

**IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE,
KOLENCHERRY:**

**Present : Smt. Sirsha N A,
Judicial I Class Magistrate.**

Friday the 20th day of September, 2024

CMP No. 1068 of 2023

In

CC No: 152 of 2022

Petitioner/ 7th Accused : Adv. Thushar Nirmal Sarathy, aged 43 years,
S/o. Vijayasarathy, Tulip, Skyline Riverdale, Thripunithura
(Now residing at 'Rhithu' Athirthi Road, Maalekad, Udayamperoor)

Respondents : State of Kerala represented by Sub Inspector of Police,
Puthencruz Police Station (Crime No: 163/2018)
(By A.P.P. Kolenchery)

Order : CMP is allowed.

ORDER

This is a petition filed u/s. 258 Cr.P.C. by the 7th accused in this case.

2. The case is instituted on the basis of final report filed by the Sub Inspector of Police, Puthencruz Police Station alleging offences punishable under sections 143, 147, 283, 149 of IPC, 4(2) of Kerala Public Way Restriction of Assemblies and Procession. Petitioner is the 7th accused in this case.

3. **The petition averments are as follows:-** The petitioner is the 7th accsued in this case. The offences alleged against the petitioner are under sections 143, 147, 283, 149 of IPC, 4(2) of Kerala Public Way Restriction of Assemblies and Procession Act, 2011. Petitioner is innocent and has nothing to do with the offences alleged against him. The allegation is that the strike committee protesting against the illegal encroachment of the public playground situated at the western side of Vadayambady Bhajanamadam Temple, by the Temple Committee backed by Nair Service Society Members, called for a

Dalith Self -respect Convention through social media as part of their ongoing agitation against cast oppression and on 04.02.2018 conducted a march to the Temple and the same was stopped by the Police. Infuriated by this police action accused with an intention to obstruct the national highway at about 3:00 p.m. on the same day formed themselves into an unlawful assembly and marched towards the Puthencruz Police Station shouting provocative slogans and assembled before the police station occupying the national highway and footpaths and thereby committed the offences. After dispersing the accused, Inspector of Police, Puthencruz suo moto registered Cr.163/2018 against 7 named accused and another 100 identifiable persons under SS.143, 147, 283 and 149 of IPC besides S.4(2) of the Kerala Public Way (Restriction of Assemblies and Procession) Act, 2011. The investigation was carried out by the very same inspector who registered the crime and he laid the charge before this court for the aforesaid offences. It is most humbly submitted that petitioner's name is not recorded in the FIR in the above crime. Out of 14 charge witnesses cited in this case by the prosecution nobody speaks about the involvement, not even the name, of the petitioner in the above case. None of the witnesses had given statement identifying the petitioner. This being so, arraying the petitioner as an accused in the above case is unjust.

4. Copy served to the prosecution. Though the learned Assistant Public Prosecutor on behalf of the prosecution opposed the application he could not put forth any convincing arguments making the petitioner dis-entitled for the discharge.

5. Heard. Perused the records.

6. The point that arise for consideration:-

1. The petition is to be allowed or not ?

7. **Point No:1 :-** As per the section 258 of Cr.P.C. The power of the court to discharge the accused is restricted to those cases instituted otherwise than on complaint wherein the allegations in the charge sheet does not attract any offence. By perusing the records it can be seen though 14 witnesses were cited by the investigating officer to prove the prosecution case, none of the witnesses had stated with regard to the involvement of the petitioner in the commission of offence. It is also seen that none of the witnesses had identified the accused. In the final report nor the 161 statement of the witnesses, there is no evidence against the petitioner, I think this case will not lie against the petitioner as there is no prima facie case against him. In the result the petition is allowed and the proceedings against the petitioner is hereby dropped under section 258 of Cr.P.C.

In the result:-

The petition is allowed and the proceedings against the petitioner/
7th accused is dropped under section 258 of Cr.P.C.

(Dictated to the Confdl, Asst, transcribed and typed by her, corrected by me and pronounced in open court on this the 20th day of September, 2024.)

Sirsha N A
Judicial Ist Class Magistrate
Kolencherry