



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 9TH DAY OF FEBRUARY 2026 / 20TH MAGHA, 1947

CRL.MC NO.5636 OF 2021

CRIME NO.847/2018 OF ALAPPUZHA NORTH POLICE STATION,
ALAPPUZHA

CC NO.367/2018 OF CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

PETITIONER/ACCUSED:

SHAJEER
AGED 29 YEARS
S/O.HASSAN KUNJU, PUTHENPARAMBUVELI,
VANDANAM P.O, ALAPPUZHA, PIN 688 005

BY ADVS.
SRI.GOKUL DAS V.V.H.
SMT.AMEENA.R
SMT.POORNIMA S.NAIR

RESPONDENTS/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULANM, PIN 682 031

BY ADV.
SMT.MAYA M.N., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09.02.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



2026:KER:32850

C.R.**ORDER***Dated this the 09th day of February, 2026*

This Crl.M.C. is filed by the petitioner seeking to quash Annexure II Final Report and all further proceedings in Crime No.847 of 2018 before the Alappuzha North Police Station, now pending as C.C.No.367 of 2018 on the files of Chief Judicial Magistrate Court, Alappuzha. Petitioner is the sole accused in the said crime and is alleged to have committed offences punishable under Sections 324 and 353 of the Indian Penal Code and Section 3(2)(e) of the Prevention of Damage to Public Property Act, 1984 (for short "the Act of 1984").

2. The prosecution case is that on 04.04.2018, at about 09:30 A.M., while the de facto complainant, who was serving as the driver of the official vehicle of the Judge, MACT, Alappuzha, was discharging his official duty and had reached near Indira Junction situated on the southern side of the District Court Road, Alappuzha, the accused, who was driving a private bus named "Thasahil" bearing Registration No.KL-17/D-9179, allegedly overtook the said car from the right side and collided with the rear portion of the right



2026:KER:32850

back door of the vehicle. It is further alleged that despite the de facto complainant sounding the horn, the accused did not stop the bus and continued to drive the same in a rash and negligent manner. As a result of the said act, the right side front door of the car was damaged and the glass pane was shattered, the fragments of which allegedly caused injuries to the de facto complainant. Thus, the petitioner is alleged to have committed the offences as stated above.

3. Heard Sri.Gokul Das V.V.H, the learned counsel for the petitioner and Smt.Maya M.N, the learned Public Prosecutor.

4. It is contended by the learned counsel for the petitioner that the offences punishable under Sections 353 and 324 of the IPC are not attracted in the facts and circumstances of the case. It is submitted that the allegations, even if taken at their face value, do not disclose the commission of the said offences. It is further contended that in order to attract the offence under Section 353 of IPC, it is imperative that the prosecution must establish that there was an assault or use of criminal force against a public servant while he was acting in the execution of his duty, or with the intention to prevent or deter him from discharging his duty, or in consequence of



anything done or attempted to be done by him in the discharge of such duty. However, the allegations in the FIR and Final Report does not even *prima facie* disclose any act amounting to assault or use of criminal force against the defacto complainant so as to attract the said provision.

5. The learned counsel further submitted that there is nothing to indicate that the petitioner had any intention whatsoever to cause hurt to the defacto complainant nor is there any material to suggest that the petitioner had knowledge that while overtaking, the bus driven by him would hit the car driven by the de-facto complainant. Thus it is contended that there are absolutely no materials on record to show that the ingredients necessary to constitute the offence under Section 324 of the IPC are made out.

6. It is the specific contention of the learned counsel that the vehicle driven by the defacto complainant does not fall within the definition of “public transport” as contemplated under Section 3(2)(e) of the Act of 1984 and therefrom the said provision cannot be attracted as against the petitioner. No ingredients to attract the offence under Section 3 (2)(e) of the Act of 1984 are disclosed even *prima facie*. Hence it is prayed that the continuation of proceedings



against the petitioner pursuant to Annexure II Final report is wholly unsustainable in law and is liable to be quashed. Reliance is placed on the dictum laid down in ***Devaki Amma v. State of Kerala: (1981 KHC 313)*** ; ***Jaidas v. State of Kerala: [2017 (1) KHC 669]*** ; ***Hariprasad and another v. State of Kerala: [2017 (1) KHC 851]***.

7. Per contra, the learned Public Prosecutor opposed the contentions and submitted that Annexure A2 Final Report, when read in its entirety, clearly disclosed the ingredients of the offences alleged. It is submitted that the defacto complainant was a public servant who was discharging his official duty as the driver of the official vehicle of the Judge, MACT, Alappuzha at the relevant time. Therefore, the act of the accused in driving the bus in a rash and negligent manner and causing damage to the vehicle, thereby obstructing the de-facto complainant in the discharge of his official duty, would attract the offence punishable under Section 353 of IPC.

8. With regard to the offence under Section 324 of the IPC, the learned Public Prosecutor submitted that due to the impact caused by the bus driven by the accused, the glass of the car door shattered and the broken pieces caused injuries to the de-facto



complainant. It is contended that the injuries sustained by the de-facto complainant were the direct consequence of the act of the accused and therefore the ingredients necessary to constitute the offence under Section 324 of the IPC are *prima facie* made out.

9. It is further submitted by the learned Public Prosecutor that an amount of ₹60,000/- had to be incurred for repairing the damages sustained by the vehicle after the incident. According to the prosecution, the nature and extent of the damage caused to the vehicle clearly indicate that the act was not a mere accidental brushing, but a deliberate and rash act on the part of the accused, which constitutes the necessary *mens rea* for the offences alleged under Section 3(2)(e) of the Act of 1984.

10. I have heard both sides in detail and considered the contentions put forth. The question to be considered is whether a case has been made out for quashing the Final Report invoking Section 482 of the Cr.P.C., the exercise whereof is to be done sparingly and with great circumspection. I have perused the Final Report in detail. The charges against the accused are under Sections 353 and 324 of IPC and Section 3(2)(e) of the Act of 1984.

11. It would be pertinent to reproduce Section 353 IPC



which concerns the Assault or Criminal force to deter a public servant from discharge of his duty reads as follows:

"353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Thus to constitute an offence under the said action it is required that there must be an actual assault or criminal force against a public servant while they are on duty or to stop them from performing their duty. What is intended is much more than a mere 'obstruction' from performing the official duty. There must be the use of physical energy against the person with the intent to prevent him from performing his lawful duties. It is relevant in this context to note the judgment in **Umashankar Yadav and another v.State of Uttar Pradesh, Through Chief Secretary and another** [2025 SCC OnLine SC 1066] wherein the Hon'ble Supreme Court explained the ingredients necessary to attract the offence under Section 353 as follows: :

"19.Section 353 is attracted when the following ingredients are satisfied:—



(i) Use of assault or criminal force on a public servant during execution of his duty.

(ii) With the intentions:—

(a) to prevent or deter discharge of such duty; or

(b) as a consequence of anything done or attempted to be done in the lawful discharge of his duty.

20. The words force and criminal force are defined in Sections 349 and 356 IPC and 'assault' is defined in Section 351 of the said Code.

21. A person is said to use force when:

(i) He causes motion, change in motion or cessation of motion of another person by:

(a) use of bodily power; or

(b) using a substance which comes in contact of the body, wearing apparel etc or with anything which affects the other person's senses; or

(c) inducing any animal to move or change its motion or cease to move.

22. Criminal force is defined as use of force by a person in order to commit an offence or done with the intention that such force is to cause or likely to cause injury, fear and annoyance to other person.

23. Assault involves any gesture or preparation which is done with the intention that such gesture or preparation will cause an apprehension about use of criminal force. Use of criminal force or assault on a public servant is essential to attract Section 353 IPC."

(emphasis supplied)

12. The Hon'ble Supreme Court had considered the interpretation and application of Section 353 IPC in **Mahendra Kumar Sonker v. State of Madhya Pradesh** (2024 KHC OnLine 6430). The nuances of assault and criminal force aimed at deterring a public servant from discharging their duties as envisaged under Section 353 was thoroughly examined and it was held as follows:

"A perusal of Section 353 indicates that whoever assaults or uses criminal force (a) to any person being a public servant in the execution of his duty as



2026:KER:32850

such public servant, or (b) with intent to prevent or deter that person from discharging his duty as such public servant, or (c) in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with the imprisonment of either description for a term which may extend to two years, or with fine, or with both.

16. It is important at this stage to notice the definition of criminal force as defined in Section 350 of the IPC.

“350. Criminal force.- Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

As would be clear, what is required to establish criminal force is intentional use of force to any person without that person’s consent in order to the committing of any offence.

17. Section 349 of the IPC which defines force is extracted herein below :

“349. Force.- A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other’s sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First. - By his own bodily power.

Secondly. - By disposing any substance in such a



2026:KER:32850

manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly. - By inducing any animal to move, to change its motion, or to cease to move."

18. Assault under Section 351 of the IPC would mean whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person.

19. In this background, if we peruse the evidence on record, insofar as the charge under Section 353 of the IPC is concerned, it will transpire that none of the ingredients required for convicting a person under Section 353 of IPC were attracted." (emphasis supplied)

13. I have pursued the case put forth against the petitioner bearing in mind the above precedents.

14. A perusal of Annexure-I FIR would clearly reveal that, according to the de-facto complainant himself, the incident occurred when the bus driven by the petitioner was passing ahead of the car driven by the de-facto complainant and, in the course of such movement, the bus had brushed against the right side of the said car. There is absolutely no allegation to indicate that the Petitioner had any criminal intent or mens rea to obstruct the de-facto complainant or to deter any public servant from the discharge of official duties. Similarly, the main ingredient to constitute the offence



under Section 353 IPC that is the use of assault or criminal force, is totally absent.

15. It is relevant to note that in **Devaki Amma** (supra), this Court had held that “*Criminal force as contemplated under this section means criminal force exercised against a person and not against an inanimate object or substance*”. In the absence of any direct, deliberate or intentional use of force, the mere brushing or contact of the bus against the car in the course of overtaking cannot be brought within the scope and ambit of the said provision. Consequently, the essential requirement for attracting Section 353 IPC is wholly absent, and the very foundation for invoking the said provision stands vitiated.

16. Petitioner has also been charged under Section 324 IPC. The said Section reads as follows:

“324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”



It is pertinent to note that an offence under Section 324 IPC is attracted only when hurt is caused by means of any dangerous weapon or dangerous means as contemplated under the provision. In the present case, there is absolutely no allegation whatsoever regarding the use of any dangerous weapon or 'dangerous means' by the Petitioner. Even going by the prosecution version, the alleged injury, if any, sustained by the de-facto complainant was only on account of the breaking of the car window and the shattering of glass pieces towards him during the course of the alleged incident. Such an allegation, by no stretch of imagination, would satisfy the essential ingredients of Section 324 IPC, as the injury was not caused by any intentional use of a dangerous weapon or dangerous means by the petitioner. Therefore, the invocation of Section 324 IPC is legally unsustainable.

17. With respect to the charged laid against the petitioner under Section 3(2)(e) of the Act of 1984, it is relevant to reproduce the said Section which reads as hereunder:

*"3. Mischief causing damage to public property.—
(2) Whoever commits mischief by doing any act in respect of any public property being—
(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;
(b) any oil installations;*



*(c) any sewage works;
(d) any mine or factory;
(e) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith.
shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:
Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months."*

It is the specific contention of the learned counsel for the petitioner that the official car attached to the learned Judge, MACT, Alappuzha, which is neither used for public carriage nor for carrying passengers for hire or reward, cannot be brought within the ambit of Section 3(2)(e) of the Act of 1984 as it is not a 'means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith', However, the learned Public Prosecutor vehemently opposes the said contention pointing out that to attract Section 3 of the Act of 1984 all that is required is that the subject property must be a 'Public Property'.

18. It is relevant to note that in the case at hand the 'Public Property' involved is the official Car of the judicial officer. Undoubtedly being an official vehicle purchased and maintained using the amounts availed from the state exchequer and being used as a conveyance for a judicial officer, the same could be deemed a



'Public Property' on that count. However, 'Public Property' to which Section 3(2)(e) of the Act of 1984 is extended has been specifically enumerated in the said Section. When the legislature has specifically enumerated a class of 'Public Property' that is intended to be covered by the relevant statute, then the said enumerated property alone can be termed to possess the protection envisaged by the statute or by the relevant provision. Further the said statute was never intended to deal with isolated incidents like the one at hand which lack an element of assault and criminal force aimed at causing destruction to a 'Public Property' and would fall more within the category of motor accident. It is not open to widen or extend the scope of Section 3 (2) (e) of the Act of 1984 by an interpretative exercise to mean any 'Public Property' in its all pervading and general sense. For an offence under Section 3(2)(e) of the Act of 1984 to lie, the 'Public Property' must be one that falls within all squares of the said provision. It is relevant to note that the legislature has not incorporated in Section 3 (2) (e) of the Act of 1984 a 'catch all' clause when it comes to all categories of 'Public Properties' and had rather deliberately chosen to provide a closed list of what would constitute a 'Public Property' under the said



Section thus making its intention very clear and specific to limit the ambit of the provision to only the 'Public Property' enumerated therein. Hence, Section 3 (2) (e) of the Act of 1984 is not attracted in the admitted fact situations of the case at hand. The charge does not disclose any intentional act so as to attract the offences alleged against the petitioner.

19. In view of the above, I conclude that none of the charges levelled against the petitioner are even *prima facie* found to be sustainable or as meeting the ingredients for maintaining a charge under Sections 324 and 353 of IPC and Section 3(2)(e) of the Act of 1984.

20. I find merit in the reliance placed by the learned counsel for the petitioner on the dictum laid down by the Hon'ble Supreme Court in **Javed Shaukat Ali Qureshi v. State of Gujarat** [(2023) 9 SCC 164] ; **Yogarani v. State by the Inspector of Police** [2024 SCC Online SC 2609], wherein it has been held that if it is convincingly put forth that a trial if at all continued as against the petitioner, it would variably result in his acquittal it should not be permitted to be proceeded with. It is the duty of this Court to intervene where continuation of criminal proceedings would amount



2026:KER:32850

to an abuse of process of law [See **Anukul Singh v. State of Uttar Pradesh** (2025 SCC OnLine SC 2060)]. Therefore, in order to secure the ends of justice and to prevent abuse of the process of court, this Crl.M.C. is allowed and the criminal proceedings initiated against the petitioner pursuant to Annexure II Final Report in Crime No.847 of 2018 before Alappuzha North Police Station, now pending as C.C.No.367 of 2018 on the files of Chief Judicial Magistrate Court, Alappuzha, against the petitioner and all proceedings therein are hereby quashed.

Sd/-
SYAM KUMAR V.M.
JUDGE

csl



APPENDIX OF CRL.MC NO. 5636 OF 2021

PETITIONER'S ANNEXURES

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| Annexure I | TRUE COPY OF THE FIRST INFORMATION REPORT
IN CRIME NO.847/2018 BEFORE THE ALAPPUZHA
NORTH POLICE STATION |
| Annexure II | CERTIFIED COPY OF THE ABOVE FINAL REPORT IN
CRIME NO.847/2018 BEFORE THE ALAPPUZHA
NORTH POLICE STATION |
| Annexure AIII | TRUE COPY OF THE FINAL REPORT IN CRIME NO.
847/2018 BEFORE THE ALAPPUZHA NORTH POLICE
STATION, FURNISHED TO THE PETITIONER IN C.C
NO.367/2018 BEFORE THE CHIEF JUDICIAL
MAGISTRATE COURT, ALAPPUZHA. |