



2023/KER/45810

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 4TH DAY OF AUGUST 2023 / 13TH SRAVANA, 1945

CRL.MC NO. 4997 OF 2013

ST 6707/2012 OF JUDL. MAGISTRATE OF FIRST CLASS,
KOTHAMANGALAM

PETITIONER/ACCUSED:

SIRAJ
S/O.SEETHI, VALAKATHIL HOUSE,
UDUMBANNOOR VILLAGE, P.O.MALAYINCHI.
BY ADVS.
SRI.ANIL SIVARAMAN
SRI.SREEDHAR RAVINDRAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT:

SMT. MAYA M.N., PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 04.08.2023, ALONG WITH Cr1.MC.5003/2013
AND CONNECTED CASES, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



CrI.M.C.No.4997,5003 & 5009 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 4TH DAY OF AUGUST 2023 / 13TH SRAVANA, 1945

CRL.MC NO. 5003 OF 2013

ST 6708/2012 OF JUDL. MAGISTRATE OF FIRST CLASS,

KOTHAMANGALAM

PETITIONER/ACCUSED:

JOSEPH JOHN
S/O.JOHN,PULIKKUZHY HOUSE,
THRIKKARIYUR VILLAGE, P.O NELLIKUZHY
BY ADV SRI.ANIL SIVARAMAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM

OTHER PRESENT:

SMT. MAYA M.N., PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 04.08.2023, ALONG WITH CrI.MC.4997/2013,
5009/2013, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



Crl.M.C.No.4997,5003 & 5009 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 4TH DAY OF AUGUST 2023 / 13TH SRAVANA, 1945

CRL.MC NO. 5009 OF 2013

ST 6706/2012 OF JUDL. MAGISTRATE OF FIRST CLASS,

KOTHAMANGALAM

PETITIONER/ACCUSED:

UNNIKRISHNAN V.P.
S/O.PARAMESWARA PILLAI,
VADAKKEMUTHUKKATTUSSERIYIL, P.O.THALAYAZHAM,
VAIKOM.
BY ADVS.
SRI.ANIL SIVARAMAN
SRI.SREEDHAR RAVINDRAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT:

SMT. MAYA M.N., PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 04.08.2023, ALONG WITH
Cr1.MC.5003/2013 AND CONNECTED CASES, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

**"CR"****P.V.KUNHIKRISHNAN, J.****-----
Crl.M.C.Nos.4997, 5003 & 5009 of 2013
-----****Dated this the 04th day of August, 2023****ORDER**

These three criminal miscellaneous cases filed under Section 482 Cr.P.C. are connected because the facts in these cases are almost similar. Therefore, I am disposing these three cases by a common order.

2. Petitioners in these cases were conductors of three buses bearing registration Nos.KL-44/4181, KL-17/D-3231 and KL-40/B-7372. The common allegation against the petitioners in these cases is that on 30.11.2012 at 4 pm, the petitioners, who were the conductors of the above buses, wrongfully restrained the students from boarding their bus and without taking these students, bus service was conducted and hence they committed the offence under Section 190(2) read with



Section 196 of the Motor Vehicles Act, 1988 (for short, MV Act). The learned Magistrate has taken on file all these cases as ST Nos.6707/2012, 6708/2012 and 6706/2012 respectively. The petitioners challenged these proceedings stating that no offence is made out against the petitioners even if the entire allegations are accepted.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. The short point to be decided is whether an offence under Section 190(2) read with Section 196 of MV Act is attracted based on the above allegation. It will be better to extract Section 190 of the Motor Vehicles Act:

190. Using vehicle in unsafe condition.-

(1) Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine of one thousand five hundred rupees or, if as a result of such defect an accident is



caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months or with fine of five thousand rupees, or with both and for a subsequent offence shall be punishable with imprisonment for a term which may extend to six months, or with a fine of ten thousand rupees for bodily injury or damage to property.

(2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution, shall be punishable for the first offence with imprisonment for a term which may extend to three months, or with fine which may extend to ten thousand rupees or with both and he shall be disqualified for holding licence for a period of three months and for any second or subsequent offence with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.

(3) Any person who drives or causes or allows to be driven, in any public place a motor vehicle which violates the provisions of this Act or the rules made thereunder relating to the carriage of goods which are of dangerous or hazardous nature to human life, shall be punishable for the first offence with a fine of ten thousand rupees and he shall be disqualified for holding licence for a period of three months, or with imprisonment for a term which may extend to one year,



or with both, and for any second or subsequent offence with fine of twenty thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

5. It is true that, there are some amendments in the punishments that can be imposed after the M V Act came into force. But there are no changes in the other provisions which make out the offences. Section 190(2) says that any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution shall be punishable. To attract the above offence, the main ingredient is that the person accused should be a person who drives or causes or allows to be driven, in any public place a motor vehicle. The question to be decided is whether a conductor of a bus can be treated as a person who drives or causes or allows to be driven in any public place a motor vehicle. Prima facie a conductor of a bus will not come within the



purview of the above section. Moreover, a perusal of Annexure-1 charge sheet in these cases submitted by the Police also does not show that the conductors have given any inducement to the drivers of the vehicles to drive the vehicles without taking the students from the bus stand. Therefore prima facie a conductor of a bus cannot be prosecuted under Section 190(2) of MV Act with these set of facts. Moreover, the allegation against the petitioners is that the petitioners, being the conductors of the bus had not allowed the students to board the bus. That will not attract the offence under Section 190(2) of MV Act.

6. Moreover, the action, which leads to the offence as per Section 190(2) Of MV Act is "violation of the standards prescribed in relation to road safety, control of noise and air-pollution". Simply because students were not allowed to board a bus, it cannot be treated as violation of the standards prescribed in relation to road safety, control of noise and air-pollution. In such circumstances, Section



190(2) of MV Act is not attracted even if the entire allegations in Annexure-1 charge sheet is accepted.

7. It is stated in Annexure-1 in all these cases that the offence committed by the accused are under Section 190(2) read with Section 196 of MV Act. Section 196 of MV Act is extracted hereunder:-

“196. Driving uninsured vehicle.—Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable for the first offence with imprisonment which may extend to three months, or with fine of two thousand rupees, or with both and for a subsequent offence shall be punishable with imprisonment for a term which may extend to three months, or with fine of four thousand rupees, or with both.”

8. Section 196 says that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable. Section 146 of MV Act states about the necessity for insurance against third party risk. There is



no such allegation in Annexure-1 charge sheet in these cases against the petitioners. If that is the case, I am of the considered opinion that, even if the entire allegations in Annexure- 1 in these Criminal Miscellaneous Cases are accepted in toto, no offence under Section 190(2) read with Section 196 of MV Act is attracted. Moreover, the licensing, conduct and duties of conductors of stage carriages are separately and exhaustively dealt under Chapter III of MV Act and also under Chapter III of the Kerala Motor Vehicles Rules, 1989. Clauses (p) and (q) of Rule 89 allow certain discretion to a conductor to refuse entry of further passengers, if he is satisfied that the vehicle has reached the permissible capacity to carry passengers or for any other good and sufficient reason. The prosecution has no such case and has not filed any final report alleging such action from the conductor.

9. Therefore, I am of the opinion that even if the entire allegations in Annexure-1 final reports are



accepted, no offence is made out against these petitioners.

10. But before parting with the facts of this case, some disturbing trends of the employees of private stage carriage buses and public transport employees are to be noted. In almost all bus stands and bus stops in Kerala, the employees of the buses do not allow the students to board the bus and prefer other passengers instead of students. This usually creates a law and order problem at several places. Bus owners may have a grievance about the meagre amount they are getting from students because of their concession. It seems that, the student concession rate has not been enhanced even after several decades. The value of 50 paise and 1 rupee has changed a lot over the years. But whether the student concession is to be enhanced is a policy matter of the government in relation to which this court cannot issue any direction. But student organisations and the government should look



into the changed realities. Bus owners have to take up this demand with the government and the transport department. But as long as the student concessions are in force, the owners and the employees of a bus cannot take a discriminative stand against the students while boarding buses, only because they are paying the concession rate. Students and other passengers are on an equal footing. It is the duty of the police to see that there is no law and order problem in connection with the same. The State police chief will issue necessary directions to all its subordinates to avert all such law and order problems because of this rift between the students and the employees of the buses.

But in the facts and circumstances of these cases, no offence is made out in Annexure 1 Charge sheets. Therefore, these Crl.M.Cs are allowed in the following manner.

1. Crl.M.C.No.4997/2013 is allowed and all



proceedings in S.T.No.6707/2012 on the files of the Judicial First Class Magistrate Court, Kothamangalam are quashed.

2. Crl.M.C.No.5003/2013 is allowed and all proceedings in S.T.No.6708/2012 on the files of the Judicial First Class Magistrate Court, Kothamangalam are quashed.
3. Crl.M.C.No.5009/2013 is allowed and all proceedings in S.T.No.6706/2012 on the files of the Judicial First Class Magistrate Court, Kothamangalam are quashed.
4. The registry will forward a copy of this order to the State Police Chief for appropriate actions mentioned in paragraph-10 this order.

JV/bng

Sd/-
P.V.KUNHIKRISHNAN
JUDGE



2023/KER/45810

Crl.M.C.No.4997,5003 & 5009 OF 2023

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APPENDIX OF CRL.MC 4997/2013

PETITIONER ANNEXURES

ANNEXURE-1: TRUE COPY OF THE CHARGE SHEET IN ST 6707/12 BEFORE THE JFCM, KOTHAMANGALAM.



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Crl.M.C.No.4997,5003 & 5009 OF 2023

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APPENDIX OF CRL.MC 5009/2013

PETITIONER ANNEXURES

ANNEXURE -1: TRUE COPY OF THE FIR AND
CHARGE SHEET IN ST.6706/12 BEFORE THE
JFCM, KOTHAMANGALAM.



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Crl.M.C.No.4997,5003 & 5009 OF 2023

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APPENDIX OF CRL.MC 5003/2013

PETITIONER EXHIBITS

ANNEXURE -1 TRUE COPY OF THE CHARGE SHEET IN ST
6708/12 BEFORE THE JFCM, KOTHAMANGALAM