

Durga Prasad Vs. State of Kerlaa

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Court : Kerala

Decided On : Aug-27-2014

Judge : Honourable Mr. Justice a.Muhammed Mustaque

Appellant : Durga Prasad

Respondent : State of Kerlaa

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE 27TH DAY OF AUGUST 2014 5TH BHADRA, 1936 CrI.MC.No. 834 of 2014 () ----- CC3552012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY CRIME NO. 614/2011 OF MULANTHURUTHY POLICE STATION PETITIONER(S)/ACCUSED NO.1 TO 4 ----- 1. DURGA PRASAD AGED 38 YEARS S/O.VELU ACHARI, PUTHENPURAYIL HOUSE, KARIKOD MULAMTHURUTHY, ERNAKULAM DISTRICT.

2. SHILESH KUMAR AGED 30 YEARS S/O.HARIHARAN, PALAKUZHI HOUSE VELIYANAD P.O.EDAKKATTUVAYAL, ERNAKULAM DISTRICT.

3. SHAJI AGED 38 YEARS S/O.VASU, OUTHENVEETIL HOUSE, PULIKAMALI MULAMTHURUTHY, ERNAKULAM DISTRICT.

4. KARUNAN AGED 46 YEARS S/O. CHOTHI, ARAKKATHAZHATH HOUSE, ARAKKUNNAM MULANTHURUTHY, ERNAKULAM DISTRICT. BY ADV. SRI. PAUL K. VARGHESE RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA REP. BY SUB INSPECTOR OF POLICE MULANTHURUTHY POLICE STATION ERNAKULAM DISTRICT REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 31. BY PUBLIC PROSECUTOR SHRI N. SURESH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27.08.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 834 of 2014 () ----- APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE-1: TRUE COPY OF THE CHARGE IN CRIME NO. 614/2011 OF MULANTHURUTHY POLICE STATION. RESPONDENT(S)' EXHIBITS: NIL ----- //TRUE COPY// A. HARIPRASAD, J.

----- CrI.M.C. No. 834 of 2014 -----
----- Dated this the 27th day of August, 2014.

ORDER

Petition filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.").

2. Petitioners are accused 1 to 4 in C.C.No.355 of 2012 of the court of learned Judicial First Class Magistrate, Kolencherry. They are involved in Crime No.614 of 2011 of Mulanthuruthy Police Station registered under Section 353 read with Section 34 of the Indian Penal Code (in short, "IPC"). Annexure-A1 is the charge including the first information report. The Sub Inspector of Police, Mulanthuruthy is the defacto complainant. Allegation against the petitioners is that on 06.11.2011 at about 10.45 a.m., while the defacto complainant was sitting in his room in the Police Station, the accused persons barged into the Police Station and shouted. At that time, Grade Sub Inspector Haridas was recording the statement of a witness in connection with the investigation of another criminal case. The accused persons picked up quarrel with the Grade Sub inspector Haridas and prevented him from discharging duty. Therefore, the accused have committed the aforesaid offence.

3. Heard the learned counsel for the petitioners and the learned Crl.MC No.834/2014 2 Public Prosecutor. I have perused the records submitted in this case including the statement submitted by the Sub Inspector of Police, Mulanthuruthy.

4. The statement submitted by the Police Officer would show that the 1st petitioner Durga Prasad was a person included in the Rowdy list of Mulanthuruthy Police Station. He was involved in a proceeding under Section 15(1) of Kerala Anti-social Activities (Prevention) Act, 2007.

5. Learned counsel for the petitioners submitted that the order passed by the Inspector General of Police, Kochi Range dated 29.10.2013 was challenged in W.P.(C) No.4293 of 2014 and was quashed as per judgment of this Court dated 10.03.2014. Learned counsel for the petitioners submitted that even if we accept the entire prosecution case, the offence punishable under Section 353 IPC is not attracted since the basic elements required therein are not mentioned in the final report. Section 353 IPC deals with assault or criminal force to deter a public servant from discharge of his duty. It reads as follows: "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 Crl.MC No.834/2014 3 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." If we read the Section carefully, we will find the two terms defined in the IPC employed in the Section, viz., assault and criminal force. Section 351 IPC defines assault. Going by the facts in this case, we need not interpret the term 'assault' because there is no case either in the first information report or in the final report that the petitioners assaulted the defacto complainant. What is alleged is that petitioners used criminal force against the defacto complainant by shouting and thereby they prevented him from discharging official duty. It is also alleged that the petitioners forcefully demanded that the defacto complainant should record the statement of witnesses in another criminal case, in the way the petitioners wanted it.

6. For understanding the term 'criminal force', we have to consider Sections 349 and 350 IPC. They read as follows: "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.

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." 7. Learned Prosecutor submitted that there need not be any physical assault to constitute an offence of criminal force. Even in a case where there is prevention of discharge of duty of a public servant by any person without employing physical force, according to the learned Prosecutor, the offence defined under Section 350 IPC will be attracted. Per contra, learned counsel for the petitioners submitted that in the absence of applying physical force, the offence under Section 349 IPC will not be attracted. In order to buttress the submissions, learned counsel for the petitioners strongly relied on *Devaki Amma v. State of Kerala* (1981 KLT475). The law laid down by the learned Single Judge reads as follows: "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 CrI.MC No.834/2014 6 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. 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." CrI.MC No.834/2014 7 Reliance is placed on *Sadasib Mandal v. Emperor* (AIR1915 Calcutta 131). It has been laid down thus: "The term "force", as defined in S.349, applies to force when used in connection with the human body." Learned counsel for the petitioners submitted that at the most the allegations may fall within Section 186 IPC. However, for attracting an offence under Section 186 IPC, the law must be set in motion by a complaint in writing by the public servant as required in Section 195(1)(a) Cr.P.C.. In the absence of such a complaint, the final report is not maintainable, contended learned counsel for the petitioners.

8. On a perusal of the precedents mentioned above and the provisions of law, I am of the view that the offence of criminal force defined under Section 350 IPC will not be attracted without satisfying the ingredients required for the term "force" defined in Section 349 IPC. On a reading of Section 349 IPC, it is evident that physical act either causing motion or cessation of motion of a person is required to attract the offence. If the offence of criminal force is not attracted, there is no question of attracting Section 353 IPC. Therefore, the prosecution is an abuse of the process of court. In the result, the petition is allowed. Annexure-1 charge with Crl.MC No.834/2014 8 first information report in Crime No.614 of 2011 of Mulanthuruthy Police Station, pending in C.C.No.355 of 2012 of Judicial First Class Magistrate Court, Kolencherry is hereby quashed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks `

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