
(1984) 07 KL CK 0001

In the High Court Of Kerala

Case No : Criminal R.P. No. 210 of 1981

P.K. Ibrahimkutty and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 349, 360
Penal Code, 1860 (IPC) — Section 143, 146, 147, 149, 427

Citation : (1984) KLJ 523

Hon'ble Judges : V. Bhaskaran Nambiar, J

Bench : Single Bench

Advocate : N.P. Samuel, A.R. Prakasam and T.K. Chinnan, for the Appellant; P.K. Kesavan Nair, K.N. Narayana Pillai, T.K. Venugopalan and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhaskaran Nambiar, J.—The revision petitioners accused of offences under Sections 143, 147, and 427 read with Section 149 I.P.C. challenge in this revision their conviction confirmed by the appellate court. P.W. 1 and his brother own 45 cents of land. On the southern side, there was a boundary wall touching, a pathway. There was an attempt to widen this pathway. The prosecution case is that the accused and others formed themselves into an unlawful assembly removed the boundary wall by force, widened the road and thus committed the offences under the Penal Code. The incident took place in 1979 almost at the dead of night. The two courts have gone in detail in their appreciation of evidence and found that the accused are guilty. In spite of the persuasive argument of the. young counsel, I am not inclined to exercise this revisional jurisdiction for a re-appraisal of the evidence. P.Ws. 1, 3, 4, 6 and 7 have deposed that all the accused were engaged in the demolition of the wall and that accused Nos. 1 and 8 were giving the necessary directions. This evidence has been rightly accepted. The conviction was proper; the relief u/s 360 of the Code of Criminal Procedure justified.

2. However, his contention on a question of law requires consideration. He submits that force or violence is an ingredient of the offence of rioting u/s 146 I.P.C. and Section 349 of the Code which defines "force" has to apply and there can be no offence of rioting when any unlawful assembly merely uses force to demolish buildings, or walls and is directed against inanimate objects.

3. I cannot agree with this extreme submission.

4. Section 349 CrI.P.C. does not purport to be a statutory dictionary for the meaning of "force" wherever it occurs in the Indian Penal Code. "Force" in section 349 applies only when there is "force to another". Force as an ingredient of the offence of criminal force or assault required a statutory explanation and coverage and that is provided in Section 349. Section 349 and the group of sections following it are included in Chapter XVI relating to offences affecting human body and under the sub heading "Criminal force and assault". Force against an inanimate object is thus outside Section 349 and force as an ingredient of the offence of rioting cannot naturally have any restricted relevance or logic or application. Force, as understood in common parlance, as defined in the Oxford Dictionary reads: "Strength exerted on an object, power, impetus." The word "force" in section 146 I.P.C. has to be understood in this sense.

5. Moreover, violence is also an equivalent ingredient of the offence of rioting. Violence means:-- "Unlawful exercise of physical force, intimidation by exhibition of this". And violence involves "great physical force, intense, vehement, passionate, furious, impetuous and vivid".

6. In this case force was employed by an unlawful assembly in prosecution of the common object of the assembly to trespass upon P.W. 1's land, demolish the wall and widen the road. Rightly, they were convicted u/s 147 I.P.C. A feeble contention that there was no criminal trespass as the accused were only on the public road is belied by the prosecution evidence accepted by the courts below. There was a delay of 4 days in filing the complaint, the reason was properly explained and the courts below have considered that aspect as well. The petitioners had executed a bond as provided in section 360 CrI. P.C. and the period of the bond has also expired.

In the result there is no merit in this revision petition and it has only to be dismissed. Dismissed.