

**Poulose Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/724555](http://sooperkanoon.com/724555)

**Court :** Kerala

**Decided On :** Jul-23-1984

**Reported in :** 1985CriLJ222

**Judge :** V. Bhaskararn Nambiar, J.

**Appellant :** Poulose

**Respondent :** The State

**Judgement :**

ORDER

**V. Bhaskararn Nambiar, J.**

1. The petitioner who has been found guilty Under Section 353, I.P.C is the revision petitioner.

2. The facts proved by the prosecution and found by the Courts below are that the village officer and two of his assistants, P.Ws. 1, 3 and 4, went to the disputed property to evict the petitioner's father, who was in possession of Government puramboke land as a trespasser. The accused, the son, rushed to the scene brandishing a spade. The revenue officers left the scene, sought police aid, came later and evicted the persons who had trespassed. On these findings, the Courts below found that the accused was guilty ; but considering his age, antecedents, the gravity of the offence etc., admonished him Under Section 3, Probation of

Offenders Act.

3. Even though the learned Counsel for the petitioner pressed for a reappreciation of the entire evidence contending that the finding arrived at by the Courts below is perverse and that the petitioner is entitled to acquittal, I am not inclined, sitting in revision, to reappraise the evidence.

4. However, there is one significant aspect which has been lost sight of by both the Courts below. P.W.4 a village man, who was once a village officer, states that the order of the Tahsildar was stayed and the stay was still in force. If, eviction proceedings are taken, notwithstanding the stay order, can it be said that the village officer, the public servant, was executing his duty?

5. Section 353, I.P.C. under which the petitioner is charged requires that (a) the accused should have assaulted or used criminal force ; (b) that the assault or criminal force should have been directed against a public servant ; and(c) that the public servant should have been acting in execution of his duty.

6. Sections 332 and 353, both crimes against public servants, use different phraseology which, probably, may not be very material but cannot be ignored to understand the scope of Section 353. Section 332 applies when the public servant in the discharge of his duty is hurt, while Section 353 is attracted when the public servant in the execution of his duty is assaulted. The offence Under Section 332 is graver inviting a sentence which may extend to three years, while Under Section 353, the maximum punishment may extend only to two years. It is also noteworthy that while referring to acts against which there is no right of private defence, Section 99, protects a public servant acting in good faith under colour of his office.

7. A public servant discharges his duty when he performs the functions of his office and carries on any statutory or executive duty assigned to him. He executes his duty when he carries out some act or course of conduct to its completion. Execution denotes the fulfilment, completion or carrying into operation of any act or direction or order. When statutory orders and executive directions have to be implemented, the public servant acts in execution of his duty. Discharge of duty is therefore an expression of wider connotation while the term execution of duty' is of

limited application.

8. Section 353, therefore, postulates that the public servant has jurisdiction to execute and insists that he should be in the process of execution of his duty when he is assaulted or criminal force is used. Legality of the execution of duty is the sine qua non for the application of Section 353. When, therefore, a duty is prohibited by statute or by orders of a superior authority, it cannot be said that the public servant acts in execution of his duty, for he was not in duty bound to execute any order. Administrative discipline compels obedience to the orders of the superior authority by the subordinate. A stay of an order issued by a higher authority, prevents its execution by the subordinate.

9. In this case, therefore, the Village Officer was not acting in execution of his duty when he attempted to take possession in spite of the order of stay of his superiors. The evidence of P.W.4 accepted by the Courts below thus is fatal to the prosecution case. This material factor has been omitted to be considered by the Courts below and there has been a serious miscarriage of justice when petitioner was convicted

10. The Public Prosecutor contended that the statement of P.W.4 need not be accepted as true. I cannot agree. He is their own witness. The prosecution cannot discard him for a conviction of the accused. Moreover, the records show that there was originally a stay by the Government for two months. It is not known whether the stay was extended. In this state of affairs, P.W.4's evidence that there was stay had to be accepted

In the result, it is not proved that the Village Officer was assaulted or that criminal force was used when he was acting in execution of his duty. The ingredients of Section 353 are not satisfied ; the petitioner is entitled to acquittal. He is acquitted of the offence. Under Section. 353, I.P.C Cri R.P. is allowed