

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE****AMBALAPUZHA**

Present : Aiswarya Ann Jacob

Judicial Magistrate of First Class

Dated this, the 21st day of April, 2026.

**C. C. No. 1182/2018**

- Complainant : State of Kerala represented by the Sub  
Inspector of police, Ambalapuzha Police  
Station in Crime No. 1571/2018.  
Rep. by A.P.P., Ambalapuzha
- Accused : Gopinadhan Nair, aged 66/18 years,  
S/o. Kuttappan Nair, Mini Sadanam Veedu,  
Karumadi Muri, Ambalapuzha Thekk Village.  
Rep. by Adv. P. Sasidharan
- Offences : U/s. 118(a) and 119(a) of Kerala Police Act  
and u/s. 353 of Indian Penal Code
- Plea : Not guilty
- Finding : Not guilty
- Sentence or Order : Accused is acquitted u/s. 248(1) of Cr. P. C.

**DESCRIPTION OF THE ACCUSED**

Sl. No.	Name of the Police Station and Crime No. of the offence	Name	Father's name	Occupation	Residence	Age
1.	Ambalapuzha Police Station in Crime No. 1571/2018	Gopinadhan Nair	Kuttappan Nair		Mini Sadanam Veedu, Karumadi Muri, Ambalapuzha Thekk Village.	66/18

**DATES OF**

Occurrence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of Evidence
29.10.18	29.10.18	28.03.19	28.03.19	-	10.06.19	24.08.22

Close of trial	Sentence/ Order	Service of Copy of Judgment or finding on account	Explanation of delay	Period of detention undergone during investigation, inquiry of trial for the purpose of section 428 Cr.P.C.
10.04.26	21.04.26	...	No delay	...

This case having been heard on 10.04.2026 and the court on 21.04.2026 delivered the following :

**J U D G M E N T**

1. This is a case instituted on a final report filed by the Sub Inspector of police, Ambalapuzha Police Station in Crime No. 1571/2018, alleging commission of offences punishable u/s. 118(a) and 119(a) of Kerala Police Act and u/s. 353 of Indian Penal Code against the accused.
2. Prosecution case in brief is that, on 29.10.2018 the accused was found near the compound wall of the house belonging to Smt. Saritha Gopakumar named Saritha Bhavan of Ambalapuzha South Panchayath Ward No. 7 in an intoxicated manner and incapable of handling himself and performed sexual gestures, degrading the dignity of women. While PW1 prevented him from committing any such acts, the accused pushed him down and attempted to hit him, thereby deterring him from discharging from his official duties. Thus, the accused is alleged to have committed the aforesaid offences.

3. On the appearance of the accused before the court, he was released on bail and copies of relevant prosecution records were furnished to him. After hearing both sides, charge for offences u/s. 118(a) and 119(a) of Kerala Police Act and u/s. 353 of Indian Penal Code was framed, read over and explained to accused to which he pleaded not guilty and claimed to be tried.
4. The prosecution examined PW1 to PW3 and Exts.P1 to P3 were marked. The other witnesses were given up by the learned APP. After closure of the prosecution evidence, the accused was examined u/s.313(1)(b) CrPC with regard to the incriminating circumstances appearing against him to which he denied all of them and pleaded innocence.
5. Heard both sides.
6. The following points arose for consideration :
  - i. Whether the accused, behaved in an intoxicated manner and incapable of looking after himself, and thereby committed an offence punishable under Section 118(a) of KP Act ?
  - ii. Whether the accused, performed any sexual gesture degrading the dignity of women, and thereby committed an offence punishable under Section 119(1)(a) of KP Act ?
  - iii. Whether the accused, obstructed PW1, a public servant, while he was discharging his official duty, and attempted to deter him from performing his duty, and thereby committed an offence punishable under Section 353 of IPC ?
  - iv. What shall be the Sentence or Order ?
7. **Point nos.(i) to (iii)**: For the sake of brevity and to avoid repetition, these points are considered together. The prosecution case is that the accused in an intoxicated manner deterred PW1 from discharging his official duties thereby resulting in the final report indicting the accused for offences punishable u/s 118(a) and 119(a) of Kerala Police Act and u/s. 353 of Indian Penal Code.

8. The official whose duty was alleged to have been deterred was examined as PW1. He testified that on the day of the alleged incident he received a phone call regarding the fact that the accused was hurling abusive words against a lady near Karumady Junction. On the basis of the aforesaid information, he along with two other officials reached the place of occurrence. The accused was immediately arrested and while attempting to take him in a jeep, the accused pushed him and hurled obscene words. The accused continued uttering obscene words even while he was brought to the police station, which deterred PW1 from discharging his official duties. Exhibit P1 was marked through him. He asserted that no documents to prove the factum of him being in duty was adduced before this court. Apart from this, it was deposed that he never felt that the accused was in an intoxicated condition.
9. PW2 deposed that the incident happened in the month of December in 2018. She submitted that the accused was in the habit of hurling abusive words. As per her version, on the date of the aforesaid incident, the accused hurled abusive words and while police reached the place, the accused pushed them. Thereafter she was called to the police station where she had witnessed the accused uttering obscene words. She further deposed that she had given a written complaint to the police station.
10. Since the presence of the 4<sup>th</sup> witness could not be secured despite earnest efforts, an additional witness who could identify his signature was examined as PW3. He deposed to be familiar with the signature of the original 4<sup>th</sup> witness whom he had worked with and identified the signature in Ext P1. Apart from this Exhibit P2 and P3 were also marked through him.
11. In order to attract an offence u/s 118(a) of the Kerala Police Act, it is essential to prove that the person was found in a public place in a state of intoxication or in a rioting manner, incapable of looking after himself. A careful scrutiny of the evidence on record reveals conspicuous lacunae in establishing the essential ingredients of the said offence, particularly with respect to the mental and

physical state of the accused at the relevant point of time. It is significant to note that PW1 himself did not perceive the accused to be in an intoxicated condition. The prosecution has also failed to produce any medical evidence whatsoever to substantiate the allegation of intoxication. Furthermore, there is nothing discernible from the materials on record to indicate that the accused was conducting himself in a rioting manner or that he was incapable of looking after himself at the time of the alleged incident.

12. The Hon'ble High court of Kerala in **Shybu Mathew v. State of Kerala (2012 (1) KHC 392)** had elaborately discussed the meaning of intoxication, rioting condition and incapable of looking after himself. Subsequently in the recent decision of **Salim Kumar B. S. v. State of Kerala and Another (2021 (6) KHC 380)** it was held that *“The expression 'rioting condition' used in S.118(a) would mean that the person was behaving in a way that is violent and / or not in control. Behaving in a noisy and / or violent or tumultuous manner may come within the expression 'rioting condition'. The behaviour which is contrary to law, which may tend to disturb the sense of morality of the public or which may affect the public peace or decorum may also be termed as riotous or disorderly behaviour”*.

13. In the present case, prosecution has fallen short on discharging its burden to prove the guilt of the accused as there is nothing on record to prove that the accused was intoxicated or behaved in a rioting manner or was incapable of looking after himself. The only allegation levelled against the accused is that he hurled abusive words at PW1 and pushed him. However, this allegation is not substantiated by any cogent, reliable, or credible evidence. In the absence of proof of the essential ingredients, this Court is of the considered opinion that the offence under Section 118(a) of the Kerala Police Act is not attracted.

14. Section 119(1)(a) penalises a person for performing any sexual gestures or acts degrading the dignity of women. The prosecution has examined PW2 as the sole eyewitness to the alleged incident. A careful appreciation of her testimony

reveals that she deposed only with respect to the hurling of abusive words by the accused, and conspicuously made no mention whatsoever of any sexual gesture having been performed by him. The testimony of the sole eyewitness therefore fails to furnish any evidentiary foundation for the specific charge under Section 119(1)(a). Most importantly the case of the prosecution does not disclose any incident whereby the accused had depicted any act of sexual gesture.

15. The Hon'ble Kerala High Court **Arun S. v. State of Kerala (2024 KHC 576)** held that “ If the sexual gestures or acts performed by the accused could not be discernible from the FIR, Final Report or other materials, mere assumption of the Detecting Officer as well as the Investigating Officer that the accused performed or showed sexual gestures or acts degrading the dignity of women, keeping the gestures or acts in his mind in secrecy, would not suffice to constitute an offence under S.119(1)(a) of the KP Act”.
16. Discrepancy also prevails regarding the date on which the offence was alleged to have been committed. As per the prosecution version the incident occurred on 29.10.2018 while as per PW2 the occurrence was on December 2018. This material difference is not satisfactorily explained and thereby casts serious doubts on the veracity and reliability of the prosecution case. Considering the facts of the case, the prosecution evidence is insufficient to sustain a conviction u/s 119(1)(a) of KP Act.
17. To sustain a charge under Section 353 IPC, the prosecution must establish not only the act of assault or use of criminal force, but also the fact that the person obstructed was a public servant acting in the discharge of his official duty at the material time. Though the prosecution alleges that the accused pushed PW1, no cogent or reliable evidence has been placed on record to substantiate this allegation. The only allegation raised against the accused was that he hurled abusive words at PW1 and PW2 which led to deterring PW1 from discharge his official duties. Mere use of abusive language, does not by itself constitute assault or criminal force within the meaning of Section 353 IPC.

18. Also, the nature, character, and purpose of the duty allegedly been discharged by PW1 at the material time is not corroborated through sufficient evidence. This fact is even acknowledged by PW1 himself. In the absence of proof that PW1 was in fact engaged in the performance of any official duty, one of the foundational ingredients of the offence under Section 353 IPC stands not proved. The Hon'ble High Court of Kerala in its landmark decision of **Devaki Amma v. State of Kerala (1981 KHC 313)** has even held that "*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*".
19. A careful perusal of evidence makes it amply clear that there is a total absence of any evidence to prove the allegations levelled against the accused beyond reasonable doubt. Material discrepancy also exists regarding the date of occurrence. Allegation alone is not sufficient to sustain a conviction. In view of the settled legal positions, this court is of the opinion that the prosecution has miserably failed in proving the charges levelled against the accused beyond reasonable doubt.
20. In the light of the evidentiary shortcomings and the settled legal position it is concluded that the prosecution has miserably failed to prove its case beyond reasonable doubt. The accused is therefore entitled to the benefit of doubt and is acquitted of all the charges alleged against him. Consequently, point nos.(i) to (iii) is found against the prosecution.
21. **Point no.(iv)** : In view of the findings in point nos.(i) to (iii) it can be seen that the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt. Since, there is an element of doubt, the accused is entitled to the benefit of doubt. It follows that the accused is not guilty.
22. In the result, accused is found not guilty of the offence punishable u/s. 118(a) and 119(a) of Kerala Police Act and u/s. 353 of Indian Penal Code and he is acquitted u/s.248(1) of Cr.P.C. The accused is set at liberty and the bail bond executed by him stands cancelled. Material objects if any present shall be

disposed off after the appeal period is over.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court, on this, the 21st day of April, 2026).

Judicial Magistrate of First Class  
Ambalapuzha

**APPENDIX**

Witnesses for the Prosecution :

- PW1 : Sajith K R  
PW2 : Saritha Gopakumar  
PW3 : Arun

Exhibits for the Prosecution :

- P1 : Scene Mahazar marked through PW1 on 24.08.2022.  
P2 : FIR marked through PW3 on 25.02.2025.  
P3 : Arrest Memo marked through PW3 on 25.02.2025.

Material objects marked : NIL

Witnesses/Exhibits for Defence : NIL

Court Witnesses/Exhibits : NIL

Judicial Magistrate of First Class  
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