

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
ERNAKULAM**

**(for the trial of criminal cases against sitting and former MPs/MLAs of the
district of Ernakulam)**

Present : Sri.Sunil.K.P., M.A., LLB, Additional Chief Judicial Magistrate

Monday, 28th day of October, 2019/6th Karthika 1941

CC. No: 205/2019

Complainant : State represented by the S.I. of Police,
Thoppumpady Police Station, in Cr.No.320/15 of
Thoppumpady Police Station
(By M.S.Aromalunni, Assistant Public
Prosecutor Sr. Grade)

Accused : 1. Satheesan, S/o.Sasi, Vazhappilly House,
Ambalaparambu Bhagam,
Kothamangalam Village.(absconding)
2. Maneesh, S/o.Thanka, Nikarthil House,
Kadayabhagam, Palluruthy.(absconding)
3. Bineesh, S/o. Augustine, Kollath House, Pullar
Desom, P.D. Road, Palluruthy.(absconding)
4. **K.J. Maxi, S/o.Jacob, Konnathu House,
Pattel Market Road,Thoppumpady, Kochi.**
5. Niyas, S/o.Hakkeem, Adakkaparambil House,
Panayappilly Kara, Thoppumpady.(absconding)

(By Adv.Asif K. Mohamed Ali for A4)

Offence : U/s.143, 147, 283 r/w 149 of IPC

Plea : Not guilty(A4)

Finding : Not guilty(A4)

Sentence or Order : The accused No.4 is acquitted u/s 255(1) Cr.P.C. of

the offences punishable u/s.143, 147, 283 r/w 149 of IPC. The bail bond of accused No.4 shall stand cancelled and he is set at liberty. Case against A1 to A3 and A5(A3, A4, A5 & A7 in Charge) is refiled as **CC.No.790/19**.

DESCRIPTION OF ACCUSED

Sl.No.	Name	Father's Name	Calling	Residence	Age
1.	Satheesan	-	-	-	-
2.	Maneesh	-	-	-	-
3.	Bineesh	-	-	-	-
4.	K.J. Maxi	Jacob	-	Thoppumpady	56/19
5.	Niyas	-	-	-	-

DATE OF

Occurrence	Complaint	Apprehension	Release on bail
17.03.2015	01.09.2015	U/s.205 Cr.P.C	-
Commencement of trial	Close of trial	Sentence or Order	
30.01.2019	26.10.2019	28.10.2019	

This case came up for consideration today and the court on the same day passed the following:

JUDGMENT

The accused stand charge sheeted by the Sub Inspector of Police,

Thoppumpady Police Station, in Crime No.320/15 alleging commission of offences punishable u/s 143, 147, 188, 283 r/w 149 of IPC.

2. The Prosecution case is briefly stated below: On 17.03.2015 at 11.00 AM the accused persons, who are the activists of DYFI formed themselves into an unlawful assembly near Kazhuthumuttu Junction and conducted a march towards the office of the MLA at Palluruthy along P.T Jacob road and caused obstruction to the pedestrians and the vehicles, thereby the accused are alleged to have committed the aforesaid offences.

3. Initially the case was taken on file as CC.No.1659/15 before Judicial First Class Magistrate Court – II, Kochi and made over to this court and taken on file as CC.No.37/2018. Even though the final report was filed alleging commission of offences u/s. 143, 147, 188, 283 r/w 149 of IPC, cognizance was taken u/s.143, 147, 283 r/w 149 of IPC. A9 entered appearance and pleaded guilty. Hence the case against others was refiled as CC.No.311/2018. A1, A2, A8 and A10 also pleaded guilty and the case against others was refiled to the present number. Except A4(A6 in charge) all other accused absconded. Hence the case against them was split up. A4 entered appearance. Copies of the records were furnished. Particulars of offences were read over and explained to the accused and he pleaded not guilty. He was exempted from appearance.

4. The Prosecution has cited CWs.1 to 5 to prove the case. PWs.1 to 3 were examined and marked Ext.P1 and P2. CW3 was given up by the learned Prosecutor. In spite of coercive steps, the presence of CW1 could not be procured. Hence the evidence of the prosecution was closed.

5. On the close of the prosecution evidence, the accused No.4(A6) was examined u/s.313 Cr.P.C. He denied all the incriminating circumstances through the counsel and pleaded innocence and further stated that a false case was foisted against him out of political rivalry. No defence evidence was adduced.

6. Heard both sides.

7. The points that arose for consideration are: -

1. Whether the accused formed themselves into an unlawful assembly?
2. Whether the accused committed rioting?
3. Whether the accused caused traffic obstruction on any public way?
4. Whether the accused acted in prosecution of their common object?
5. Finding?

6. The sentence or order to be passed?

8. **Point Nos. 1 to 4 :-**

The evidence let in by the prosecution is comprised of the oral testimony of PW1 to PW3 and Ext.P1 and Ext.P2. According to PW2, who was the Sub Inspector of Police, Thoppumpady Police Station, on 17.03.2015 while he was on patrolling duty along with the police party, he saw the activists of DYFI namely Vipinraj, Sony K. Francis, Maneesh, Sundardas and other 45 activists causing traffic obstruction to the pedestrians and vehicles on the P.T Jacob road at Kazhuthumuttu Junction having formed themselves into an unlawful assembly. After sometimes the above activists dispersed themselves. He registered Ext.P2 F.I.R. The investigation was conducted by PW3 and laid final report. PW1 would say that on 17.03.2015 he was along with PW2 in connection with law and order patrolling duty. When they reached near Kazhuthumuttu junction about 45 persons were seen causing traffic obstruction in P.T. Jacob road by conducting march at about 11 AM. Ext.P1 is the scene mahazar. PW1 identified his signature therein.

9. On an appraisal of the entire evidence it is very pertinent to note that none of the witnesses examined to prove the occurrence has stated the manner in which the traffic obstruction was caused. No independent witness

has been cited to prove that any traffic obstruction was caused to him. Mere vague allegation is not sufficient. Thus, the prosecution could not adduce cogent and convincing evidence to prove the ingredients of an offence u/s.283 IPC. There is absolutely no evidence to prove that the accused have committed any of the acts as enumerated u/s.141 IPC so as to constitute an unlawful assembly. There is not even a whisper in the oral testimony of the witnesses examined to prove the occurrence that the accused have used force or violence in prosecution of their common object. Hence the ingredients of the offences u/s.147 and 149 also do not stand proved. In the light of the discussions made above I hold that the prosecution has miserably failed to prove the case against the accused and they are entitled to an acquittal. The points are found against the prosecution.

10. **Point No.5: -**

In the light of the discussions on point Nos.1 to 4, I find that the accused is not guilty of the offences u/s 143, 147, 283 r/w 149 of IPC and he is acquitted thereunder.

11. **Point No.5: -**

In the result, the accused No.4 is acquitted u/s 255(1) Cr.P.C. of the offences punishable u/s.143, 147, 283 r/w 149 of IPC. The bail bond of

accused No.4 shall stand cancelled and he is set at liberty. Case against A1 to A3 and A5(A3, A4, A5 & A7 in Charge) is refiled as CC.No.790/2019.

Dictated to the Confdl. Asst. transcribed by her, corrected and pronounced by me in Open court on this the 28th day of October, 2019.

Sd/-
Additional Chief Judicial Magistrate

Appendix

Witnesses examined for the Prosecution:

PW1 : Rejimon examined on 17.06.2019
PW2 : Anil George examined on 30.08.2019
PW3 : N.S. Sanjayan examined on 14.10.2019

Exhibits marked for the prosecution:

P1 : Scene mahazar dated 17.03.2015 proved by PW1
P2 : F.I.R,dated 17.03.2015, proved by PW2

Witnesses and Exhibits examined for the defence:

Nil

Material objects marked:

Nil

Sd/-
Additional Chief Judicial Magistrate.

//True copy//

Additional Chief Judicial Magistrate.