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**(2005) 01 KL CK 0019**  
**In the High Court Of Kerala**  
**Case No : Criminal M.C. No. 2942 of 2002**

Kesavan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 20-01-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 23, 24, 34, 378, 380

**Citation :** (2005) 3 ILR (Ker) 355 : (2005) 3 KLT 391 : (2005) 4 RCR(Criminal) 43

**Hon'ble Judges :** K. Hema, J

**Bench :** Single Bench

**Advocate :** C.V. Bimal Roy and C.A. Chacko, for the Appellant; G.S. Reghunath, Nair Ajay Krishnan, Nagaraj Narayanan and Thavamony, Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

K. Hema, J.—If articles which are in possession of a person are removed by another with intention to evict the former from a building in which the articles are kept, will an offence u/s 380 of the Indian Penal Code (IPC, for short) be attracted? This question arises for consideration in this case.

2. Petitioners are accused of offences under Ss. 380, 451 and 34 IPC. The third respondent/de facto complainant, who is a practising advocate filed a complaint before Judicial First Class Magistrate alleging that after his senior's death, he was in possession of the building owned by petitioners 1 and 2 and he was running his office in the building. First and second petitioners demanded eviction of the building. The complainant agreed to vacate the building when he gets another building for occupation. But, before that, all the petitioners went to the office of the de facto complainant and asked him to vacate the building. He was also told that or else, articles which are kept in the office would be removed.

3. Later, a coconut was deliberately put on the building under the pretext of

plucking coconuts and hence the de facto complainant filed a complaint before the Dy. S.P. On the very same evening also, there was a threat that his files would be removed and the building would be destroyed. A suit was therefore filed before the Munsiff's Court for restraining the petitioners from causing obstructions in running the office. A temporary injunction was also issued against the petitioners and this fact was conveyed to the first petitioner and others. But, on the date of occurrence, de facto complainant received information in the night that petitioners were destroying the building. At about 6 a.m. he went to the office and found that the building was destroyed and the files, books, furniture etc. were missing. On a complaint that his articles were removed by the petitioners, a crime was registered. Police after investigation, submitted a charge sheet before the Judicial First Class Magistrate. Based on the charge sheet, the Court took cognizance of offence u/s 380 and 451 IPC and issued summons to the petitioners. The petitioners filed this petition to quash the charge sheet.

4. The question which arises in this case is whether, on the above allegations, offences under Sections 380 and 451 IPC will lie or not. It is vehemently contended by learned counsel appearing for the petitioners that the allegations in the complaint and the other records will not disclose the necessary ingredients of offence u/s 380 IPC. From the charge sheet as well as the complaint and other records it appears that the sole intention of the petitioners while removing the articles was to evict the de facto complainant. Hence, an offence of "theft", u/s 380 IPC is not attracted, is the argument.

5. To appreciate this argument, I shall first try to find out as to what constitutes "theft" under Indian Penal Code. Section 378 of Indian Penal Code defines "theft". In Section 378, a reference is made to the expression "dishonestly". The said word "dishonestly" is defined u/s 24 of IPC. On reading Section 24, I further find that a reading of Section 23 IPC will also be necessary to understand the real import of the expression, "dishonestly". So, to perceive as to what constitutes the offence of "theft", a joint reading of all the above sections is absolutely essential. I shall therefore extract all the above sections one by one as follows:

"Section 378: Theft.- Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft".

"Section 24: "Dishonestly"- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

"Section 23. "Wrongful gain".- "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled".

"Wrongful loss".- "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled".

6. A close reading of Sections 378, 24 and 23 IPC extracted above would show that proof of removal of a movable property by the accused alone will not be sufficient to establish "theft". Prosecution has to further prove that the accused had intended to take the movable property "dishonestly" as defined u/s 24 read with Section 23 IPC. To prove that the accused intended to take the property "dishonestly", prosecution has also to establish that the accused intended to cause wrongful gain or wrongful loss of the movable property as stated in Section 23 of IPC. Thus, to prove the offence of "theft", prosecution has to establish that the accused moved the articles with the requisite intention contemplated by Section 378 IPC read with Sections 23 and 24 of IPC.

7. The main ingredients of offence of "theft" which are to be proved u/s 378 of IPC are therefore (1) that the offender had the intention to "take" a movable property out of possession of another without the consent of the latter; (2) that the offender had also intended to cause wrongful gain by unlawful means, of such property to which the person gaining is not entitled to or wrongful loss by unlawful means, of such property to which the person who is losing it is entitled to and (3) that with such intentions and in order to such "taking", the offender had moved such movable property.

8. Thus, it is clear that the offence of "theft" takes in both a physical act of "moving" and also a specified intention. But, what exactly is the nature of the intention which is required to be proved to make out the offence of "theft"? Theft postulates two "intentions". Firstly, an intention of the accused to "take" any movable property out of possession of another person without the consent of the other person. Secondly, an intention to cause wrongful gain by unlawful means, of such property to which the person gaining is not entitled to or to cause wrongful loss by unlawful means of such property to which the person losing is entitled to. Only if both such intentions of the accused are proved, an offence of "theft" as defined in Section 378 IPC will be established. Therefore, a mere removal of a movable property by a person from possession of another without the consent of the latter with the sole intention to evict him from a building will not be sufficient to make out an offence u/s 380 of IPC.

9. But, the records in this case will not reveal that the accused had any intention to cause wrongful gain or wrongful loss in respect of any "movable" property. In the charge sheet itself it is stated that the accused had removed the movables with the intention to evict the complainant. The definite case of the prosecution is that the movables were removed with the intention to evict the complainant. It is specifically stated in complaint that the accused had threatened the complainant that his articles will be removed in case he did not vacate the premises. The accused thereafter allegedly removed the files, books etc. from the possession of the complainant. But those movables were kept exposed and intact in the premises of the house of the accused. Thus, even if the entire allegations in the records are accepted, it will only reveal that the accused moved the articles with the intention to evict the complainant from the building but they

did not have the intention to cause any wrongful gain or wrongful loss of any movable property. Therefore the allegations revealed from records will not constitute offence u/s 380 IPC. If no offence u/s 380 is attracted, no offence u/s 451 also will lie.

10. Learned counsel appearing for the 3rd respondent vehemently contend that this Court cannot go into the meticulous details in the case diary or in the charge-sheet to consider whether the ingredients of offence is made out or not, u/s 482 Cr.P.C. He has also cited decisions in support of his arguments to contend that this Court has no jurisdiction to go into these details (vide *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another*, and *M. Krishnan Vs. Vijay Singh and Another*, . On going through those decisions, I find that Hon"ble Supreme Court was considering the propriety of this Court's interference at a very early stage of the case when only the FIR or a complaint is available. In cases where only FIR or a complaint alone is available, it was held that the Court cannot lightly interfere merely on the basis of the allegations in such records.

11. But, the stage of this case is different. Charge sheet is submitted in this case, after detailed investigation and all documents and evidence on which the prosecution case rests are available in Court. The records are complete. Further, a meticulous examination of the records is not at all necessary to infer the alleged intention of the accused in this case. The nature of intention of the accused is evident from an apparent reading of the records and charge-sheet themselves. Records available in Court will reveal that the intention of the accused was only to evict the petitioners and not to commit theft as defined. In such circumstances, the dictum laid in the decisions cited above will have no application in this case.

12. Learned counsel appearing for the 3rd respondent also strenuously contended that this Court while exercising its inherent jurisdiction cannot look into the truth of the defence or falsity of prosecution case at this stage but those can be decided at the appropriate stage by the courts below. He also cited a decision in support of his argument (vide 1992 (2) KLJ 487, *Abdul Salam v. K.M. Muhammadali*). But, I make it clear that what I have gone into is not the truth or falsity of the defence case or that of the prosecution case. Such an enquiry is not necessary for the disposal of this case. I have only considered the records produced by the prosecution as such and decided whether the allegations made against the accused as per records on the face of it will constitute the offences alleged against them. Such an enquiry is permitted under law. It is well-settled that if the Court finds that the allegations revealed from the records on the face of it do not constitute ingredients of any offence, this Court can certainly interfere u/s 482 Cr.P.C. and quash the charge. This will be necessary for the purpose of preventing abuse of process of Court and also to meet ends of justice, as stated in Section 482 itself.

13. On going through the records and hearing both sides, I am satisfied that no offence u/s 380 of IPC is made out from the records available in this case. If no

offence u/s 380 IPC is made out, an offence u/s 451 also will not lie. The charge sheet itself explicitly reveals that the sole intention of the petitioners was to evict illegally the de facto complainant who was allegedly running his office in the building belonging to the first and second petitioners. Hence the lower Court ought not to have taken cognizance of the offence of either u/s 380 or 451 IPC. Charge against the accused in this case is liable to be quashed and I do so.

In the result the following orders are passed:

- i) The charge sheet Annexure-A6 in C.C. No. 611 of 2001 is hereby quashed;
- ii) The Court below is directed to drop all the proceedings against the petitioners in the above said case.

The petition is allowed.