

IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Smt.Anit Joseph, B.A., LL.B., Sub Judge

Thursday, the 27th day of June, 2019
6th day of Ashadha, 1941

ORIGINAL SUIT No.20/2017

Don Bosco College,
Sulthanbathery-Pulpally Road,
Sulthanbathery in Sulthanbathery Taluk,
Wayanad District, Represented by its
Principal and Manager, Fr.Joy Ullattil,
S/o.Mathew, Aged 55 years,
Residing at Don Bosco House,
Kuppady Village in Sulthanbathery Taluk
in Wayanad District – 673 592.

Plaintiff

Vs.

1. Jishnu Venugopalan, S/o.P.V.Venugopalan,
Aged 19 years, residing at Purakadi House,
Meenangadi P.O., Meenangadi Village
in Sulthanbathery Taluk in Wayanad District.
2. Jobinson James, S/o. Bennison, Aged 22 years,
residing at Madathil House, Thariyode P.O.,
Kavummantham in Wayanad District.
3. Febin, S/o.Sulaiman, Aged 25 years,
residing at Mundarayin House in
Cheeral Village in Sulthanbathery Taluk
in Wayanad District.
4. Harikrishnan, S/o.Jayaprakashan,
Aged 21 years, Residing at Karikulath House,
Kalloor, Noolpuzha Village in
Sulthanbathery Taluk in Wayanad District.
5. Lijo Johny, S/o.Johny, Aged 31 years,
residing at Ayyamvelil House,
Kuppady Village in Sulthanbathery Taluk
in Wayanad District.

Defendants

- 6 Jithoosh, S/o.Kumaran, Aged 35 years, residing at Alakattumali House in Manthondikunnu in Kuppady Village in Sulthanbathery Taluk in Wayanad District.
 7. Arjun Gopal, S/o.Gopalan, Aged 21 years, residing at Sreelakam House, Emily in Kalpetta Village in Vythiri Taluk in Wayanad District.
 8. Arshid K.P., Father's name not known, Aged 22 years, residing at Kariyaupoyil House, Vythiri P.O., Wayanad District.
 9. Sibin.V.J., Father's name not known, aged 20 years, residing at Valiyaparambil House, Kaniyambetta P.O., Wayanad District.
 10. Amaljith P.S., Father's name not known, Aged 20 years, residing at Peruvelil House, Amarakuni P.O., Wayanad District.
 11. Nithin Mohan, Father's name not known, Aged 21 years, residing at Ambadi House, Kalpetta P.O., Kalpetta Village in Vythiri Taluk in Wayanad District.
 12. Muhammed Arshad, Father's name not known, aged 20 years, residing at Alullathil House, Cherukattoor P.O., Panamaram, Wayanad District.
 - *13. Alex Mathew, S/o.Mathew, aged 20 years, residing at Andukunnel House, Kenichira P.O, Wayanad District.
- (*D13 amended as per the order in IA.88/19 dated 01.02.2019 and strike out his name)
14. Vishnu O.P., Father's name not known, Aged 19 years, residing at Othaliyil House, Cheeyambam P.O., Pulpally, Wayanad District.
 15. Jittu M.Jayan, S/o.Jayan, Aged 22 years, residing at Marath House, Sasimala P.O., Pulpally, Wayanad District.

Defendants

16. Vishnu Prasad P.S., Father's name not known, aged 20 years, residing at Puthussery House, Nellarachal P.O., Ambalavayal, Wayanad District.
 17. Jawahar Patchely, Father's name not known, aged 20 years, residing at Sneha House, Puzhamudi P.O., Kalpetta in Wayanad District.
 18. Nitto Thomas, S/o.Thomas, aged 20 years, residing at Koolipurackal House, Kalpetta North P.O., Kalpetta Village in Vythiri Taluk in Wayanad District.
 19. Tinu Poullose, S/o.Poullose, aged 19 years, residing at Vennamattathil House, Kenichira P.O., Wayanad District.
 - (***20**. Arshid K.P., Father's name not known, aged 19 years, residing at Kariyaupoyil House, Vythiri P.O., Wayanad District.
 - (***D20** amended as per the order in IA.88/19 dated 01.02.2019 and strike out his name)
 21. Abin Thomas, S/o.Thomas, aged 20 years, residing at Chirayath House, Vaduvanchal P.O., Wayanad District.
 22. Ranjith R., Father's name not known, Aged 20 years, residing at Soubhagya House, Muttil P.O., Wayanad District.
 23. Nidheesh Soman, S/o.Somasekharan, Aged 26 years, residing at Devi Bhavan, Kottakunnu in Kuppady Village in Sulthanbathery Taluk in Wayanad District.
 24. Ajnas Ahammed, S/o.Salim, Aged 21 years, residing at Eari House, Puzhamudi P.O., Vengapally Village in Vythiri Taluk in Wayanad District.
 25. Sarath, S/o.Sadasivan, Aged 19 years, residing at Urumpadikunnu House, Rippon P.O. in Muppainadu Village in Vythiri Taluk in Wayanad District.
- Defendants

26. Ajmal, S/o.Rasheed, Aged 19 years, residing at Edamadathil House in Karadippara in Nenmeni Village in Sulthanabathery Taluk in Wayanad District.
27. Harisankar, S/o.Jayachandran, Aged 24 years, residing at Ambadi House in Chundale P.O. in Kannanchathu in Wayanad District.
28. Jishnu Shaji, S/o.Shaji, Aged 20 years, residing at Chamakalayil House, Kenichira in Poothady Village in Sulthanabathery Taluk in Wayanad District.
29. Rashid, S/o.Aboobacker, aged 22 years, residing at Cheriyaadil House in Mylambadi in Krishnagiri Village in Sulthanabathery Taluk in Wayanad District.
- Defendants

This Interlocutory Application is coming on 25th day of June 2019 for final hearing before me in the presence of Sri.George Joseph and Manoj George, Advocates for the plaintiff and Sri.K.K.Somanathan, Advocate for D6, Sri.Shyju Manisseril, Advocate for D8. Sri.T.P.Ealias, Advocate for D9, D12, D14, D15, D16 and D22. Sri.K.J.Vijayakumar, Advocate for D10, D11, D17, D18, D19 and D21. D1 to D5 and D7 and D23 to D29 set exparte and having stood over for consideration to this day the court delivered the following:-

JUDGMENT

This is a suit for compensation.

2. The averments in the plaint in brief are as follows:- That, the plaintiff is the Principal and Manager of Don Bosco College, run by the

congregation of the Don Bosco, having its head office at Bangalore and a house in Sulthan Bathery. The Principal is authorized to file the suit on behalf of the college. The defendants are active workers of a student organization by name Student Federation of India and of DYFI. Defendant No.2 is the District Secretary of Student Federation of India. All the defendants are the active members of the above organization. The plaintiff is a well known self financing college in Wayanad District affiliated to University of Calicut. About 600 students are studying for various courses in the college. Distance education and ITI are also conducted by the same management in the campus under the title Don Bosco Tech. The college maintaining well ambiance for education is situated in a calm and quite area. It is the only self financing college accredited by NAAC (National Assessment and Accreditation Council) with B grade. Said college recognized by Government of Kerala and affiliated to Calicut university is being managed by Salesians of Don Bosco, which is a religious order of the Catholic Church. Defendant No.1, Jishnu Venugopal is a second year B.com student. As per the code of conduct of the college, the students are not allowed to carry out political activities inside the campus. Said fact is clearly and specifically intimated to the students as and when they are admitted in the college. Sri. Jishnu Venugopal had violated the code of conduct and thus an inquiry was conducted against him. Following the inquiry, on 10.07.2017 he was

suspended by the management for violation of the code of conduct. Against the suspension of Mr. Jishnu, certain agitations were conducted by him with the support of SFI and DYFI. On 11.07.2017 at about 11.00 am the defendants and about 200 persons came from Sulthan Bathery town formed themselves into an unlawful assembly under the leadership of defendants No.1 and 2 and trespassed into the college compound by shouting slogans in barbaric words. The protest turned into violence and defendants, who were holding weapons like iron rods, wooden rods, stones, sticks, etc. trespassed into the building through various gates. They threatened the principal and staff with dire consequence. The plaintiff and staff were wrongfully confined. Thereafter defendants trespassed into the office room, class rooms, ITI building etc. and rampaged all the window panels and broke them by striking with iron rods and wooden rods. They destroyed computers, printers, CCTV, furniture, wash basin, chairs etc. and thereby caused heavy damage to the plaintiff. They have destroyed plastic chairs, sign boards, flower pots, water taps, CCTV, fans, both ceiling and pedal, tube lights, name board of the college, gates, statue of Don Bosco, shutters, etc. They had also broken the statue of Don Bosco kept outside the college building in the compound. Since college declared holiday for the students, the college office was completely destroyed, chairs were broken into pieces. Computers were made into pieces. The defendants trespassed into the office of the principal and

smashed wall painting, cupboards, etc. The principal had to run out for safety. The actions of the defendants caused irreparable injury, hardship and loss to the plaintiff. So the college is temporarily closed.

3. All the damage and loss are caused due to the unlawful activities carried out by the defendants. On the basis of a complaint filed by the plaintiff before Sulthan Bathery Police Station, a case was registered as crime No. 546/2017. Plaintiff had to spend huge amount to repair the damages. The mischief committed by the defendants was very grave and irreparable, and the college sustained huge loss. All the defendants are jointly and severely liable to compensate the damages. The plaintiff believe that the violent and mischievous actions had been instigated by the leadership of SFI and DYFI. So those organization are also responsible and liable for damages caused to the plaintiff. The plaintiff had to spend huge amount to repair the structures in order to reopen the college. The plaintiff is not able to asses the total damage caused by the defendants in terms of money now. So the plaintiff is limiting its claim for compensation to ₹ 10,10,000/- (Rupees Ten lakh and ten thousand only). The extent of damages will be amended after obtaining commission report. Defendants are also liable to pay interest @ 15% per annum. On 11.07.2017 about 50 students came to the college to take admission in various degree courses

were threatened by defendants and thus they went back without taking admission. Defendants are liable to compensate said damage as well. Hence the suit.

4. On receiving summons, though all the defendants entered in appearance, defendant Nos. 1 to 5, 7 and 23 to 29 not filed vakalath and proper written statement. Without noticing that defect they were permitted to cross examine PW1. Such cross examination made without vakalath and proper statement cannot be taken into consideration. Therefore, those defendants, who have not filed vakalath and written statement are liable to be set exparte. Hence, they are hereby set exparte. Plaintiff abandoned the suit against defendant No.13 and 20 by striking out their names.

5. Defendant No.6 filed separate written statement containing following averments : Plaintiff has not locus standi to file the suit against this defendant. There is no document to prove that the plaintiff is the Principal of Don Bosco College, and he is authorized to conduct the suit on behalf of the college. This defendant is not aware of the facts narrated in paragraphs No.2, 3 and 4. The entire allegations of trespass and mischief made in the plaint are false. This defendant never visited the college on 11.07.2017 or some other dates. Defendant has no connection with the incident narrated in the plaint. He has been

falsely implicated in the criminal case by influencing police. There is no base for the claim of ₹ 10,10,000/- (Rupees Ten lakhs and ten thousand only) as damages. This defendant is not liable to pay any compensation to the plaintiff.

6. Defendant No.8 also filed separate statement and denied all the allegations. He admitted that he is a 3rd year BBA student. He specifically made clear that he has no membership in SFI or DYFI. On the date of incident, since, the college was disbursed by 9.30 am itself, this defendant left the campus soon and reached home by 11.00 am, the alleged time of occurrence. This defendant is not an accused in the crime case registered by Sulthan Bathery Police in connection with the incident.

7. Defendants No. 9, 12, 16 and 22 together filed written statement containing the following averments : These defendants are not the sympathizers or active workers of SFI or DYFI. Defendants were aware that 1st defendant Jishnu Venugopal was suspended from the college. But they were not aware of the subsequent incident allegedly taken place in the college. These defendants never participated in any agitation nor caused any loss to the institution. Plaintiff has deliberately with intention to create a false case declared holiday to the college on the alleged date. When some anti social group committed mischief in the college, due to the personal revenge of management towards some students,

the case has been falsely instituted against them. These defendants are not liable to pay any compensation to plaintiff.

8. Defendant Nos.10, 11, 17, 18, 19, and 21 also jointly filed written statement. The gist of the contentions in the written statement filed by them is as follows : The defendants are not the sympathizers or followers of any of the organizations mentioned in the plaint. Such averments in the plaint are false. These defendants admit the claims made by plaintiff in paragraph No.3. These defendants have no knowledge regarding the incident allegedly taken place in the campus on 11.07.2017. They have no direct knowledge regarding the loss alleged to be sustained to the college. On the date of incident when these defendants reached college, it is learned that holiday is declared to the college. On realizing said fact, defendants left the campus. There is no base for claiming ₹ 10,10,000/- (Rupees Ten lakhs and ten thousand only) as damages. The special damages alleged to be sustained to the plaintiff have not been particularly and specifically pleaded in the plaint. The claim is seen made on the basis of assumptions and presumptions of plaintiff. No disciplinary action has been taken against these defendants from the college. In the circumstances, the suit instituted for realizing compensation from students is improper and therefore, unsustainable. These defendants are not liable to pay any compensation to the plaintiff.

9. Defendant Nos.14 and 15 jointly filed written statement. The averments therein were similar to the averments in the written statement filed by all the defendants referred to above. Hence, they do not deserve separate narration.

10. The issues already framed in the suit have been recasted by invoking the provisions of Order XIV Rule 5 of CPC. Now the issues for consideration are:-

1. Whether defendants have any role in the incident allegedly taken place on 11.07.2017 in the campus of plaintiff college ?
2. Whether the defendants have destroyed the valuable properties belonging to plaintiff institution and caused loss to the institution ?
3. If so, what is the amount of loss?
4. Whether defendants are liable to compensate plaintiff for the loss ?
5. If so, what shall be the quantum of compensation ?
6. Reliefs and costs?

11. PW1 to PW3 were examined and Exts.A1 to A8 were marked from the side of plaintiff. DW1 to DW3 were examined and no exhibits were marked from the side of defendants. Commissioner was examined as CW1 and his report

and annexure are marked as Exts.C1 and C2. Ext.A1 being photocopy is rejected. Exts.A2 and A3 CDs marked as subjected to proof have not been properly proved before the court. Hence, they are also rejected. Both sides have been heard.

12. Issue Nos.1 to 5 :- These issues are interconnected. Hence discussed together. The suit is one for compensation for the damage allegedly caused by the defendants to the plaintiff institution. Plaintiff is a self financing college affiliated to Calicut University situate at Sulthan Bathery. The College is represented by its Principal examined as PW1. He has not produced any document to establish that he is the Principal and he has been authorized to conduct the suit on behalf of the college. The case of the plaintiff was that on 11.07.2017 at about 11.am, defendants, who are the active workers of SFI and DYFI trespassed into the college campus with weapons like iron rode, wooden stick, stone etc. and thereafter destroyed the building and valuable properties in the college and thereby caused huge loss to the college. Mischievous activities are specifically narrated in the plaint on the following words. Defendants trespassed into the office room, class rooms and rampaged all the window panels of the college, ITI building, office rooms and broke them by striking with iron rods, wooden rods, etc. and thereby destroyed computers, printers, CCTV, furniture, wash basin and chairs and thereby caused heavy damage to the

plaintiff. They have destroyed plastic chairs, sign boards, flower pots, water taps, CCTV, fans both ceiling and pedestal, tube lights, name board of the college, gates, statue of Don Bosco, shutters, etc. They had also broken the statue of Don Bosco kept outside the college building in the compound. Since college declared holiday for the students, the college office was completely destroyed, chairs were broken into pieces. Computers were made into pieces. The defendants trespassed into the office of principal and smashed wall painting, cupboards, etc.

13. Before the court, PW1 reiterated the case in the plaint. According to PW1, the group consists of about 200 members turned themselves into an unlawful assembly and thereafter trespassed into the office, principle's room, class room and other areas in the campus with weapons and thereafter destroyed the building and valuable properties in the building. Though the particular act done by each member of the group is not specifically mentioned, the result of the ravages performed by them is well described in the plaint and in the oral evidence of PW1. That apart, the commission report marked as Ext. C1 would give a clear picture of the mischief committed in the college premises. Defendants seriously opposed the commission report saying that the damage assessed by the commissioner is baseless and therefore unreliable. What made them more aggrieved was that the commissioner had sought the

assistance of an engineer to assess the damage without the permission of the court.

14. The commissioner examined as CW1 admitted that he had sought the assistance of the engineer without the direction of the court. According to defendants, the engineer depended by the commissioner is the brother of an advocate and on a phone call he reached the spot without any direction from the court and it is unwanted and illegal. According to commissioner, after seeing the mischief committed in the premises, he felt it necessary to have the assistance of an engineer to assess the damage and thus he sought the assistance of the engineer examined as PW2. I could not find any impropriety on the part of the commissioner in doing so. The commissioner said that he himself noted various destructions made in the campus and thereafter sought the help of the engineer to assess the extent of the damage caused due to the said varieties of destruction. Another objection raised by the defendants was that the civil engineer assisted the commissioner is not an expert to assess the loss of electronic goods. It is true that different varieties of electronic devices including computer, CCTV cameras etc. were destroyed in the incident. The loss on such head is also assessed by the commissioner with the assistance of engineer. Though the defendants have seriously opposed the assessment made

by the engineer, the actual loss calculated by the commissioner with his assistance cannot be discarded as baseless and absurd.

15. Commissioners can seek the assistance of experts to execute the warrant, if the situation necessitates. Ordinarily, such experts shall be appointed by the courts. There are different situations also, where commissioner finds a suitable expert to help him. What is important is the sincerity and integrity of the commissioner. If the commissioner is acceptable and reliable nothing wrong could be found on his part in depending an engineer for preparing a report of given nature. In the given case, though the defendants suggested that the commissioner acted biasly to help plaintiff, they have not succeeded to establish the same before the court by adducing some convincing evidence.

16. The aspects reported in the commission report would go to show that the allegations made by the plaintiff is true and the hooliganism caused much loss to the plaintiff. The devastation caused due to the vandalism revealed from the commission report and evidence of PW1 is sufficient to feel that the grievance of the plaintiff is genuine. The mischief of given nature committed by students and others came under the banner of a political party

cannot be justified. Every citizen has got right to protest against the injustice done to him either by an institution or by an individual. But, such protest should be carried out in a lawful manner. No citizen is expected to take law into his hands. Nobody has got right to destroy public or private properties.

17. But, the material question is whether there is sufficient evidence to hold defendants liable for the damages sustained to the plaintiff. Defendants contended that plaintiff has not succeeded in proving their involvement in the alleged incident and therefore, they cannot be held liable to compensate plaintiff. We may now analyze the evidence on record in detail. According to plaintiff, despite strict prohibition, when defendant No.1, a second year B.com student performed political activities inside the campus, the college authorities were constrained to suspend him and the aggrieved defendant No.1 campaigned the agitation and played key role in the unlawful activities performed by the group. Though PW1 has not produced any documents to prove the action taken against defendant No.1, almost all defendants admitted said fact. From the oral evidence of DW2, it could be understood that the reason for violence alleged by the plaintiff is also true.

18. Most important aspect is that there is no convincing evidence to believe that the defendants were the miscreants and the mischievous act performed by them caused loss to the plaintiff. The oral evidence let in by PW1 is insufficient to fix the definite identity of all the defendants. There is no conclusive documentary evidence as well. In the plaint it is stated that defendants are active workers of SFI and DYFI and it is under the instruction of the leaders of said organization the illegal activities have been carried out. Except a bald allegation, no specific averments to that effect. That apart, above mentioned organizations and its representatives are not made party to the suit. Had it been an agitation executed under the instruction of an organization, the representatives of such organization could have been made party to the suit and their vicarious liability as the leaders of the group could have been established before the court.

19. In the absence of specific pleadings and evidence, no liability can be fastened on the organizations referred to in the plaint. Now the question is whether defendants can be jointly and severally found liable to compensate the plaintiff. If there is sufficient evidence to prove the mischievous role played by each defendant, no doubt they can be held liable to compensate the plaintiff. Here, all the defendants resisted the suit by denying their involvement in the incident. According to PW1, the police has registered a criminal case in

connection with the incident and laid charge sheet against the culprits and it is sufficient to justify their claim in the suit. FIR and charge sheet laid in connection with the incident are the main documents relied by plaintiff to substantiate their case. But, they could not be found convincing. All the persons named in the FIR are not there in the charge sheet. In fact, after investigation some named in the FIR were deleted. PW3 examined before the court is the then Sub Inspector of Police Sulthan Bathery. He said that he had identified the culprits on the basis of the statements of eye witnesses and on seeing a video clipping of the incident. But, such video clipping was not produced before the court. Though opportunity was given, plaintiff has not succeeded to prove the video CD produced before the court by taking proper steps. In the circumstances, the best evidence to prove the identity of the students engaged in the illegal activities could not be looked into.

20. PW1 claimed to be the eye witness of the incident also not adduced convincing evidence to establish the identity of the miscreants. He himself admitted that all the defendants are not students in the college. According to PW1, some DYFI workers also have trespassed into the college campus and committed mischief. Defendant No.6 is identified to be a DYFI worker. He testified as DW1 said that on the date of alleged incident he was

out of station and in the evening when he came back, police unnecessarily caught him from his house. In the cross examination of PW1 he said that he had no previous acquaintance with defendant No.6. PW1 said that defendants No. 10, 11, 16, 17, 18 and 19 were the students in the college at the relevant time. But, in the cross examination, he said that he had not seen them destroying the building and other valuable properties in the college. The evidence adduced from the side of plaintiff would not establish clear identity of the miscreants.

21. Even then, it is improper to deny compensation to plaintiff, who sustained huge loss at the hands of their students on technical grounds. The students engaged in violence against the institution with utter impunity shows total disregard to the rule of law and the constitutional values. Their hooliganism cannot be justified by holding that it is a simple protest against injustice. When large scale destruction of properties in the name of agitations, Bandhs, Harthals, etc., were taken place across the country in connection with different issues, in *Re: Destruction of Public and Private Properties Vs. State of Andhra Pradesh and Others*, Hon'ble Supreme Court has recommended amendments to the Prevention of Damage to Public Property Act 1984, Criminal Procedure Code 1973 and other Criminal Law Statutes and also set out guidelines to assess damage to property in the absence of a statutory frame

work. In the said decision, The Honorable court was pleased to comment on the recommendations in the report submitted by Justice K. T. Thomas Committee.

22. The following are the important recommendations of Justice K.T Thomas committee.

(1) The PDPP Act must be so amended as to incorporate a rebuttable presumption (after the prosecution established the two facets) that the accused is guilty of the offence; (ii) The PDPP Act to contain a provision to make the leaders of the organization, which calls the direct action, guilty of abutment of the offence. (iii) The PDPP Act to contain a provision for rebuttable presumption. (iv) Enable the police officers to arrange videography of the activities damaging public property.

23. Main concern shared by Hon'ble Supreme Court was that in many cases of mob violence, the leaders of the organization, who called the direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organization would directly participate in such direct actions and they alone could be vulnerable to prosecution. The most important observation made by Hon'ble Supreme Court

was that the leaders who are the main offenders are abettors of the crime, if not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair''. After upholding the suggestions of the committee, in the said decision the Hon'ble Supreme Court was pleased to issue certain guidelines as well.

24. Another committee headed by Mr. F.S Nariman also made valuable recommendations including amendments in the relevant statutes. In the absence of legislation, the committee recommended certain guidelines to assess the damages. The recommendations and guidelines of the committee could be found exhaustive and sufficient to remove the lacuna in the relevant legislations. In the instant suit, a proper assessment of damage following the guidelines of the committee has not been made. The committee itself recommends that an assessor may be appointed to assist the Commissioner. If such recommendation of the committee is taken into account the assessment of damages made by the commissioner with the assistance of PW2 cannot be found to be improper.

25. Most important recommendation made by the committee was that once the nexus with the event that precipitated the damage is established, the principles of absolute liability shall apply. It is further made clear that the liability will be borne by the actual perpetrators of the crime as well as organizers of the event giving rise to the liability – to be shared, as finally determined by the High Court or Supreme Court as the case may be. In the absence of appropriate legislation, the guidelines of above committees shall operate as guidelines.

26. While applying the principles laid down in the report submitted by the renowned committees referred to above, the damages assessed by the commissioner can be held proper and the same can be the base for a decree. In the background of strong objection raised by defendants, it does not appear proper to accept the commission report as such. The total amount of damage assessed by the commissioner with the assistance of the PW2 was ₹ 9,55,996.39 (Rupees nine lakh fifty five thousand nine hundred and ninety six and thirty nine paise only). If the nature of destruction alleged in the plaint alone is taken into consideration more loss than the amount assessed by the commissioner can be imagined. However, it does not appear proper to accept the assessment made by the engineer as such. But, I have no hesitation to take the words of the commissioner into consideration and act upon it. According to

the commissioner, he had noted the particulars of damage and requested the engineer to assess the loss sustained on account of such damage. On going through the commission report, such particulars noted by the commissioner can be clearly understood. It is not proper to relieve the miscreants from civil and criminal liability always on technical reasons. In the circumstances, though all the defendants have seriously objected the commission report, I did not find any reason to discard it totally. At any rate the same can be the base for assessing the loss. But considering the serious objections made by the defendants, it appears proper to make a reduction in the assessment made by the commissioner. Therefore, by exercising the judicial discretion vested with this court, the extent of the special damage is hereby fixed as ₹ 5,00,000/- (Rupees five lakh only).

27. The next question to be decided is who all are liable to pay said amount as compensation. If the oral evidence of PW3, the then Sub Inspector of Police, Sulthan Bathery and Ext.A8 Charge sheet laid by him is taken into account, defendants No.1 to 7, 23 to 29 are the persons directly involved in the illegal activities taken place in the college. What appears important is that 5 persons shown in Ext.A8 charge sheet are not incorporated as defendants in the suit. But, the plaintiff, who omitted to add those five persons, included certain others as defendants in the suit. In fact, defendants No. 8 to 22 in the suit are not

accused in the criminal case registered in connection with the incident. Plaintiff has not succeeded to offer proper explanation for such disparity. That apart, after instituting suit defendant Nos.13 and 20 were struck off by the plaintiff without offering proper explanation. All the above defects in plaintiff's case is sufficient to exclude the defendants, who have contested the suit seriously at least by filing a proper written statement from the liability. Defendants Nos. 8 to 22, who seriously contested the suit are not accused in the criminal case as per Ext. A8 charge sheet. Therefore they can be held not liable to compensate the plaintiff. But, defendant Nos. 1 to 5, 7 and 23 to 29, who were set exparte in the suit could be seen included in Ext. A8 charge sheet. They do not deserve any leniency. They can be easily held liable to compensate the plaintiff. The only person left out is defendant No.6. He has seriously resisted the case against him saying that he has no connection with the incident. Admittedly, he was not a student in the plaintiff college. In the given circumstances, without convincing evidence he cannot be held liable to compensate the plaintiff. Now, the answer can be summarized as follows. Defendant Nos. 6, 8 to 12, 14 to 19, 21 and 22 are not liable to compensate plaintiff. Defendant Nos. 1 to 5, 7 and 23 to 29 are liable to compensate the plaintiff. Their liability shall be joint and several. Issue Nos.1 to 5 are answered accordingly.

28. Issue No. 6:- In view of my finding on issue Nos.1 to 5, plaintiff is entitled to realise ₹ 5,00,000/- (Rupees Five lakhs only) as compensation from defendant Nos. 1 to 5, 7 and 23 to 29. I do not find any reason to deny normal interest to the plaintiff. It appears just and proper to allow cost also to the plaintiff.

In the result, suit is decreed with costs. Defendant Nos. 1 to 5, 7 and 23 to 29 do shall pay ₹5,00,000/- (Rupees five lakh only) to the plaintiff with 6% interest per annum from the date of judgment till the date of realization. They are jointly and severally liable to pay said amount. The amount shall be paid within 3 months from the date of judgment.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this 27th day of June, 2019.)

SUB JUDGE

Appendix:

Plaintiffs' Witnesses:

PW1 - 20.02.2019 - Joy Ullattil.
PW2 - 20.02.2019 - Ancy Disilva.
PW3 - 16.03.2019 - Biju Antony.

Plaintiffs' Exhibits:

- A1 - 11.07.2017 - Copy of the FIR in Cr. No.546/2017 (Document being photocopy hence rejected).
- A2 - 11.07.2017 - CD of the News and Videos Telecast by M/s Malanad Communications.
(Document being photocopy hence rejected).
- A3 - 11.07.2017 - CD of the Videos taken by M/s Loyal studio.
(Document being photocopy hence rejected).
- A4 - 11.07.2017 - Certified copy of the FIR in Cr. No.546/2017
- A4(a) - 11.07.2017 - 162 statement of Dr. Fr.Joy Mathew (Principal of Don Bosco College).
- A5 - 11.07.2017 - Certified copy of scene Mahazar.
- A6 - 12.07.2017 - Certified copy of report to incorporate the name and address of accused.
- A7 - 28.07.2017 - Application filed by SI of Police before JFCM Court-I, Sulthanbathery to Additional accused No.31.
- A8 - 11.07.2017 - Certified copy of the FIR in Cr. No.546/2017.

Defendants' Witnesses & Exhibits:-

- DW1 - 27.03.2019 - A.K.Jithoosh.
- DW2 - 27.03.2019 - Arshid.
- DW3 - 27.03.2019 - Jawahar Patchely.

Defendants' Exhibits:- - Nil.

Court Witness:-

- CW1 - 20.02.2019 - P.Venugopalan.

Court Exhibits:-

C1 - 27.07.2017 - Commission Report.
C2 - 11.07.2019 - Paper work for damages of Building at Don
Bosco College, Sulthanbathery.

SUB JUDGE

Typed by : Haseena K.A
Compared by : Beena K.K.

Fair Judgment in OS.20/2017
Dated: 27.06.2019