

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
TALIPARAMBA

PRESENT : Sri. Anuraj.M.V.,

Judicial First Class Magistrate, Taliparamba

Dated this the 16th day of March, 2026/ 25th day of Phalguna, 1947

Calender case No. 2926/2023

Complainant : State represented by the S.I of
Police, Taliparamba police station in
Crime No. 140/2015
(By Sri.Abdussatar.V.P., A.P.P.)

Accused : M.K.Ismail
(By Adv. K.P.Muhammed Basheer)

Offence : U/s. 143, 145, 147, 341, 323, 332 r/w
149 IPC

Plea : Not guilty

Finding : Not guilty

Sentence/Order : Acused is acquitted u/s. 248(1) of
Cr.PC.

Description of accused

Sl. No	Name	Father's Name	Residence	Occupation	Age
1	2	3	4	5	6
1	M.K.Ismayil	Ibrahim	Mottammal Kuthirappuram, Ariyil	-----	26/15

Date of :-

Occurrence	Complaint	Apprehension of appearance	Released on bail	Commencement of trial	Close of trial	Sentence/ Order	Explanation of delay
23-01-15	23-01-15	30-01-18	30-01-18	30-01-18	11-03-26	16-03-26	

JUDGMENT

This is a case charge sheeted by the Sub Inspector of police, Taliparamba police station in crime No. 140/15 against accused alleging commission of offences punishable U/s. 143, 145, 147, 341, 323, 332 r/w 149 IPC.

2. The prosecution case in brief is as follows:- On 23/01/2015 at about 07.00 am at Kuthirappuram in Pattuvam amsom, the accused along with 25 other identifiable persons unlawfully assembled and wrongfully restrained the police party who came to the arrest of the first accused in cr.no. 125/15 of Taliparamba police station and thereby obstructed the police party from discharging their official duty and also the accused attacked the police party. Thus, the accused committed offences punishable U/s. 143, 145, 147, 341, 323, 332 r/w 149 IPC.

3. Originally, the case was taken on file as CC 1287/2015. A1, A3 and A5 appeared before the court in that case and they were released on bail. Copies of all relevant documents were furnished to them. Thereafter on hearing both sides, charge u/s. 143, 145, 147, 341, 323, 332 r/w 149 IPC

was framed, read over and explained to the accused. They pleaded not guilty and claimed to be tried.

4. Thereafter, from the side of prosecution PW1 to PW7 witnesses were examined and Ext.P1 to P15 documents were marked. Since A3 (accused herein) was absconded at the time of questioning u/s. 313 Cr.PC and the judgment was pronounced against A1 and A5. Case against A3(accused herein), A2 and A4 was split up and refiled as CC 1823/2023. Later, that case was transferred to LPC 30/2025. Subsequently, A3 (accused herein) was surrendered before the court and case against him was split up and refiled as the above case. He was released on bail. The above accused faced trial in CC 1287/15 upto the stage of questioning u/s. 313 Cr.PC. Hence, accused was questioned u/s 313 Cr.P.C. He denied all the incriminating circumstances appearing in evidence against him. Thereafter, accused was called upon to enter his defence and to adduce his evidence. No evidence was adduced on the side of the defence.

5. The following points arise for consideration.

- (1) Has the prosecution proved that the accused was member of unlawful assembly and thereby committed the offence punishable u/s. 143 of IPC?
- (2) Has the prosecution proved that the accused continued as member of the unlawful assembly knowing that it was commanded to disperse by PW1 and party and there by committed the offence punishable U/s. 145 of IPC?

- (3) Has the prosecution proved that the accused as member of unlawful assembly caused rioting and thereby committed the offence punishable u/s. 147 of IPC?
- (4) Has the prosecution proved that the accused in prosecution of their common object wrongfully restrained the police officials and thereby committed the offence punishable under section 341 of IPC?
- (5) Has the prosecution proved that the accused in prosecution of their common object voluntarily caused hurt to the police officials and thereby committed the offence punishable under section 323 of IPC?
- (6) Has the prosecution proved that the accused in prosecution of their common object caused hurt to the police officials in the discharge of official duty and thereby committed the offence punishable under section 332 of IPC?
- (7) Has the prosecution proved that the accused acted in prosecution of their common object?
- (8) If found guilty what is the order as to sentence and punishment?

6. **Points Nos. 1 to 7:-** These points are considered together for convenience and to avoid repeated discussion of the same evidence. Before going to the legal aspect of the case, I may briefly survey the evidence

given by the prosecution. PW1 to PW4 are the ocular as well as the injured witnesses. PW1, the then Sub Inspector of police, Taliparamba police station, deposed before the court that on 23.01.2015 at about 6.40 am received secret information to the effect that the accused in cr.no. 125/15 of the same police station were hiding in his house at Pattuvam, Kuthirapuram. The factum of secret information informed to the DYSP of Taliparamba, based on his advice, after preparing the advance search memorandum, PW1, PW2, PW3 and PW4 went to the residence of the first accused.

7. When the first accused noticed the presence of the police party, they tried to escape. He was apprehended by the police party and tried to be taken into the official jeep. On hearing of the clamour, 25 identifiable persons made an unlawful assembly and obstructed the police party and tried to release the first accused, who was apprehended by the police party. The 25 persons assembled unlawfully and caused hurt to the police party, and obstructed the police party in the discharge of their official duty. PW1 to PW4 suffered injuries and after using sufficient force, the first accused was taken into custody, and after medical attention to the injured, this crime was registered against the accused. The FIR registered by PW1 is marked as Ext.P1. The complaint is marked as Ext.P1(a). The notebook shows the details of the duty marked as Ext.P2.

8. PW2, PW3 and PW4, who were then working in Taliparamba police station, also deposed in tune with the evidence given by PW1. The notebook evidencing the duty of PW4 is marked as Ext.P3. PW5, who was

then working as a Medical officer at Taliparamba Taluk hospital, deposed before the court that on 23.01.2015 at about 7.35 am, he examined the witnesses and issued the wound certificates. The wound certificates were marked as Ext.P4 to P10. PW6, who was deposed before the court while working as WCPO at Taliparamba police station, witnessed the seizure and signed the seizure mahazar and the seizure mahazar is marked as Ext.P11. PW7, the then ASI of Taliparamba, deposed that he took up the investigation and prepared the scene mahazar, and the mahazar is marked as Ext.P12. After that, he arrested the first accused and the arrest and inspection memo is marked as Ext.P13. Thereafter, he filed the report for adding the accused no. 2 to 5, and the report was marked as Ext.P14. The document list prepared by PW7 is marked as Ext.P15. After completing the investigation filed the final report.

9. at the time of addressing before the court, the learned APP vehemently argued that the prosecution had proved the case beyond reasonable doubt and the guilt of the accused. The evidence of PW1 to PW7 and Ext.P1 to P15 is unshaken and proves the accused's guilt. There is no contradiction or inconsistencies in the evidence of PW1 to PW7. Therefore he prayed to award an appropriate sentence against the accused.

10. Learned counsel for the accused per contra refuted the arguments by the learned APP. According to the counsel for the accused, no such incidents have happened as alleged by the prosecution. The police fabricated a story against the accused and registered this crime. When PW1 to PW4 mounted the box, they were stealthily cross examined by the

counsel for the accused. According to the counsel, to attract the criminal culpability u/s. 332 IPC. The prosecution must prove that PW1 to PW4 were discharging their official duty at the time that the offence was alleged to have been committed. According to him, there are no documents or evidence before the court to satisfy that PW1 to PW4 were discharging their official duty. Per contra, the learned APP opposed the argument put forward by the counsel for the accused and submitted that Ext.P2 and P3 proved that the witnesses were discharging of their official duty at the time the offence was committed.

11. On going through Ext.P2 and P3, it can be seen that Ext.P2 is the duty notebook of PW1 and Ext.P3 is the duty notebook of PW4. The prosecution produced no other documents. When PW1 mounted the box, he deposed before the court that page no. 87 of Ex P2 will show that he was on official duty when the offence was alleged to have been committed. Ext.P3 also shows the official duty. So, according to the learned APP, the oral evidence of PW1 to PW4 was corroborated by Ext.P2 and P3 and proved that PW1 to PW4 was discharged in their official duty. But it is essential to note that according to the prosecution, the offence is alleged to have been committed on 23.01.2015, but the seizure of Ext.P2 and P3 was made only on 18.04.2015 that too after the expiry of three months and very interestingly, Ext.P2 and P3 produced before this court only after one month after the seizure that too in 13.05.2015. So, there is an inordinate delay in seizing and producing the documents before this court. No explanation is given by the witnesses or the prosecution regarding the delay.

It is undisputed that Ext.P2 and P3 are the duty notebooks issued from the police station to the officers concerned. Every police officer shall keep such a notebook containing the details of every duty they have taken, and their movements will also be evident in the duty notebook. It is also admitted that the official superior should sign the notebook every day. But on going through Ext.P2 and P3 at many pages, the initials of the superiors were conspicuously absent.

12. Moreover, in Ext.P2, even after the incident, it contains many entries. So, all the circumstances will doubt the genuinity of Ext.P2 and P3. Moreover, it is admitted by the prosecution that after the preparation of the advance search memorandum, they went to the residence of the first accused. No such search memorandum was produced and proved by the prosecution. No details of the general diary were produced by the prosecution to the effect that PW1 to PW4 went to the residence of the first accused after making an advance search memorandum. There is no satisfactory explanation given by the prosecution to the effect that what are the reasons which were prevented the prosecution from non-producing the entries in the general diary. So, considering the entire facts and circumstances, I am of the opinion that Ext.P2 and P3 will not prove that PW1 to PW4 was in discharge of their official duty when the offence was alleged to have been committed.

13. The next point argued by the learned counsel for the accused that the creation of unlawfully assembled and causing hurt to the police party did not proven by the prosecution. According to him, there is no

evidence produced by the prosecution to prove the fact that the police party searched the accused's residence. According to the prosecution, while the police party attempted to apprehend the first accused, 25 people were unlawfully assembled there and caused hurt to the police party and obstructed to discharge of their official duty. Considering the oral and documentary evidence produced by the prosecution, it can be seen that no memorandum of advance search was proved in this case.

14. It is the case of PW1 that based on the secret information, after informing DYSP, he prepared an advance search memorandum and sent it to the court, and they went to the place of occurrence. But nothing was produced by the prosecution. Moreover, the overt acts done by the accused were not deposed by the witnesses. All the witnesses deposed before the court that all the accused assembled unlawfully, caused hurt, and obstructed the discharging of the official duty. But there is no evidence of the effect that what are the overt acts done by each accused in the present case.

15. The necessity of the evidence to prove the overt act of the accused in order to attract the criminal liability u/s. 143, 147 and 149 IPC dealt by Honourable Apex court in **Baladin and others vs State of UP (1956 KHC 391)** it has been held that mere presence of a person does not make him a member of unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly. So, in order to attract the criminal provision u/s. 149 IPC whether he shared the common object with the other

members of the unlawful assembly or he has the requisite knowledge, and that has to be determine on the basis of the facts and circumstance of the interest of justice. So, the court must satisfy that he had shared the common object of the assembly or he had the requisite knowledge that a particular offence is likely to be committed in prosecution of their common object. In this present case, there is no such evidence brought out by the prosecution to prove the guilt of the accused. So, all the facts and circumstances of the case will give rise to suspicion to the prosecution case. If there is a suspicion, then the benefit arising from such suspicion should necessarily go to the accused. Hence, the points are answered in favour of the accused.

16. **Point No.8**:- In view of the discussion on point Nos.(i) to (vii), accused is found not guilty of the offences punishable u/s. 143, 145, 147, 341, 323, 332 r/w 149 IPC.

In the result, accused is found not guilty of the offences punishable under sections 143, 145, 147, 341, 323, 332 r/w 149 IPC and he is acquitted under section 248 (1) of code of criminal procedure. His bail bond stands cancelled and he is set at liberty.

(Dictated to the confidential assistant, transcribed and typed by her corrected and pronounced by me in open court, on this, the 16th day of March 2026).

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE,
TALIPARAMBA

APPENDIX

List of Prosecution/Defence/Court Witnesses

A. Prosecution Witnesses

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	K.J.Vinoy	Police witness
PW2	N.P.John	Police witness
PW3	T.P.Raghavan	Police witness
PW4	P.Raveendran	Police witness
PW5	Dr.Jaffer Basheer	Medical witness
PW6	K.K.Sindhu	Mahazar witness
PW7	M.K.Mohanan	Police witness

B. Defence witness : NIL

C. Court witness : NIL

List of Prosecution/Defence/Court ExhibitsA. Prosecution Exhibits

Sl.No.	Exhibit number	Description
1	Ext.P1	First information report dated 23.01.2015
2	Ext.P1(a)	First information statement dated 23.01.2015
3	Ext.P2	Note book of PW1
4	Ext.P3	Note book of PW4
5	Ext.P4	Wound certificate of PW1 dated 23.01.2015

6	Ext.P5	Wound certificate of PW2 dated 23.01.2015
7	Ext.P6	Wound certificate of PW3 dated 23.01.2015
8	Ext.P7	Wound certificate of CW4 dated 23.01.2015
9	Ext.P8	Wound certificate of PW4 dated 23.01.2015
10	Ext.P9	Wound certificate of CW6 dated 23.01.2015
11	Ext.P10	Wound certificate of CW8 dated 23.01.2015
12	Ext.P11	Seizure mahazar dated 18.04.2015
13	Ext.P12	Scene mahazar dated 25.01.2015
14	Ext.P13	Arrest and inspection memo of A1 dated 23.01.2015
15	Ext.P14	Name and address report of A2 to A5 dated 25.05.2015
16	Ext.P15	Document list dated 18.04.2015

B. Defence Exhibits : NIL

C. Court Exhibits : NIL

D. Material Objects : NIL

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE,
TALIPARAMBA

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