

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,  
ALAPUZHA

Present:- Ms.Seethal.M.Sasidharan, Judicial First Class Magistrate-II

Dated this the 13<sup>th</sup> day of June, 2025

**CMP 1115/25 in C.C 146/24**

Petitioner	Abdul Sathar ,s/o Ali Kunju Punnakulam ,Karunagapally Kollam ( By Adv. Ajmal A.S )
Accused	State of Kerala ,Rept. by S.I of Police, Mannancherry Police Station in Crime no 609/22 (By.APP, Alappuzha)
Offences	u/s 120(B) , 143,147,149,188 and 283 of IPC
Proceedings	u/s 258 of CrPC .
Order	Allowed

The case having been heard today, the court on the same day passed the following :-

**ORDER**

1. This is a petition filed under section 258 of the code of criminal procedure to stop further proceedings against the accused in the above case .
2. **Petition averments in brief are as follows** : The petitioner is the second accused in the above case .The offences alleged against the accused are under section 120(B) , 143,147,149,188 and 283 of IPC.The prosecution case in brief is that on 23.09.2022 at around 9.30 hrs , the second accused ,who was the then PFI state secretary

announced a statewide hartal in violation of the order of Hon'ble High court in WP(C) No 222 and 224 of 2019 and the first accused along with 24 other persons formed themselves into an unlawful assembly near ambanakulangara junction and they caused obstruction to the public thereby committing the above mentioned offences . The learned counsel for the petitioner submitted that the only allegation against the accused is that under his instigation the other accused has committed the above offences . It is submitted that there are no prima facie materials before this court to show that the petitioner was involved in the above incident .Hence , this petition is filed for discharge of the petitioner from the above offences .

3. Copy served to Learned APP.
4. Heard both sides and perused the records .
5. The only point that arise for the consideration of this court is :
  - 1) Are there sufficient grounds for proceeding against the accused under section 120(B) , 143,147,149,188 and 283 of IPC?
6. The charge sheet in this case was initially filed against 26 accused persons, out of whom 24 pleaded guilty to the offences alleged against them and were convicted vide separate judgments of this Court. The case was thereafter refiled against the remaining two accused persons, and the petitioner is the second accused in the present case (initially arrayed as the 26th accused). The prosecution alleges that the first accused, along with other accused persons, formed an unlawful assembly and obstructed the public pathway, thereby causing hindrance to the public. It is further alleged that the second accused conspired with the other accused in the commission of the said offences. Initially, the FIR was registered only against 25

accused persons who had participated in the assembly. During the course of investigation, the petitioner was subsequently arrayed as the 26th accused, with the offences under Sections 120B and 188 of the IPC being incorporated against him.

7. Section 120B of the IPC deals with the punishment for the offence of criminal conspiracy. On a perusal of the entire prosecution records, it is evident that the petitioner was not a member of the alleged unlawful assembly. Although Section 149 of the IPC has been invoked against the accused persons, there is no mention in the records of any use of force or violence by the protestors. None of the prosecution witnesses have given any statement implicating the petitioner in the alleged protest. The only material placed on record by the prosecution is a report stating that the petitioner has been arrayed as the 26th accused and that Section 120B has been incorporated along with the other offences alleged.
8. In this context , section 196(2) of CrPC assumes importance which reads as follows :

“ No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding;

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.”

9. The prosecution does not have a case that the petitioner took part in the unlawful assembly .The petitioner is alleged to have entered into a criminal conspiracy with other accused to commit the offences punishable under Sections 143, 147, 149, and 283 of the IPC. These offences fall under the category of offences that are *not* punishable with death, imprisonment for life, or rigorous imprisonment for a term of two years or more. Hence, the bar under Section 196(2) of the CrPC is attracted in this case. However, no sanction, as required under Section 196(2) of the CrPC, has been produced by the prosecution. In such circumstances, any further proceedings against the accused for the alleged offence of criminal conspiracy are vitiated and legally unsustainable.
10. On overall consideration of facts and circumstances of the case , this court is satisfied that there are no sufficient grounds for proceeding against the petitioner u/s 120(B) , 143,147,149,188 and 283 of IPC .In result , the petition is allowed and all further proceedings against the petitioner for the abovementioned offences is stopped u/s 258 of CrPC and the petitioner is released .

Dated this the 13<sup>th</sup> day of June 2025

Judicial First Class Magistrate-II,  
Alappuzha