



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 8TH DAY OF JANUARY 2025 / 18TH POUSHA, 1946

CRL.MC NO. 2911 OF 2024

CRIME NO.2373/2023 OF ERNAKULAM NORTH POLICE STATION, ERNAKULAM

IN C.C. NO.687 OF 2023 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

PETITIONERS/ACCUSED:

- 1 BENNY MATHEW
AGED 62 YEARS
S/O MATHAI MATHEW, FLAT NO.2A, RDS RETREAT APARTMENT,
CHITTOOR ROAD, NORTH.P.O., KACHERIPPADY, ERNAKULAM,
PIN - 682018
- 2 PRAMOD JAIN
AGED 47 YEARS
S/O PRAKASH MAL JAIN, FLAT NO.3A, RDS RETREAT APARTMENT,
CHITTOOR ROAD, NORTH.P.O., KACHERIPPADY, ERNAKULAM,
PIN - 682018
- 3 JOHN ODAMTHODU
AGED 52 YEARS
S/O JOSEPH.A.U., FLAT NO.5E, RDS RETREAT APARTMENT, CHITTOOR
ROAD, NORTH.P.O., KACHERIPPADY, ERNAKULAM, PIN - 682018

BY ADVS.
SHAHUL HAMEED MOOPPAN
K.M.VARGHESE
T.A.NIYAS
ABHIJITH HARINDRAN
ARUN T.S.

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM,, PIN - 682031
- 2 SUB INSPECTOR OF POLICE
ERNAKULAM TOWN NORTH POLICE STATION, KOCHI CITY, ERNAKULAM
NORTH.P.O., ERNAKULAM, PIN - 682018



**3 SMT. REENA JOSEPH
AGED 58 YEARS
W/O GOPALAKRISHNAN, 14/2128, STAR VILLA, THOPPUMPADY,
PRESENTLY AT FLAT NO.1-A, RDS RETREAT APARTMENT, CHITTOOR
ROAD, NORTH.P.O., KACHERIPPADY, ERNAKULAM, PIN - 682018**

**BY ADVS.
T.P.PRADEEP
P.K.SATHEES KUMAR(K/607/2012)
MINIKUMARY M.V.(K/118/2019)
R.K.PRASANTH(K/000475/2017)
JIJO JOSEPH(K/000402/2022)
PP - JIBU T S**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
16.12.2025, THE COURT ON 08.01.2025 PASSED THE FOLLOWING:**

**“C.R”****ORDER****Dated this the 8th day of January, 2025**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings in C.C. No.687/2023 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam. The petitioners herein are the accused in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, in detail. Also heard the learned counsel appearing for the defacto complainant. Perused the relevant materials available.

3. In this matter, the prosecution alleges commission of offence punishable under Section 430 read with 34 of the Indian Penal Code, by the accused. Initially as on 24.09.2023, the FIR was registered on the basis of the FIS lodged by the defacto complainant, who is residing on rent in one of the flats in RDS Retreat Apartments, Ernakulam. The prosecution allegation is that, the accused



herein who are the President, Secretary and Treasurer of the RDS Retreat Apartments Owners Welfare Association, disconnected the water supply to the rental flat, where the defacto complainant has been residing for the last 15 years and thereby her basic amenities for drinking water and to do cooking etc. were denied.

4. While seeking quashment of the proceedings, the learned counsel for the petitioners argued that, the petitioners/accused, being the office bearers of the RDS Retreat Apartments Owners Welfare Association, vested with administration of the apartment complex comprising of several dwelling units, has been controlling the supply of water to various flats, supplied by the Kerala Water Authority and for the supply of water, each member of the association will have to pay the charges for the same. It is submitted by the learned counsel for the petitioners that, water connection to the defacto complainant's rental residence was stopped, when she left huge arrears towards water charges and failed to pay Rs.51,334/- towards the said head, after issuing Annexure.R3(e) notice. Thereafter, the defacto complainant paid Rs.51,334/- and accordingly



water supply was reconnected. Therefore, in the facts of the given case, offence punishable under Section 430 read with 34 of the Indian Penal Code would not attract. It is specifically pointed out by the learned counsel for the petitioners that, as of now also Rs.50,000/- is due from the defacto complainant and the petitioners are not in a position to supply water without remitting the fee prescribed for the same, as they would not bear the costs by themselves.

5. The learned counsel for the petitioners would further submit that, in order to attract offence punishable under Section 430 of IPC, mischief must be committed by a person, by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals. In the instant case, water supply to the flat of the defacto complainant was disconnected, after giving notice demanding payment of huge arrears of water charge and thereafter reconnected the water supply on payment of arrears. Therefore, the said overt acts would not constitute mischief defined under Section 425 of IPC, so as to attract



the offence punishable under Section 430 of IPC.

6. It is submitted by the learned counsel for the petitioners that, even going by the mahazar prepared on 25.09.2023, water supply was not found only in the tap inside the bathroom of the flat and other places water supply was found. It is submitted that, water supply to the bathrooms of the apartment would be provided only during morning and evening as agreed between the flat owners and the association. Therefore, in the mahazar prepared on 11.30 hours on 25.09.2023, the narration that there was no water supply at the bathroom of the flat of the defacto complainant, is not a reason to hold that there was failure to give water after payment of Rs.51,334/-. Therefore, the quashment sought for is liable to be allowed.

7. Strongly opposing quashment of the proceedings sought for, and highlighting the ingredients to attract offence punishable under Section 430 of IPC, the learned counsel for the defacto complainant filed a counter statement along with documents marked as Annexures.R3(a) to (g), to contend that the offences alleged are made out, *prima facie*, for which, trial is



necessary. The contentions raised by the learned counsel for the defacto complainant could be seen from paragraph Nos. 5 to 7 of the statement. The same are as under:

5. It is submitted that the majority of the flat owners left the apartment due to the misbehavior and autocratic attitude of the petitioners and one Binoy Mohan Mathew who is a relative of the defacto complainant and a Flat owner initiated a Civil Suit against the petitioners before the Hon'ble Munsiff Court at Ernakulam. True copy of the OS 1207/2024 of the Munsiff Court, Ernakulam is produced herewith and marked as Annexure R3(d). Petitioners falsely implicated him a criminal case and the the Hon'ble high Court of Kerala quashed the same. As the above Binoy Mohan Mathew questioned the illegal activities of the petitioners, they are in enimical terms with the defacto complainant also.

6. Being so a notice for disconnection of water was issued to the owner of the defacto complainant's Flat demanding an amount of Rs 51,334/-. But the owner of the Flat questioned some amounts in the notice and asked the office bearers for clarifications and he did not pay the demanded amounts. True copy of the Notice



dated 23.08.2023 issued by the Secretary of Association is produced herewith and marked as Annexure R3(e).

7. It is submitted that from 11.09.2023 onwards the petitioners disconnected the water supply to the Flat of the defacto complainant. The controlling valves of the water supply to the Flat of the defacto complainant are installed in the balcony of the Flat of the 1st petitioner's son. Water supply for drinking cooking and primary needs in bath room was disrupted from 11.09.2023. Even though the owner of the flat of the defacto complainant was reluctant to remit the demanded amount in Ext R3-e notice because of the disputes between him and Association, the defacto complainant transferred this amount to the Flat owner as she had suffered a lot due to the lack of water in the Flat, especially living alone. The Flat owner transferred Rs 51,344 demanded in the Notice on 22.09.2023 to the Account of the Association through UPI payment. True copy of the screen shot of the UPI Payment is produced herewith and marked as Annexure R3(f). Even after the remittance of the demanded amount, petitioners did not care to supply water to the Flat of the defacto complainant. Hence on 23.09.2023,



defacto complainant preferred a complaint to the SHO of Ernakulam Town North police Station. True copy of the Acknowledgement receipt dated 23.09.2023 is produced herewith and marked as Annexure R3(g). Even though the police contacted the petitioners and directed to supply water to the defacto complainant, they did not comply with the directions and on 24.09.2023 at 7.22 pm FIR No. 2373/2023 was registered against the petitioners for the offences punishable under Sections 430 and 34 of I.P.C.

8. According to the learned counsel for the defacto complainant, the petitioners have no legal right to disconnect the water supply to the flat of the defacto complainant unilaterally, since the association is one registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 and the disputes between the members have to be resolved through the competent civil court.

9. The learned Public Prosecutor also opposed the quashment of the proceedings by sharing the arguments tendered by the learned counsel for the defacto complainant.



10. On perusal of the records available, the allegation in the present crime is confined to disconnection of water supply provided to the rental flat of the defacto complainant by the accused persons, who are the office bearers of RDS Retreat Apartment Owners Welfare Association. According to the prosecution, the disconnection of water supply at the instance of the petitioners herein is an offence punishable under Section 430 read with 34 of IPC.

11. Whereas, the specific contention of the learned counsel for the petitioners is that, since the water supply was provided on undertaking by the members of the association to pay required fee for the same and water supply to the flat of the defacto complainant was disconnected when there is failure to remit the water charge, no offence under Section 430 read with 34 of IPC would attract in the facts of the present case. Even otherwise, no mischief could be found in the overt acts at the instance of the petitioners to attract the offences alleged.

12. As extracted in paragraph Nos. 5 to 7 of the



statement filed by the 3rd respondent, it is true that, there are certain disputes between certain flat owners and the association and the learned counsel for the defacto complainant reiterated the same to point out maladministration on the part of the petitioners. However, this Court needs to address the question as to whether, the offence punishable under Section 430 read with 34 of IPC is made out, *prima facie*, from the prosecution records.

13. In this connection, it is relevant to refer Section 430 of IPC. The same is as under:

430. Mischief by injury to works of irrigation or by wrongfully diverting water.—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

14. Thus, when a person commits mischief by doing



any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, the same constitutes an offence punishable under Section 430 of IPC. Mischief is one of the most cardinal ingredient to attract offence under Section 430 of IPC. Section 425 of IPC deals with mischief, wherein it has been provided that, *whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"*.

15. Section 430 deals with diminution of supply of water, wherein it has been provided that, *the word "diminution" is derived from the verb "diminish", which lexicographically means "lessen". The words "diminution of the supply of water for agricultural purposes" in section 430 cannot be limited to the cases only where the water*



has been allowed either to go waste or has been diverted for non-agricultural purposes. The section read as a whole also refers to cases, where the water is intended for use for all purposes including for food or drink for human beings or for animals or for cleanliness or for carrying on any manufacture.

16. In such cases, the Courts should decide whether any unlawful or dishonest intention has been established. It is not every interference with the distribution of water that constitutes mischief under the IPC. It is only interference which cannot be justified by the assertion of *bona fide* right that would constitute mischief.

17. Thus, the crucial question to be considered is whether the petitioners herein committed any mischief defined under Section 425 of IPC, so as to attract the offence under Section 430 of IPC?

18. The one and only allegation against the petitioners herein, who are the office bearers of RDS Retreat Apartment Owners Welfare Association, is that they disconnected the water supply provided to the rental



flat possessed by the defacto complainant, when she failed to clear the arrears towards the water charges to the tune of Rs.51,334/-, as evident from Annexure.R3(e) notice issued on 23.08.2023. Thus, after issuing notice as on 23.08.2023, when the defacto complainant failed to pay the water charge due, the water supply was disconnected on 12.09.2023. Thereafter on remitting the arrears towards the water charge, water supply was reconnected. It is in view of this development, in the mahazar prepared on 11.30 hours on 25.09.2023, except in the bathroom water supply was found. As far as the non-availability of water in the bathroom is concerned, the argument advanced by the learned counsel for the petitioners is that, as part of internal arrangement between the flat owners and association, water supply to the bathrooms is restricted and the same is available only during morning and evening. The same is not in dispute. Thus, the sum and substance of the prosecution allegation is confined in the matter of disconnection of water supply of the rental flat of the defacto complainant by the



petitioners for failure to pay the charges towards the same. As of now also, according to the learned counsel for the petitioner, Rs.50,000/- is in arrears towards the water charge and the defacto complainant has been enjoying the water provided by the association, in view of the interim order passed by this Court.

19. In this connection, it is relevant to refer that, if water is provided by the Kerala Water Authority, the Authority has the right to disconnect water supply in the event of failure to pay the water charges, after issuing notice.

20. Even though, it is argued by the learned counsel for the defacto complainant that, since the association was registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955, the association has no right to disconnect the water supply and the disputes between the members have to be resolved through the competent civil court, the said contention could not be appreciated for the simple reason that, if all flat owners defaulted water supply, the



association would be forced to file civil suit to get the water charges realized, through process of court, the intend of the association and its functioning would be in trouble.

21. In the decision reported in ***Uttam Basu v. Geeta Mullick*** [(1987) 1 Crimes 512 (Cal)] it is held that, to sustaine conviction under Section 430 IPC, it must be proved that there was regular or habitual diminution of supply of water. Mere stoppage of water for a temporary period (here landlady was accused of stopping water supply to tenant) would not do.

22. In the present case, the petitioners disconnected the water supply provided to the rental flat possessed by the defacto complainant, when she failed to clear the arrears towards the water supply charges, after issuing notice as on 23.08.2023. Thereafter, on remitting the arrears towards the water charge, water supply was reconnected. However, according to the petitioners, as of now also Rs.50,000/- is in arrears.

23. Thus, the overt acts at the instance of the petitioners would not amount to an act of mischief defined



under Section 425 of IPC and punishable under Section 430 of IPC, where the disconnection of water supply already reconnected soon after payment of defaulted arrears.

24. Therefore, the prosecution against the petitioners is found to be without sufficient materials, *prima facie*, and the same would require quashment. Accordingly, the petition is liable to succeed.

25. In the result, all further proceedings in C.C. No.687/2023 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam, as against the petitioners stand quashed.

It is specifically made clear that, the defacto complainant has to pay the water charges, without fail, to get the water supply without interruption, otherwise the association is free to take action, as per law.

**Sd/-
A. BADHARUDEEN
JUDGE**

**APPENDIX OF CRL.MC 2911/2024****PETITIONER ANNEXURES :**

- Annexure I** TRUE COPY OF THE FINAL REPORT DATED 28.9.2023 IN C.C. NO.687 OF 2023 PENDING ON THE FILE OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
- Annexure II** TRUE COPY OF THE LAWYER NOTICE DATED 27.10.2023 ISSUED BY BINOY MOHAN MATHEW THROUGH ADV. M.B. SANDEEP, ADVOCATE TO THE RDS RETREAT APARTMENT OWNERS WELFARE ASSOCIATION COMPRISING THE PETITIONERS

RESPONDENT ANNEXURES :

- Annexure R3(a)** True copy of the Notice dated 21.11.2022 issued by the Deputy Chief Electrical Inspector, Ernakulam
- Annexure R3(b)** True copy of the Notice dated 12.09.2022 issued by the Executive Engineer to the wife of the 1st petitioner
- Annexure R3(c)** True copy of the Notice dated 12.09.2022 issued by the Executive Engineer to the son of the 1st petitioner
- Annexure R3(d)** True copy of the OS 1207/2024 of the Munsiff Court, Ernakulam
- Annexure R3(e)** True copy of the Notice dated 23.08.2023 issued by the Secretary of Association
- Annexure R3(f)** True copy of the screen shot of the UPI Payment done on 22.09.2023
- Annexure R3(g)** True copy of the Acknowledgement receipt dated 23.09.2023
- Annexure R3(h)** True copy of the screenshot of UPI payments (Rs 18000 and Rs 2000 respectively) dated 6.08.2024