



2025:KER:13428

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946

CRL.MC NO. 5513 OF 2023

CRIME NO.80/2023 OF MANANTHAVADY POLICE STATION, WAYANAD

IN C.C. NO.194 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,

MANANTHAVADY

PETITIONER/ACCUSED:

PRADEEP KUMAR V.L.
AGED 47 YEARS
RADHAS, MAYIPADI, SHIRIBAGILU, KASARAGOD DISTRICT,
PIN - 671124

BY ADVS.
I.V.PRAMOD
SAIRA SOURAJ P.
RESMI SAJEEVAN

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031

2 TASNIMA
AGED 38 YEARS
W/O. SHERIF, CK HOUSE, AZHIKKAL P.O., KANNUR DISTRICT
PIN - 670009

BY ADVS.
PUBLIC PROSECUTOR
DEEPAK RAJ
PP - JIBU T S

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10.02.2025,
THE COURT ON 18.02.2025 PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 18th day of February, 2025**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure.A1 and all further proceedings in C.C. No.194/2023 on the files of the Judicial First Class Magistrate Court-II, Mananthavady, arose out of Crime No.80 of 2023 of Mananthavady Police Station, Wayanad. The petitioner herein is the accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor, in detail. Also heard the learned counsel appearing for the defacto complainant/2nd respondent. Perused the records and relevant materials available.

3. In a nutshell, the prosecution allegation is that, the accused herein committed offences punishable under Sections 323 and 354 of the Indian Penal Code [hereinafter referred as ‘IPC’ for short]. The specific case of the prosecution is that, on 25.01.2021 there was a mediation at the office of a document writer in connection with certain



documents procured by the accused, while he was working as a staff in the firm run by the defacto complainant and her husband. The specific allegation is that, while the discussion was going on, at about 1.40 hours, the accused, who sat in front of the defacto complainant taken a plastic stool by using his legs and this time the shoes of the accused hit on the left knee of the defacto complainant and thereby she sustained pain. Since the defacto complainant thought that it was not intentional, she forgave the same. But, thereafter the accused intentionally kicked on the left foot of the defacto complainant with shoes he wore and thereby she suffered pain and there was swelling. Then, she moved towards her husband. Later, the accused became furious towards the defacto complainant and her husband and he went out. When the defacto complainant moved towards the door, the accused entered into the office and pressed on her breast and pushed her aside, in front of her husband and other mediators. This is the context on which the prosecution alleges commission of the above offences by the accused.

4. The learned counsel for the petitioner/accused



would submit that, the ingredients to attract offence punishable under Section 354 of IPC not made out from the prosecution materials. In this connection, she placed a decision of this Court in ***Vaheed M.A. v. K.K. Lathika*** reported in ***[2024 (6) KHC 196 : 2024 KHC OnLine 885 : 2024 (5) KLT SN 19]***, where this Court held as under:

“The test of outrage of modesty is to be determined by thinking whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. I am of the considered opinion that, even if there is assault or use of force from the side of the petitioners towards the complainants, the offence under Section 354 IPC is not made out.”

5. According to the learned counsel for the petitioner, the petitioner was helping the defacto complainant in her firm, without accepting any remuneration and on a fine morning, he was expelled from his job by the defacto complainant and her husband, without any reason. The learned counsel for the petitioner pointed out that, the allegation put forward by the defacto complainant for immediate expulsion was procurement of certain documents by the petitioner in relation to certain property. Thereafter,



there was mediation talks between the parties several times and there occurred an altercation on the day of occurrence. But, the defacto complainant and her husband failed in getting back the documents. After failure of the mediation, a false case was foisted against the petitioner by the defacto complainant. Therefore, the allegation as to commission of offence under Section 323 of IPC also would not attract in this case. Therefore, the matter would require quashment.

6. Per contra, the learned counsel for the defacto complainant submitted that the petitioner is a person, who has worked as a Civil Police Officer in the Kerala State Police Department and was dismissed from service on 19.08.2023 for misconduct and he was given the assignment of a Supervisor in the firm run by the defacto complainant and her husband, by name Riftha Group of Companies. While working so, he procured vital documents of the company and even after repeated requests, he was not ready to return the same. There were mediation talks and this occurrence was in the midst of a mediation talk held on 25.01.2023 at the office of a document writer in Mananthavady. According to the learned counsel for the



defacto complainant, reading the allegations in the statement given by the defacto complainant, the prosecution allegations are made out, *prima facie* and the same would attract offences punishable under Sections 323 and 354 of IPC. Therefore, the quashment prayer is liable to fail.

7. According to the learned Public Prosecutor also, on reading the FIS along with the statements given by the defacto complainant and witnesses, the offences alleged are made out, *prima facie*. Therefore, quashment could not be considered, without opting the procedure of trial. The learned Public Prosecutor also opposed quashment.

8. In the instant case, the prosecution allegation is that, the accused intentionally kicked on the left foot of the defacto complainant with shoes he wore in the middle of a mediation talk and the same resulted in swelling and she suffered pain. Thereafter, when the defacto complainant moved towards the door, the accused entered into the office and pressed on her breast and pushed her aside, in front of her husband and other mediators and thereby outraged her modesty.



9. While considering the arguments on the issue, it is necessary to extract Section 323 as well as Section 354 of IPC. Section 323 of IPC provides as under:

323.Punishment for voluntarily causing hurt.—*Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

10. Section 115(2) of the Bharatiya Nyaya Sanhita, 2023, [hereinafter referred as 'BNS' for short] is the corresponding provision to Section 323 of IPC. The same reads as under:

115. Voluntarily causing hurt.- (1)
Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

(2)Whoever, except in the case provided for by sub-section (1) of section 122 voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine



which may extend to ten thousand rupees, or with both.

11. Tracing the ingredients to attract offence under Section 323 of IPC as well as under Section 115 of BNS, voluntarily causing hurt is the offence, in exclusion of what has been provided for by Section 334 of IPC. Section 334 of IPC reads as under:

334. Voluntarily causing hurt on provocation.—*Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.*

12. Section 122 of the BNS is the corresponding provision to Section 334 of IPC. The same reads as under:

122. Voluntarily causing hurt or grievous hurt on provocation.— (1) *Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which*



may extend to one month, or with fine which may extend to five thousand rupees, or with both.

(2) Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both.

13. Hurt is defined under Section 319 of IPC and the same provides that, whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. Same definition is given to the term 'hurt' under Section 114 of the BNS also.

14. Coming to the offence under Section 354 of IPC, it has been provided as under:

354. Assault or criminal force to woman with intent to outrage her modesty.—*Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.*



15. Section 74 of BNS is the corresponding provision to Section 354 of IPC. The same reads as under:

74. Assault or criminal force to woman with intent to outrage her modesty.—*Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.*

16. In this matter, the question to be addressed is, whether the ingredients to attract the offences punishable under Sections 323 and 354 of IPC as against the accused are made out from the prosecution records, *prima facie*?

17. In order to attract an offence under Section 354 of IPC, it is sine qua non that, 1) there must be an assault or use of criminal force to any woman by a man and 2) intending to outrage or knowing it to be likely that he will thereby outrage her modesty. In the decision of this Court in ***Biju Abraham v. State of Kerala*** reported in **[2025 KHC OnLine 105 : 2025 KHC 105 : 2025 KER 7186]**, this Court discussed at length the ingredients to attract the



offence under Section 354 of IPC in paragraph Nos.17 to 19 and it has been held as under:

17. As I have already discussed, the most essential ingredient to attract an offence under S.354 of IPC is assault or use of criminal force to any woman with intent to outrage or knowing it to be likely that he will thereby outrage her modesty.

18. Indubitably Indian Society places great emphasis on modesty of women and any act that seems as an insult to modesty is a matter of serious concern. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended within the ambit of assault or use of criminal force. In recent years, the issue of the safety and security of women has come to the forefront in India, with large number of cases of sexual offences against women being reported. The legislature has taken steps to strengthen laws against sexual offences, with stricter deterrents for rape and sexual assault. However, sexual offences against women continue to be a major problem in India and efforts are still needed to ensure that laws are effectively implemented. It is important for individuals to be aware of their rights and for the society to take a zero - tolerance approach towards sexual offences to arrest the menace of sexual assault and molestation.



19. The act of outraging a female's modesty is increasing exponentially thereby taking a toll on the lives of women leading to mental and physical agony. The word 'modesty' has to be judged as a quality or state of being modest, which is characterised by humility, restraint, simplicity, and good taste. The act of outraging the modesty of a woman, refers to the virtue that attaches to a female owing to her gender and is an attribute associated with females in general. It is a sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. To put it differently, modesty to a woman has evolved as altogether a different concept which has very little to do with the physique of the woman. The modesty of a woman is intimately connected with femininity including her sex. Modesty is not only limited to physical modesty but it also includes moral and psychological modesty. The moral modesty of a woman is said to be the sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. The psychological modesty of a woman is said to be her innate sense of self - respect and dignity. Thus the modesty of a woman is sublime and any sort of intrusion or intercession is to be dealt with resolutely and soberly.

18. Scanning the allegations herein to see commission of offence under Section 323 of IPC, according



to the defacto complainant, at about 1.40 hours on 25.12.2021, while a meeting was going on, the accused, who sat infront of the her, taken a plastic stool by using his legs and this time the shoes of the accused hit on her left knee and thereby she suffered pain. But, she forgave the same. Again, the accused intentionally kicked on the left foot of the defacto complainant with shoes he wore and thereby she suffered pain. Even though, in the medical certificate issued by the doctor, who treated the defacto complainant, there is no external injury noted, the same has no much bearing when the offence is one under Section 323 of IPC.

19. As already pointed out, what is required to find commission of offence under Section 323 of IPC is causing hurt, defined under Section 319 of IPC and the same includes bodily pain. It is evident from the statement given by the defacto complainant that, when the accused kicked on the left foot of the defacto complainant with shoes he wore, she suffered pain. Thus, the ingredients to see commission of the offence punishable under Section 323 of IPC by the accused are available, *prima facie*.



20. Coming to Section 354 of IPC, in the instant case, there was a meeting attended by the defacto complainant, her husband and the accused, to settle the disputes in between them, which admittedly arose while the accused was working as a staff in the firm run by the defacto complainant and her husband. The allegation pertaining to Section 354 of IPC is pressing on the breast of the defacto complainant and pushing her aside by the accused. Even though, the occurrence was in continuation of a meeting, without finding any positive result, whereby the accused became furious and as a subsequent event, when the defacto complainant moved towards the door, the accused entered into the office and pressed on her breast and pushed her aside, in front of her husband and other mediators. In such a case, it could not be held *prima facie* that the offence under Section 354 of IPC is not made out, so as to quash the proceedings.

21. Summarizing the discussion, it is held that the prosecution allegations as to commission of offences punishable under Sections 323 and 354 of IPC by the accused are made out, *prima facie*, warranting trial.



Therefore, quashment sought for by the petitioner/accused could not succeed.

22. In the result, this petition must fail and accordingly, the same stands dismissed. Interim order of stay in this matter stands vacated.

Registry is directed to forward a copy of this order to the trial court, within three days, for information and further steps.

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.MC 5513/2023

PETITIONER ANNEXURES :

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| Annexure-A1 | A TRUE COPY OF THE FIRST INFORMATION STATEMENT
AND THE FIRST INFORMATION REPORT DATED
26.01.2023 IN CRIME NO. 80/2023 OF
MANANTHAVADY POLICE STATION, WAYANAD DISTRICT |
| Annexure-A2 | A CERTIFIED COPY OF THE FINAL REPORT IN C.C.
NO.194/2023 BEFORE JFCM-II, MANANTHAVADY IN
CRIME NO.80/2023 OF MANANTHAVADY POLICE
STATION |
| Annexure-A3 | THE MEMO OF EVIDENCE IN C.C. NO.194/2023
BEFORE JFCM-II, MANANTHAVADY IN CRIME
NO.80/2023 OF MANANTHAVADY POLICE STATION |
| Annexure-A4 | CERTIFIED COPY OF THE STATEMENTS OF THE
WITNESSES IN CRIME NO.80/2023 OF MANANTHAVADY
POLICE STATION |
| Annexure-A5 | A TRUE COPY OF THE WOUND CERTIFICATE ISSUED BY
THE WAYANAD GOVERNMENT MEDICAL COLLEGE
HOSPITAL, MANANTHAVADY DATED 25.01.2023 |