

**Antony Ouseph vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1348613](https://sooperkanoon.com/1348613)

**Court :** Kerala

**Decided On :** Oct-25-2023

**Judge :** Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No. :** Crl.MC/7245/2014

**Appellant :** Antony Ouseph

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
WEDNESDAY, THE 25TH DAY OF OCTOBER 2023 / 3RD KARTHIKA,  
1945 CRL.MC NO. 7245 OF 2014 AGAINST THE ORDER/JUDGMENT  
CC 1032/2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS  
,KOLENCHERRY PETITIONERS/ACCUSED NOS.2 & 3: 1 ANTONY  
OUSEPH AGED 58 YEARS, S/O.ANTONY, PADUPURACKAL HOUSE,  
UDAYAMPEROOR POST, ERNAKULAM DISTRICT. 2 MARY AGED 55  
YEARS, W/O.ANTONY OUSEPH, PADUPURACKAL HOUSE,  
UDAYAMPEROOR POST, ERNAKULAM DISTRICT. BY ADVS.  
SRI.SOORAJ T.ELENJICKAL SMT.P.M.MAZNA MANSOOR  
SRI.B.PRASANTH SRI.T.S.SARATH RESPONDENT/COMPLAINANT:

STATE OF KERALA THROUGH THE SUB INSPECTOR OF POLICE, MULANTHURUTHY, ERNAKULAM DISTRICT, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADV. SRI.RENJITH.T.R, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

----- Crl.M.C. No. 7245 of 2014  
----- Dated this the 25th day of October, 2023

## **ORDER**

The petitioners are accused Nos. 2 and 3 in C.C. No.1032/2013 on the file of Judicial First Class Magistrate Court, Kolenchery arising from Crime No.395/2012 of Mulanthuruthy Police Station. It is submitted that the 2nd petitioner who is the 3rd accused is no more. Hence, her case is abated. The above case is charge sheeted alleging offences punishable under Sections 279, 353 and 294(b) r/w Section 34 of IPC.

2. The prosecution case is that, the

accused persons, three in numbers were found traveling in a motor car through a public road and at that time the Sub Inspector of Police, who was in routine traffic inspection duty, intercepted the vehicle alleging that the car driven by the 1 st accused was in a rash and negligent manner endangering human life. It is alleged that, at that time the 2nd accused attempted to assault the Sub Inspector with his hand. It is also stated that the other accused persons uttered abusive and obscene words against the police personals causing annoyance to them and also hindrance to the discharge of their official duty and thereby committed the offence. Annexure-1 is the final report. It is submitted that the 1 st accused was also died and only the 1st petitioner, who is the 2nd accused is alive. It is the case of the petitioner that, even if the entire allegations are accepted, no offence is made out against the 1 st petitioner, who is the 2nd accused in this case.

3. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

4. This Court perused Annexure-A1 final report. It will be beneficial to extract the relevant portion of the final report:

" 2-o, 3-o 1-)o 1-)o , xxxx 2-)o 2-)o

. 3 1-)o "

5. In the final report, it is not specifically

stated the abusive words used by the accused. But, in the First Information Statement, it is stated that the 2nd accused attempted to hit the police constable by folding his hand and that the accused persons uttered the words , in front of the general public and drove away in their car. Whether this amounts to an offence under Section 294(b) and 353 of IPC is the question. As far as Section 279 of IPC is concerned, the allegation is only against the 1st accused, who is no more.

6. In *Latheef v. State of Kerala* [2014

(2) KLT 987] this Court considered the ingredients to attract Section 294(b) in detail. It will be better to extract the relevant portion of the above judgment;

3. The very short point for decision in this revision is whether the words alleged to have been used by the revision petitioner will constitute obscenity as defined under the law. The abusive words alleged to have been used by the revision petitioner herein are ' .....'. Of course as regards wrongful restraint and assault the two Courts below found the revision petitioner not guilty, and he stands acquitted. As regards the above words alleged to have been used by the petitioner both the Courts below found that it is obscene. Of course it stands

proved by the evidence of PW 1 that the revision petitioner had in fact used such words in the alleged incident. So, much discussion is not required on that aspect. The question for decision in revision is whether

those words will amount to obscenity as defined under the law. If the finding is that such words will not amount to obscenity, the revision petitioner will have to be acquitted.

#### 4. Sub-section (1) of S.292 IPC provides

that for the purposes of sub-section (2), dealing with punishment and sentence for obscenity, a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious, or appeals to the prurient interest, or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. Thus sub-section (1) to S.292 IPC gives a clear idea as to what is meant by obscenity under the law, punishable

under Sections 294(2), 293 and 294 IPC.

#### 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 S.294(b) IPC it must satisfy the definition of obscenity. S.294 IPC does not define obscenity. Being a continuation of the subject dealt with under S.292 IPC the definition of obscenity under 292(1) IPC can be applied in a prosecution under S.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 KHC 231 : 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

(1) KHC 812 : 2008 (2) KLT 745 : 2008 (1) KLD 339 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 S.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.

#### 7. In Durga Prasad and Others v. State

of Kerala [2014 (3) KHC 704] this Court considered the ingredients of Section 353 of IPC. It will be better to extract the relevant portion of the above judgment;

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 S.350 IPC will be attracted. Per contra, learned counsel for the petitioners submitted that in the absence of applying physical force, the offence under S.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 KHC 313 : 1981 KLT 475 : 1981 KLN 452. 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 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 S.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." Reliance is placed on *Sadasib Mandal v. Emperor*, AIR 1915 Cal. 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 S.186 IPC. However, for attracting an offence under S.186 IPC, the law must be set in motion by a complaint in writing by the public servant as required in S.195(1)

(a) Cr PC. 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 S.350 IPC will not be attracted without satisfying the ingredients required for the term "force" defined in S.349 IPC. On a reading of S.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 S.353 IPC. Therefore, the prosecution is an abuse of the process of Court.

8. In the light of the dictum laid down in

*Durga Prasads case* (supra) and *Latheefs case* (supra), I am of the considered opinion that the offence under Section 353 and 294(b) of IPC is not made out against the 1st petitioner, who is the 2nd accused in this case. The admitted case of the prosecution is that, the petitioner attempted to hit the police constable by folding his hand. Prosecution has no case that, any force is used. Hence Section 353 IPC is not attracted. Therefore, the continuation of the proceedings against

the 1 st petitioner is an abuse of process of Court. Therefore, this Criminal Miscellaneous Case is allowed in the following manner: i. All further proceedings against the 1st petitioner, who is the 2nd accused in C.C. No.1032/2013 on the file of Judicial First Class Magistrate Court, Kolenchery arising from Crime No.395/2012 of Mulanthuruthy Police Station are quashed. ii. The case against the 2 nd petitioner is stands abated. Sd/- P.V.KUNHIKRISHNAN nvj JUDGE  
APPENDIX OF CRL.MC 7245/2014 PETITIONER ANNEXURES ANNEXURE I- THE CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE POLICE IN CRIME NO.395/2012 OF MULANTHURUTHY POLICE STATION. ANNEXURE II- TRUE COPY OF THE FIRST INFORMATION

REPORT AND THE STATEMENTS OF THE WITNESS RECORDED UNDER SECTION 161 OF THE CODE OF CRIMINAL PROCEDURE WHICH FORMS PART OF ANNEXURE-I FINAL REPORT.

### **ANNEXURE III- TRUE COPY OF THE DISCHARGE SUMMARY**

OF THE 2ND PETITIONER ISSUED FROM CHRISTIAN MEDICAL COLLEGE, VELLORE. ANNEXURE IV- TRUE COPY OF THE DEATH CERTIFICATE OF THE 1ST ACCUSED IN THE CRIME ISSUED FROM THE AUTHORIZED PANCHAYAT AUTHORITIES. RESPONDENTS EXHIBITS :NIL //TRUE COPY//  
PA TO JUDGE

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