

**IN THE COURT OF SESSIONS, THALASSERY**

Present: Sri. K.T.Nisar Ahammed, Sessions Judge.

Thursday, the 19<sup>th</sup> day of March, 2026/28<sup>th</sup> Phalguna, 1947

**CRIMINAL APPEAL No.344 OF 2023**

From which Court the appeal is preferred : Judicial First Class Magistrate Court, Thalassery.

No. of case in that Court : CC 195/2016

Name and description of the Appellants. : 1. Poovali Rajesh, Aged 52 years, S/o. Lakshmanan, Residing at Poovali House, Kodyeri Amsom, Kommal Vayal.  
2. Shamal.A, Aged 34 years, S/o. Mani, Residing at Asha Nivas, Templegate. P.O, Thalassery.  
3. Siju. M.K, aged 47 years, S/o. Purushothaman, Residing at Surabhi House, Templegate. P.O, Kodyeri amsom.  
4. Riju M.K, aged 39 years, S/o. Purushothaman, Residing at Surabhi House, Templegate. P.O, Nangarath Peedika.  
5. Sarath Sasi, aged 36 years, S/o. Sasi, Residing at Suresh House, Templegate.P.O, Nangarath Peedika.  
6. T.Raghavan, aged 64 years, S/o. Kannan, Residing at Surabhi House, Paral, Kodyeri amsom.  
7. Aravindhakshan, aged 57 years, S/o. Raghavan, Residing at Arathi House, Kodyeri amsom, Paral.P.O  
8. Jayarajan M. V, aged 70 years, S/o. Balakrishnan, Residing at Kizhakkayil House, Thiruvangad amsom, Vayalalm P.O Templegate.

9. Satheesan.A.P, aged 60 years,  
S/o. Kumaran, Residing at Pullunda  
House, Paral. P.O, Kodyeri.
10. Prasad M.C, aged 34 years,  
S/o. Mohan, Residing at Mathrumozhi  
House, Paral. P.O, Mamballikunnu.

Name and description of the Respondent.	: State: Rep. by Public Prosecutor, Thalassery.
The sentence and the provision of law under which it was imposed by the trial Court.	: The accused No.1, 3, 4, 5, 6, 7, 8, 9, 13 and 14 are convicted U/s 255 (2) Cr.P.C. for the offences under Sec. 143, 147, 153 and 427 r/w 149 IPC. The accused No.1, 3, 4, 5, 6, 7, 8, 9, 13 and 14 are sentenced to pay fine of Rs. 1000/-(Rupees One Thousand only) each for the offence under S. 143 r/w. 149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 10 days, to pay fine of Rs. 1000/- (Rupees One Thousand only) each for the offence under S. 147 r/w. 149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 10 days, to pay fine of Rs. 2000/- (Rupees Two Thousand only) each for the offence under S. 153 r/w. 149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 20 days and to pay fine of Rs. 1,000/- (Rupees One Thousand Only) each for the offence under S. 427 r/w. 149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 10 days.
Whether confirmed, reversed or modified and if modified, the modification	: Reversed. The appeal is allowed. The impugned judgment of conviction and sentence is set aside and the appellants are acquitted u/s.248(1) of Cr.P.C, for all offences. Bail bonds cancelled and they are set at liberty.

## Date of or on which

Presentation	Filing	Issuance of notice to the respondent	Appearance of respondent
1	2	3	4
16.12.2023	19.12.2023	19.12.2023	--
Appellant ordered to appear	Release on execution of bail bond	Final Hearing	Judgment
5	6	7	8
--	--	03.03.2026	19.03.2026

This appeal coming on for hearing before me, upon perusing the appeal and the record of the evidence and proceedings and upon duly considering the same after hearing the arguments of Sri.K.Sathyan, Advocate for the Appellants; Sri. K. Ajith Kumar, Public Prosecutor for the State/Respondent; I do adjudge and pass the following:-

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

Appeal against the judgment of conviction and sentence passed by the Judicial First Class Magistrate, Thalassery dated 21.11.2023 in CC.195/2016.

2. The appellants/accused (A1, A3 to A9, A13 and A14) along with four others were charge sheeted by the Sub Inspector of Police, New Mahe Police Station for the offences punishable u/ss.143, 147, 153, 427, 283 r/w.149 IPC in Crime No.539/2015 of the same Police Station.

3. The allegation was that, the appellants along with others, the workers of CPI(M) had formed an unlawful assembly and committed riot on 06.09.2015 at 5.50p.m at Komman Vayal- Madapeedika Public Road. It is alleged that they had caused obstruction to the road by

conducting a procession and destroyed the gate of Manapally Kavu Durga Devi Temple at Komman Vayal, Kodyeri with intent to cause riot and caused damage to the tune of Rs.15,000/-. Thereby, the accused have committed the above offences.

4. The learned Magistrate framed the charge u/ss.143, 147, 153, 427 and 283 r/w.149 of IPC against accused Nos.1, 3 to 14. The prosecution has examined PWs.1 to 5 and marked Exts.P1 to P5. Then after complying Sec.313(1)(b) of Cr.PC., opportunity was given for defence evidence. The accused did not adduce any evidence. The report filed by the Police with regard to the non-availability of CW.8, the investigating officer was marked as Ext.C1. Then, after hearing both sides, as per the impugned judgment, the learned Magistrate found the accused (A10, A11 and A12) not guilty for all the offences and they were acquitted. The appellants/accused (A1, A3 to A9, A13 and A14) are also found not guilty u/s.283 r/w.149 of IPC and acquitted for that offence, but they were found guilty and convicted u/s.255(2) of Cr.PC, for the offences u/s.143, 147, 153 and 427 r/w.149 IPC. They were sentenced to pay fine of Rs.1000/- (Rupees One Thousand only) each for the offence under S.143 r/w.149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 10 days. To pay fine of Rs.1000/- (Rupees One Thousand Only) each for the offence under Sec.147 r/w.149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 10 days. To pay fine of Rs.2000/- (Rupees Two Thousand only) each for the offence under S.153 r/w.149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 20 days and to pay fine of Rs.1000/- (Rupees One Thousand only) each for the offence under S.427 r/w.149 IPC, in default of payment of fine, they shall undergo Simple Imprisonment for a period of 10 days.

5. Aggrieved by the above judgment of conviction and sentence, the appellants/accused preferred the present appeal on following grounds:

The impugned judgment is against law and weight of evidence. The trial court went wrong in convicting the appellants. There is no evidence to connect the accused into the crime. The conviction u/s.153 of IPC is illegal for want of sanction from the Government. The trial court went wrong in relying on the evidence of PWs.1 to 3, the workers of BJP/RSS who are interested witnesses. There is no independent witness. The sentence imposed is also exorbitant. Hence the appellant prays for allowing this appeal and to set aside the impugned judgment of conviction and sentence.

6. Notice issued to the respondent. Trial Court records were called for.

7. Heard both sides.

8. Now, the points that arise for consideration are:

- 1) Whether there is any illegality or impropriety in the impugned Judgment of conviction and sentence ?
- 2) If so, what should be the order?

9. **Point No.1 :-** The learned counsel for the appellants has submitted that admittedly, PWs.1 to 3 are BJP workers and the accused are workers of CPM. The chance of false implication because of political rivalry cannot be ruled out. PWs.1 to 3 have deposed that they have witnessed the incident, but their evidence is contradictory and cannot be believed at all. There is no chance of PWs.1 to 3 witnessing the incident. Ext.P1 is not the FI Statement in this case. PWs.1 to 3 have categorically deposed that they had given a written petition before the Police on the same day. According to PW.3, from

the place of incident itself, Police recorded his statement and the Police was very well present at the scene of occurrence. So, according to PWs.1 to 3, they have given a written petition. But, Ext.P1 is not a written petition. That itself shows that Ext.P1 is not the FI Statement. It is the specific case of the prosecution that the accused had destroyed the gate and caused a damage Rs.15,000/- with intent to cause riot. But, going by Ext.P2 scene mahazar, one cannot see any damage to the gate. For a conviction u/s.153 of IPC, the sanction of the Government is required. No sanction obtained in this case. Here, it has come in evidence that the gate was installed without getting permission. So, it is an object installed illegally. Even if, it is found that it was damaged, there cannot be an offence. Hence, the learned counsel prays for allowing this appeal.

10. The learned Public Prosecutor has submitted that there is absolutely no illegality or impropriety in the impugned judgment. The trial court has properly appreciated the evidence and came to the right conclusion. The sentence imposed is also very reasonable. Hence, the learned Public Prosecutor prays for dismissal of the petition.

11. Here, the prosecution case is that the appellants herein along with others formed an unlawful assembly, did procession through Komman Vayal- Madapeedika Public Road on 06.09.2015 at 5.50p.m. They are the workers of CPM. They had destroyed the gate of Manapally Kavu Durga Devi Temple at Komman Vayal, Kodyeri and caused a damage of Rs.15,000/-, with intent to cause riot. Thereby, they have committed the offences punishable u/ss.143, 147, 153, 427, 283 r/w.149 of IPC.

12. The trial court has already acquitted the appellants for the offence u/s.283 IPC, but convicted them for all other offences. One of

the main argument of the learned counsel for the appellants was that the conviction u/s.153 of IPC is barred for want of sanction u/s.196 of Cr.P.C. The learned counsel has invited my attention to the ruling reported in 2015 (2) KHC 570 Joy Cherian v. Sub Inspector of Police, Thampanoor and Others. I find merit in the above submission. Going by Section 196 of Cr.P.C, there is a clear bar for taking cognizance of any offence punishable under Chapter VI or under section 153-A, of IPC except with the previous sanction of Central Government or State Government. In the ruling relied on by the learned counsel, the Hon'ble Supreme Court has held that, Section 196 Cr.P.C creates a bar for taking cognizance u/s.153 and 153A without sanction. So, cognizance itself is barred u/s.196 of Cr.P.C , without the sanction of the Government. If that be so, the conviction of the appellants u/s.153 of IPC is illegal and for that reason alone, the conviction u/s.153 of IPC is to be set aside.

13. The other main argument of the learned counsel was that, Ext.P1 is not the FI Statement in this case. According to PWs.1 to 3, they have given a written petition before the Police on the same day itself. According to PW.3, his statement was recorded by the Police from the spot itself. He has further deposed that the Police was present at the scene of occurrence. Here, admittedly, Ext.P1 is not a written petition given either by PW.1 or PWs.2 and 3. Ext.P1 is the statement of PW.1 recorded by SCPO on 06.09.2015 at 7.35 hours. So, I find merit in the submission of the learned counsel. Ext.P1 is not the FI Statement of this case. The alleged written petition given by PWs.1 and 2 was suppressed. There is every circumstance to doubt the suppression of the original FI Statement since, the accused are members of a political party and PWs.1 to 3 are the workers of another political party. Admittedly, there were political rivalry between them. In such a circumstance, the above submission of the

learned counsel that there is suppression of original FI Statement is very relevant. It is also pertinent to note that according to PWs.1 to 3, there were more than 100 people. It can be seen that, out of 100 people, the prosecution has picked up 14 persons. Of-course, nothing wrong in picking up, provided there is sufficient evidence. Here, it is brought in evidence that the original FIS was suppressed. So, that creates a strong doubt in the case of the prosecution. In this regard, the learned counsel has invited my attention to the ruling reported in 1998 KHC 114 Peethambaran vs. State of Kerala. There, the Hon'ble High Court has held that, suppression of the true first information report entitles the accused the benefit of doubt. That was a case where PW.1 and PW.5 therein deposed before the Court that soon after the occurrence, they went to Kilimanoor Police and given information to the Sub Inspector of Police, but the S.I of Police did not record their statements. But, in fact, the Police recorded the statement, but that statement was suppressed. There, the Hon'ble High Court has held that accused is entitled for the benefit of doubt. Here also, PWs.1 to 3 have categorically deposed that, soon after the incident, they went to Police Station and given a written petition and that petition was not produced. So, I find merit in the submission of the learned counsel.

14. Another submission of the learned counsel was that, even if, it is alleged that the accused had destroyed the temple gate, but going by the scene mahazar, one cannot see any damage to the alleged gate. I find merit in the submission of the learned counsel. On going by the scene mahazar, one can see that a gate with the writing, " Chellath Madappura Temple" was found placed on the electric post at the alleged scene of occurrence. This gate was not fixed on the ground. If it was fixed on the ground and plucked, definitely, there would be some evidence on the ground. So, one can

see that there is no evidence to show that this gate which was fixed on the ground and it was uprooted by the accused. There is no evidence to show that it was damaged. It was only found placed on the electric post.

15. So, from the above discussion, I hold that there is merit in this appeal. The impugned judgment of conviction and sentence is illegal and improper and liable to be set aside. The point is answered in favour of the appellants.

16. **Point No.2:-** In view of my findings on point No.1, the appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside and the appellants are acquitted u/s.248(1) of Cr.P.C, for all offences. Bail bonds cancelled and they are set at liberty.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court, this the 19<sup>th</sup> day of March , 2026).

Sd/-

SESSIONS JUDGE

Typed by : Bhagyarajan.C  
Compared by : Manjush.C

**IN THE COURT OF SESSIONS,  
THALASSERY**

CRIMINAL APPEAL No:344/2023

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

DATED :19.03.2026

To

- 1.The Registrar, High Court of Kerala,  
Ernakulam, Kochi - 682 031.
- 2.The Judicial First Class Magistrate,  
Thalassery.
- 3.The Public Prosecutor, Thalassery.
- 4.The Appellant.

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