attract the offence, the prosecution is required to*

establish that there was assault or use of criminal force and such assault or use of criminal force was made on a public servant while he was acting in the execution of his duty or with intent to prevent or deter him from discharging his duty or in consequence of anything done or attempted to be done by him in the discharge of his duty. There is no doubt that the second respondent is a public servant and at the time of the alleged incident, she was discharging her official duty. But the crucial question is whether the petitioner has assaulted the second respondent or used any criminal force and whether the alleged act was done by the petitioner with intent to prevent or deter the second respondent from discharging her official duty.

9. *The word 'assault' has been defined under Section 351 of IPC as follows:- "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. " The explanation says that mere words do not amount to an assault.*

10. *A reading of Section 351 of IPC would show that the victim must apprehend that he who makes that gesture or preparation was about to use criminal force to the victim.*

11. *The word 'criminal force' has been defined under Section 350 of IPC as follows:- "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."*

12. The word 'force' has been defined under Section 349 of IPC as follows:- 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.

13. In the case on hand, the prosecution has no case that the petitioner has used any force on the 2nd respondent. On the other hand, the case of the prosecution in short is that, after entering into the office room of the petitioner, the accused asked as follows:- "Who asked you to enter into my property, who is your authorized officer, who gave you the authority to enter into my land." Apart from uttering these words, there was absolutely no use of force or even an attempt to use force. Apart from the vague allegation that the official time of the 2nd respondent was lost on account of the alleged acts of the petitioner, there is no specific allegation that the above mentioned words were uttered by the petitioner with the intent to deter the 2nd respondent from discharging her duty.

In case of **Jaswinder Singh (supra)** Punjab and Haryana High Court while dealing with Section 353 of IPC has observed as under:-

"4. The learned counsel for the petitioners contended that offences under Sections 333, 332 and 353 I.P.C. have not been made out on a reading of the complaint. It is not the case of the prosecution that the police constable Davinder Singh was attacked while discharging his duties as a public servant or with any intent to prevent or deter

the constable from discharging his duties as such public servant and, therefore, the offences under Sections 333, 332 and 353 I.P.C. are not attracted in this case. According to him, the averments in the complaint may amount to commission of offences under Sections 323 or 324 or under any other Section, which are not exclusively triable by the Court of Sessions. According to learned counsel, the offences under Sections 332, 333 and 353 I.P.C. came into play only when a public servant is discharging his duties as such and that if any injury is caused to him while discharging his duties in official capacity. According to him, it is not the case of the prosecution that at the time of the commission of the offence, the constable Davinder Singh was discharging any official duty because after performing his official duties, he had been simply returning to the police station in the bus during which time the alleged incident was said to have taken place.

5. *It is to be seen whether the learned Additional Sessions Judge is correct in framing charges for the offences under Sections 332, 333 and 353 I.P.C. read with Section 34 I.P.C.*

6. *Sections 332, 333 and 353 I.P.C. read as follows:*

“Section 332. Voluntarily causing hurt to deter public servant from his duty. - Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that 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 three years, or with fine, or with both.

Section 333. Voluntarily causing grievous hurt to deter public servant from his duty. - Whoever 14 voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that 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 ten years and shall also be liable to fine.

Section 353. Assault or criminal force to deter public servant from discharge of his duty. - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public 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."

7. *A reading of the above Sections clearly shows that if a public servant while discharging his duties is attacked or any injury caused to public servant in the discharge of his duties or when any public servant prevented or deterred from performing his duties or when any public servant assaulted or any criminal force used against the public servant while he is executing his duties as such public servant, then only the above offences would attract. It is not the case of the prosecution that the accused caused hurt or assaulted the constable Davinder Singh while he was performing his duties as such public servant, or with intent to prevent him or deter him from discharging his duties. I am, therefore, of the opinion that the necessary ingredients*

to attract Sections 332, 333 and 353 I.P.C. are not present in the present case. The learned Additional Sessions Judge has not considered this aspect of the matter. The learned Additional Sessions Judge referred to a Supreme Court judgment in *Manumiya v. State of Gujarat*, reported in (1979) 4 SCC 717 : AIR 1979 SC 1706, but that decision is not applicable in this case as in that case the driver of the bus was prevented from entering into the bus to drive the bus, which is his duty, therefore, on the facts of 15 that case, it has been held that the public servant was prevented from discharging his duty, namely, plying the vehicle, but such is not the case in the present one. There is no allegation anywhere in the complaint that the police constable was prevented or deterred from performing his duty. There is also no allegation that he was hurt while performing his duty. Performance of duty had already been done by him by delivering dak at various places. He was coming back to the police station after performing his duties. Simply because the police constable happens to be a public servant, it cannot be said that he has been discharging his duties. It depends on the facts of each case whether a public servant can be said to be discharging his duties and whether the offences have been committed when the public servant has been discharging his duties. It is not even the case of the prosecution that the accused had knowledge that the constable was performing his duty. Therefore, it cannot be said that the accused with an intent to prevent or deter the complainant from discharging his duties, caused injuries to him. It cannot also be said that the accused caused hurt to the constable while he was discharging his duties. I am, therefore, of the opinion that Sections 332, 333 and 353 I.P.C. are not attracted in this case but the fact remains that it is the case of the prosecution that the accused beat the constable Davinder Singh on the date of the incident. It is also mentioned that his teeth were broken. It is also in the complaint that an iron rod has

been used by the accused while attacking the constable. Therefore, it is for the Additional Sessions Judge to consider under what Sections the accused has to be charged with. I, therefore, feel that it is just and proper to set aside the impugned order of the learned Additional Sessions Judge and remand the matter back to him for reconsideration on the question of charges to be framed against the accused on the basis of the averments in the complaint and if he feels that any offence exclusively triable by a Court of Sessions is made out, he may try and proceed with the trial of the case after framing appropriate charges. If, he is of the opinion that the offences said to have been committed by the accused are not exclusively triable by the Court of Sessions, he may frame appropriate charges against the accused for these offences and send the matter to Chief Judicial Magistrate for trial as provided under 16 Section 228 clause (1) of the Code of Criminal Procedure.....”

24. In the present case there is nothing to show that the petitioners used criminal force to commit any offence. Thus the offence under Section 353 is clearly not made out against the petitioners herein.

25. Section 283 of the Indian Penal Code, 1860, lays down:-

“283. Danger or obstruction in public way or line of navigation.—

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Ingredients of offence- The essential ingredients of the offence under sec. 283 are as follows:

(1) The accused did an act or omitted to take care with property in his possession or under his charge;

*(2) Such act or omission caused danger, obstruction or injury to any person;
 (3) The danger, obstruction or injury was caused in any public way or public line of navigation.”*

26. No danger, obstruction or injury was caused by the petitioners herein in the present case, thus not making out a prima facie case under Section 283 of the Indian Penal Code.

27. Section 51 (b) of the Disaster Management Act, 2005, lays down:-

“51. Punishment for obstruction, etc.-

(a).....

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.”

28. As discussed in paragraph 4, 5 & 6 of this judgment, the offence under Section 51(b) of the Disaster Management Act, 2005, is also not made out against the petitioners herein.

29. Section 3 in the Prevention of Damage to Public Property Act, 1984, lays down:-

“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.

(2) Whoever commits mischief by doing any act in respect of any public property being—

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.”

30. No mischief was caused by damaging any public property by the petitioners herein, as seen from the case diary.
31. The petitioners in this case were leading a procession on behalf of a political party with certain demands.
32. From the allegations in the written complaint and the case diary it is thus evident that the petitioners herein though admittedly were part of the procession, they did not act in any manner which prima facie shows that the ingredients required to constitute the offences alleged in the present case are present in respect of any of the petitioners herein and as such the present proceeding **is liable to be quashed.**

- 33. Criminal revision being CRR 1585 of 2020 is allowed.**
- 34.** The proceedings being GR Case No.1147 of 2020 arising out of Hastings PS Case No.109 of 2020 dated 08.10.2020 under Sections 143, 147, 149, 332, 353 and 283 of the Indian Penal Code, 1860 read with Section 51(b) of the Disaster Management Act, 2005 and Section 3 of the Prevention of Damage to Public Property Act, 1984, pending before the Court of the learned Chief Metropolitan Magistrate, Calcutta, **is hereby quashed in respect of the petitioners herein namely, Kailash Vijayvargiya, Mukul Roy, Arjun Singh and Rakesh Singh.**
- 35.** All connected application, if any, stands disposed of.
- 36.** Interim order, if any, stands vacated.
- 37.** Let a copy of the Judgment be sent to the learned trial Court for compliance.
- 38.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)