

(2008) 03 KL CK 0064
In the High Court Of Kerala
Case No : B.A. No. 1252 of 2008

P.K. Faizal

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 149, 332, 353

Citation : (2008) 1 KLJ 793

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : Jawahar Jose, for the Appellant;

Final Decision : Dismissed

Judgement

R. Basant

1. This application for anticipatory bail arouses and brings to my mind disturbing thoughts about the attitude of the polity to the police and vice versa. The alleged fact scenario in the present case is one of very common occurrence in Kerala. The Keralite sees it often through the visual media. A political demonstration is taking place. A large number of persons with flags walk down a street to proceed to the nerve centre of official activity. Police with visible anxiety and apprehension waits for them. The police have instructions to stop the procession at a certain point. Barricades have already been put up and the police cordon is arranged. The crowd reaches the barricade. The police ask them to stop. Then starts the oft repeated sequences. The demonstrators do not stop. They in mad frenzy try to break the police barricade and cordon and proceed further. Inanimate barricades and live policemen are beaten up. The police force also start losing their self-control not befitting their position as a trained force. Commotion and pandemonium descends. It is anarchy and free for all thereafter. To what extent it should go may vary as per the script already written. When "X" combination rules "Y" combination indulges in such demonstration. Not to be out

done, when "Y" combination rules "X" combination indulges in the same behavior with vengeance.

2. Are we going mad? After completing 60 proud years - "Shashtabdhyaapoorthi", of our existence as a democracy, cannot the enlightened literate polity of Kerala imbibe, prescribe and follow a healthier culture for protests and demonstrations. Right to dissent conceded, should we not express our dissent in less unruly and more civilized manner? Why should the police barricades and cordons be broken? How is the protest less efficacious if you stop at the barricade and continue the slogan shouting? Should the policemen discharging their official duties be attacked and tormented?

3. The Britisher respects his bobby. The American trusts his cop. But the unfortunate Indian policeman continues to be at the butt end of all scornful jokes. He is not respected. There is no concern for him. The imperial distrust of the Indian police continues even now after 60 years of independence. He is looked at unfortunately not as a member of a citizen friendly democratic police force; but as a member of an institution of oppression. The police force of the democratic republic do themselves sometime behave, and is often treated by others like its imperial predecessor. Law distrusts the police. Not even a signed statement of any one - be he a witness or accused, can be recorded by the police ordinarily. The system feeds itself on a regular diet of distrust against the police. This can and does beget only irresponsibility from them in return. To bring about a change in the attitude of the polity and the system towards the police, should the last the hard policeman change and transform/

4. I have digressed. A court in addition to its function as lis resolver and law adjudicator can and should at times (and only if relevant to its primary functions in a given case) offer food for thought to the polity and act as a catalyst for healthy changes in society. The court can provoke though and encourage sublime introspection in society. That perception of the role of a Judge explains my digression. May all the leaders and followers as also ordinary members of the polity think. Should police barricades and cordons be broken in a protest demonstration? Can and should flag poles be used as weapons? Can and should stones be thrown at policemen? Can and should the policeman doing his public duty be assaulted for not fault of his? Should not law and the system assert to protect the policeman discharging his official duty?

5. Now to my primary duty. The petitioners claim to be leaders of the Youth Congress who were engaged in a protest demonstration. It is alleged that on 16-2-08 they led a protest demonstration and were members of an assembly which turned out to be unlawful and indulged in acts of violence. The members of the unlawful assembly attempted to break the police barricade and cordon and indulged in stone throwing against, the policemen on duty. The petitioners contend that they are innocent. They are leaders who led a protest demonstration. They may not be mulcted with any liability for the acts of culpable indiscretion of some of the members of the assembly.

6. The leaders must lead. They have to control their men. Leadership in a democracy is too serious a business to be left to Mark Antonies of Shakespearean vintage who invite mischief and when mischief has arrived move away saying:

Mischief thou are afoot. Take what course thou wilt

7. Such persons/leaders do certainly fall within the sweep of vicarious liability in criminal law under Sec. 149 I.P.C. At any rate, at this anticipatory bail stage, I am not prepared to concede to the petitioners any benefit of doubt and invoke the extraordinary equitable discretion under Sec. 438 of the Cr.P.C. At this stage what alone matters is the tenability of the allegations and not proof of guilt. Law must assert and must eloquently convey through the orders of the court its displeasure against (he alleged impugned conduct. Such conduct must be frowned upon and condemned in unmistakable terms by the enlightened polity and courts. I have no hesitation to agree that the petitioners are not entitled for the invocation of the extraordinary equitable discretion under Sec. 438 of the Cr.P.C. They, who face allegations of having committed the offences punishable, inter alia, under Secs. 353 and 332 read with Sec. 149 of the IPC, must surrender before the investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and usual course.

8. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously. Hand over a copy of this order to the learned Public Prosecutor.