

**IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS,
TALIPARAMBA**

Present:- Sri.**Prasanth.K.N**, Additional District and Sessions Judge

Friday, the 29th day of May, 2026/ 8th Jyeshtha, 1948

CRIMINAL APPEAL No. 227 OF 2019

From which Court the appeal is preferred	Judicial First Class Magistrate, Taliparamba																
No. of the case in that Court	CC 160/2013																
Name and description of the Appellants	<table><tr><td>1.</td><td>Ashraf, S/o.Aboobacker, aged 42 years, Kuttukkantakath House, Manna, Taliparamba amsom, Taliparamba (PO), Kannur Dist.</td></tr><tr><td>2.</td><td>Shamseer, S/o.Kareem, aged 32 years, Parambilakath House, Taliparamba (PO), Taliparamba amsom, Kannur Dt. 670141.</td></tr><tr><td>3.</td><td>A.P.Ashraf, S/o.Ibrahim, aged 33 years, Annacheerakath Puthiyapurayil House, Perumalabad, Chapparapadavu (PO), Kooveri, Kannur Dist. 670581.</td></tr><tr><td>4.</td><td>Anwarsadath, S/o.Yousuf.P, aged 37 years, Haseeja Manzil, Pappinisseri amsom, Pappinisseri (PO), Kannur Dt. 670561</td></tr><tr><td>5.</td><td>Rashid, S/o.Muhammedkunhi, aged 33 years, Panikkarakath House, Nhattuvayal, Taliparamba (PO), Kannur Dist. 670141.</td></tr><tr><td>6.</td><td>Manzoor, S/o.Muhammed Kunhi, aged 39, Kadungon Puthiyapurayil, Allamkulam, Taliparamba (PO), Taliparamba amsom, Kannur Dist. 670141.</td></tr><tr><td>7.</td><td>Moideen, S/o.Ali, aged 39 years, Pallakkan House, Mukkola, Taliparamba PO Taliparamba amsom, Kannur Dist. 670141.</td></tr><tr><td>8.</td><td>Subair, S/o.Muhammed, aged 39 years, Bathali House, Mukkola, Taliparamba PO, Taliparamba amsom, Kannur Dist. 670141.</td></tr></table>	1.	Ashraf, S/o.Aboobacker, aged 42 years, Kuttukkantakath House, Manna, Taliparamba amsom, Taliparamba (PO), Kannur Dist.	2.	Shamseer, S/o.Kareem, aged 32 years, Parambilakath House, Taliparamba (PO), Taliparamba amsom, Kannur Dt. 670141.	3.	A.P.Ashraf, S/o.Ibrahim, aged 33 years, Annacheerakath Puthiyapurayil House, Perumalabad, Chapparapadavu (PO), Kooveri, Kannur Dist. 670581.	4.	Anwarsadath, S/o.Yousuf.P, aged 37 years, Haseeja Manzil, Pappinisseri amsom, Pappinisseri (PO), Kannur Dt. 670561	5.	Rashid, S/o.Muhammedkunhi, aged 33 years, Panikkarakath House, Nhattuvayal, Taliparamba (PO), Kannur Dist. 670141.	6.	Manzoor, S/o.Muhammed Kunhi, aged 39, Kadungon Puthiyapurayil, Allamkulam, Taliparamba (PO), Taliparamba amsom, Kannur Dist. 670141.	7.	Moideen, S/o.Ali, aged 39 years, Pallakkan House, Mukkola, Taliparamba PO Taliparamba amsom, Kannur Dist. 670141.	8.	Subair, S/o.Muhammed, aged 39 years, Bathali House, Mukkola, Taliparamba PO, Taliparamba amsom, Kannur Dist. 670141.
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Name and description of the Respondents	State of Kerala rep. by Public Prosecutor, Thalassery, through SHO, Taliparamba Police Station, Kannur Dist.																

The sentence and the provision of law under which it was imposed in the lower Court.	Convicted.
Whether confirmed, reversed or modified and if modified the notification	Allowed.

Date of or on which

1	Presentation	05.08.2019
2	Filing	05.08.2019
3	Issuance of notice to the respondent	06.08.2019
4	Appearance of respondent	--
5	Appellant ordered to appear	--
6	Release on execution of bail bond	03.06.2013
7	Final hearing	26.05.2026
8	Judgment	29.05.2026

This petition coming on this day for hearing before me in the presence of S/Sri.K.P.Muhammed Basheer & Muhammed Janaise.V, Advocates for the Appellants and the tribunal passed the following:-

JUDGMENT

1. This captioned criminal appeal was patently preferred under **Section 374(3)(a)** of the Code of Criminal Procedure, against the order of conviction and sentence in **C.C. No. 160/2013** dated 18.07.2019 of the Judicial First-Class Magistrate Court, Taliparamba, for the offences under **Sections 143, 147, 341, 353 r/w 149** of the **Indian Penal Code**.

2. For the sake of convenience, the appellant will be referred to as the **accused**, the Code of Criminal Procedure, 1973, hereinafter referred to as **Cr.P.C**, the Indian Evidence Act, 1872, hereinafter referred to as **Evidence Act**

and the Indian Penal Code, 1860, hereinafter referred to as **IPC**.

Case of the prosecution

3. On 18.09.2012 at 2.00 pm, while the Junior Health Inspectors of Taliparamba Municipality were engaged in evicting the unauthorized street vendors at Taliparamba town, all the accused formed themselves into an unlawful assembly, wrongfully restrained the officers and obstructed them from discharging their official duty with a common object. Thus, the accused had allegedly committed the aforesaid offences.

The investigation

4. Based on the Ext.P9, a petition given by CW1 Municipal Secretary, PW8 registered an FIR as **Crime No. 1257/2012** of Taliparamba police station under **Sections 143, 147, 341, 353 r/w 149** of the **IPC**. Following the registration of the crime, the investigation was conducted by PW9, and upon its conclusion, he submitted the final report under **Section 173(2)** of the **Cr.P.C.** before the Judicial First-Class Magistrate Court, Taliparamba.

The inquiry

5. Upon perusing the police report and the relevant documents annexed thereto, the learned Magistrate took cognizance of the offences punishable under **Sections 143, 147, 341, 353 r/w 149** of the **IPC** against the accused as **CC 160/2013**. At the time of cognizance of the case, the accused were on bail, and they appeared before the court upon issuance of summons, defended by the lawyer of their own choice. After serving the relevant documents and complying with the legal formalities of **Section 207** of **Cr.P.C**,

upon consideration of the prosecution records and after hearing the prosecution and defence, the trial court framed charges against the accused under **Sections 143, 147, 341, 353 r/w 149** of the **IPC**, to which they pleaded not guilty and claimed to be tried.

The trial

6. To prove the case, the prosecution has examined witnesses PW1 to PW10, and the documents Ext.P1 to P10 were marked. Neither oral nor documentary evidence has been adduced from the side of the accused.

7. After the closure of prosecution evidence, the accused was questioned under **Section 313(1)(b)** of **Cr.P.C**, enabling him to explain all the incriminating circumstances against them. The accused denied all the circumstances appearing in evidence against them and stood by their plea of innocence. During the trial, the seventh accused absconded, and the charge against him was split up and refiled as CC 769/2019.

The Judgement

8. The trial court, after the appreciation of evidence, found the accused guilty of the offence under **Sections 143, 147, 341, 353 r/w 149** of the **IPC**, convicted the accused, and sentenced them to undergo simple imprisonment for one month under Section 341, simple imprisonment for one month under Section 143, simple imprisonment for six months and to pay fine of ₹500 each under Section 147, in default of payment of fine they shall undergo simple imprisonment for one month, simple imprisonment for one year

and to pay fine of ₹500 each under Section 353 of IPC, and in default of payment of fine they shall undergo simple imprisonment for two months. Aggrieved by the impugned judgment, this appeal has been preferred by the accused.

9. In alignment with statutory procedure, both sides were heard, and the records were perused. No fresh evidence was adduced during this appellate stage.

10. Having heard the compiling arguments, the following points are subjoined and arise for consideration.

Points for consideration

1. *Did the accused form themselves into an unlawful assembly with a common object to commit an offence as alleged by the prosecution?*
2. *Did the accused form themselves into an unlawful assembly with a common object to commit riot, as alleged by the prosecution?*
3. *Did the accused wrongfully restrain the witnesses as alleged by the prosecution?*
4. *Did the accused use criminal force against a public servant with the intention to deter them from discharging their public duty, as alleged by the prosecution?*
5. *Whether the accused had committed any offences as alleged?*
6. *Are the impugned conviction and sentence passed by the trial court subject to interference?*
7. *If so, what should the sentence or order be?*

Discussion on Points No. 1 to 6

11. The ingredients and evidence for all points are the same, so they are considered together for brevity and convenience. Before entering the discussion, it is necessary to set out the evidence adduced by the prosecution to better understand the case.

Prosecution Evidence

12. In order to prove the case, the prosecution has examined the officials of the municipality as occurrence witnesses, PW1, PW3 and PW10 and the eye witnesses to the incident, PW2, PW4 to PW7. The independent eyewitnesses, PW2, PW4, PW5, and PW6, and the scene mahazar witness, PW7, were turned hostile to the prosecution and deviated from their previous statements. The assistant public prosecutor sought permission to put the questions that may be asked during the cross-examination under **Section 154** of the **Evidence Act**. Even after granting permission, nothing has been elicited from them in further examination in favour of the prosecution. However, PW7 identified his signature in the scene mahazar, which was marked as Ext.P1.

13. The occurrence witnesses, PW1, PW3 and PW10, stated that, as per the instruction of the municipality on 18.09.2022 at 2.00 pm, they tried to evict the unauthorized street vendors, who were engaged in street selling at Market Road, Taliparamba. Then the accused wrongfully restrained the municipality's Jeep, removed the key from the vehicle, and also grabbed PW10 by the collar. The accused removed the seized property from the Jeep and obstructed their official duty. At the dock, PW1 identified four accused, PW3

identified three accused, and PW10 identified one accused.

14. The Grade SI, PW8, registered Ext.P2 FIR based on the petition filed by the Municipal Secretary, CW1. The investigating officer, PW9, proceeded to the scene of the occurrence, prepared Ext.P1 scene mahazar, and the first accused was arrested by Ext.P3 arrest memo, and his name and address were added by Ext.P4 report. The other accused were surrendered to the police, as per the direction of the Hon'ble High Court of Kerala, and their arrests were recorded in Ext.P5 and Ext.P6, and they were added by Ext.P7. One of the accused was dropped by Ext.P8, and after recording the statement of the witnesses and concluding the investigation, he filed the final report.

Discussion on identity

15. Immediately after the occurrence, Ext.P1 petition was submitted by PW1 and PW10 jointly to CW1, the secretary of Taliparamba Municipality, by narrating the incident. Based on the petition, CW1 prepared Ext.P9 and submitted it to the Taliparamba police. Consequent to this information, Ext.P8 FIR was registered by PW8. Neither in the Ext.P10 petition nor in the Ext.P9 FIS is there a whisper regarding the identity of the accused by their name, address or physical features. The witnesses stated that the autorickshaw drivers interfered with their duty, and Ext.P9 stated that the obstruction of public duty occurred. On 29.09.2012, without any information regarding the identity of the accused, the first accused was arrested and remanded to police custody. His name and address were added by Ext.P4 only after his arrest. The other accused

surrendered before the investigating officer as per the direction of the High Court in BA No.7709/2012, and the name and address of the accused were added on 02.10.2012. Then the question is, the FIR was registered against some unidentified persons without any indication of their identity, and how the police reached the conclusion that the accused are the actual culprits

16. Significantly, as per the evidence of occurrence witnesses, several persons were gathered at the place of occurrence during the incident. Apart from that, no specific overt act by the assailants was mentioned in either the documents or the evidence of the witnesses to the occurrence. Interestingly, some witnesses identified the accused in general, without specifying their overt acts. The statement regarding the presence and identity of the accused, without any specification, is unknown to the law and will not assist the prosecution in fixing culpability on the accused. Apart from that, there is no previous acquaintance between the witnesses and the accused, and they were not identified during the investigation. In such circumstances, the identification of the unidentified assailants, seven years after the occurrence at the dock, is unsustainable by law and cannot be accepted.

Discussion on public duty

17. It is incumbent on the prosecution to prove the basic ingredients of discharging the public duty by the witnesses to attract the offences. The absence of the production of the Government order, the order of the Municipal Secretary, or the resolution of the municipal committee to evict the

unauthorized street vendors in the locality indicates a lack of proof of discharge of public duty. The Junior Health Inspectors PW1 and PW10, and the temporary driver PW3, are not officially designated persons to evict the street vendors by any law. In the absence of the provisions in the Panjayath Raj Act or any other laws, there should be a specific order from the Government or other authority to perform such duty by the Junior Health Inspectors. The prosecution's failure to produce the order or any documents, coupled with the non-examination of CW1, the municipal secretary, would be fatal to the prosecution's case. Furthermore, the duty register of the occurrence witnesses has not been produced before the court for verification.

18. Significantly, all the independent witnesses were turned hostile, and the entire prosecution case depends upon the oral evidence of official witnesses. In such a scenario, the failure to properly identify and the absence of proof of public duty, coupled with the omission of a separate and specific overt act by the accused, would render the prosecution's case unworthy of acceptance. Likewise, some people gathered and exchanged words with one another. In such a scenario, the court cannot go behind them without proving their identity and the official duty of the public servants

Conclusion

19. The street vendors, selling essential commodities or vegetables to common people for their livelihood, could not be treated as offenders. If some people tried to obstruct their livelihoods without any order, they would naturally

resist it. That was not with the intention of doing a criminal act, but as a matter of existence. As observed by the Apex Court in *Olga Tellis v. Bombay Municipal Corporation, 1985 (3) SCC 545*, the right to life under **Article 21** of the Indian Constitution includes the right to livelihood of a common man.

20. Upshot to the above discussion, all circumstances lead to suspicion, and all the accused are entitled to the benefit of the doubt. It is the well-settled plethora of judicial precedents of constitutional courts and the basic principles of criminal jurisprudence in an accusatorial system, that the suspicion, however strong, cannot take the place of proof. The accused is presumed to be innocent unless proven guilty without any shadow of suspicion, as enumerated in *Hanumant Govind Nargundkar V. State of MP, AIR 1950 SC 343*.

21. Due to the **inconsistent version of the occurrence witnesses, the omission of crucial ingredients, and the failure of proper identification**, this court found that the prosecution has miserably failed to prove the charge against the accused beyond any reasonable doubt, and was inclined to accept the version of the defence without any hesitation. Points 1 to 6 are answered accordingly and found against the prosecution.

The finding/ Point No.7

22. These points are interconnected and considered together for convenience. The trial court has neither analyzed nor appreciated the evidence in a proper manner. Upshot of the above discussion, to meet the ends of justice,

this court holds that the impugned judgment requires interference. The challenge raised on merits in these circumstances must succeed, and therefore, the conviction arrived at by the trial court is hereby set aside.

Resultantly,

1. The appeal is allowed.
2. The conviction of the accused by the trial court under **Sections 143, 147, 341, 353 r/w 149** of the **IPC** is hereby set aside.
3. The bail bond of the appellants stands cancelled, and they are set at liberty.
4. Any amount deposited by the accused at the time of suspending the sentence before this court or the trial court shall be returned to them on application.
5. The material objects, if any, being valueless, shall be destroyed in accordance with the rule after the appeal period and, if an appeal is preferred, after the appeal is disposed of.

(Dictated to the Confidential Assistant, transcribed and prepared by her, in computer, corrected and pronounced by me in open court on the 26th day of May 2026.)

Sd/
**ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TALIPARAMBA**