



"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 14TH DAY OF AUGUST 2025 / 23RD SRAVANA, 1947

CRL.REV.PET NO. 490 OF 2025

CRIME NO.2741/2020 OF Kollam East Police Station, Kollam

**AGAINST THE ORDER/JUDGMENT DATED 01.02.2025 IN CMP
NO.6757 OF 2024 IN CC NO.2273 OF 2020 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, KOLLAM**

REVISION PETITIONER(S)/PETITIONER/ACCUSED

MANILAL

**AGED 56 YEARS, S/O. LATE VIVEKANANDAN, AGED 56
YEARS, 'AKSHAJAM', PATTATHANAM P.O., KOLLAM,
PRESENTLY RESIDING AT C-3, MELEVEEDU
APARTMENTS, MELE THAMPANNOOR, THAMPANNOOR P.O.,
TRIVANDRUM., PIN - 695001**

BY ADVS.

SRI.SOORAJ T.ELENJICKAL

SMT.HELEN P.A.

SHRI.ATHUL ROY

SHRI.INDRAJITH DILEEP

SMT.AMALA ANNA THOTTUPURAM

SHRI.P.PARAMESWARAN NAIR

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA

**REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. (CRIME NO.
2741/2020 OF KOLLAM EAST POLICE STATION),
PIN - 682031**



BY ADV.:

SR PP, SMT SEETHA S

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 14.08.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



“CR”

P.V.KUNHIKRISHNAN, J.

Crl. Rev. Pet. No.490 of 2025

Dated this the 14th day of August, 2025

ORDER

A humane touch is necessary in every administrative act of bureaucrats. It is often said that every file has a face, and every decision has a consequence. Behind every decision, there is a person with hopes, fears and dreams. Every decision made in an office affects a life outside of it. Administrative decisions are not just papers; they are lives in progress. The success of democracy is not just about governance by elected representatives of the people alone, but it also relies on the way bureaucrats support such a government with a



humane approach. Without a humane approach, a democratic government cannot succeed. The bureaucracy that forgets the people forgets its very purpose. Empathy is the bridge between a democratic government and its people. Bureaucracy has a vital role in it.

2. This is a sad story of a 76-year-old man and his son-in-law, who is the revision petitioner in this case. The petitioner's father-in-law contacted the office of the Tahsildar (LR) to have 3 cents of property mutated in his name in the revenue records, for which he had already paid land tax earlier. It is the case of the petitioner that the Tahsildar was reluctant to do the same, stating technical reasons one after the other. At last, a hearing was scheduled in the office of the Tahsildar. The revision petitioner accompanied his father-in-law, who is an old man, to assist him in the enquiry. They entered the chamber



of the Tahsildar and requested action on the file, which had been pending consideration for about 1 ½ years. The Tahsildar took a stand that since the opposite party is represented through another person, the hearing cannot be conducted. Considering the embarrassing situation of the father-in-law, the revision petitioner questioned the stand of the Tahsildar, which resulted in a wordy quarrel with the Tahsildar. Subsequently, a criminal case was registered against the petitioner, alleging offences punishable under Sections 353 and 294(b) IPC.

3. The prosecution case is that the accused entered the cabin of the de facto complainant, who is the Tahsildar and uttered obscene words, snatched the office file from the section clerk, and also threw the file and plastic chairs kept in the room, thereby obstructing the duty of the de facto complainant. Annexure I is the FIR and FI Statement. Thereafter,



the police submitted a final report, as evident by Annexure-II. The petitioner received the summons from the court and thereafter filed a discharge petition as CMP No. 6757/2024 in CC No. 2273/2020 before the Judicial First Class Magistrate Court-II, Kollam. The learned Magistrate, as per the impugned order, allowed the discharge petition in part, by discharging the petitioner from the offence under Section 294(b) IPC. But the learned Magistrate found that the petitioner had to face trial under Section 353 IPC. Aggrieved by the same, this Criminal Revision Petition is filed.

4. Heard Adv. Sri. P Prameswaran Nair, who appeared for the petitioner and also the learned Public Prosecutor.

5. Advocate Parameswaran Nair submitted that, even if the entire allegations are accepted, the offence under Section 353 IPC is not made out. The



counsel takes me through the ingredients of Section 353 IPC and submits that the admitted case of the prosecution will not constitute the offence under Section 353 IPC. The Public Prosecutor, on the other hand, submitted that the ingredients of Section 353 IPC are made out. The Public Prosecutor takes me through the definitions of “force,” “criminal force,” and “assault.” The Public Prosecutor submitted that in the light of the above definition in the Indian Penal Code, the offence under Section 353 IPC is *prima facie* made out. Therefore, it is submitted that there is nothing to interfere with the impugned order.

6. This Court considered the contention of the petitioner and the Public Prosecutor. The allegations in the final report filed against the petitioner are extracted hereunder:

"വസ്തു സംബന്ധമായ തർക്കത്തിന് പ്രതിയുടെ കൂട്ടുകാരന്
അനുകൂലമായ തീരുമാനം ഉണ്ടാകാത്തതിലുള്ള



വിരോധത്താൽ 1-ാം സാക്ഷി തഹസീൽദാരായി ജോലിനോക്കി വരുന്ന കൊല്ലം ഈസ്റ്റ് വില്ലേജിൽ വടക്കുംഭാഗം ചേരിയിൽ താലൂക്ക്-സാൽട്ട്ഹൗസ് റോഡിൽ ടി റോഡിന് കിഴക്ക് വശം തെക്ക് ദർശനത്തിൽ സ്ഥിതിചെയ്യുന്ന താലൂക്ക് ഓഫീസ് കെട്ടിടത്തിന്റെ 2-ാം നിലയിൽ വടക്ക് കിഴക്കേ മൂലഭാഗത്തുള്ളതും തഹസീൽദാരുടെ കൃപ്തനായി ഉപയോഗിക്കുന്നതുമായ മുറിയിൽ 19.08.2020-ാം തീയതി രാവിലെ 12.00 മണിയോടെ പ്രതി കയറി 1-ാം സാക്ഷിയെ അസഭ്യം പറഞ്ഞും ടി ഓഫീസിൽ ഇട്ടിരുന്ന പ്ലാസ്റ്റിക് കസേരകൾ നിലത്തടിച്ചും 2-ാം സാക്ഷിയുടെ കൈവശം ഉണ്ടായിരുന്ന ഫയൽ പിടിച്ചു വലിച്ചെടുത്ത് മേശപ്പുറത്തെറിഞ്ഞും മേശപ്പുറത്തിരുന്ന ഫയലുകൾ തട്ടി താഴെയിട്ടും 1-ാം സാക്ഷിയുടെ ഔദ്യോഗിക കൃത്യ നിർവ്വഹണത്തെ തടസ്സപ്പെടുത്തിയും പ്രതി മേൽ വകുപ്പുകൾ പ്രകാരമുള്ള കുറ്റംചെയ്തിരിക്കുന്നു എന്നുള്ളത്.”

7. A perusal of the above allegation would show that the overt act attributed to the petitioner is that he used filthy language against CW1, who is the Tahsildar. It is also the case of the prosecution that the petitioner took a file from CW2, who is the clerk attached to the office of the Tahsildar and threw the



same over the office table of CW1 and the accused made the office files to fell down from the table of CW1 and consequently the accused obstructed CW1 from performing her official duty. Whether the same constitutes the offence under Section 353 IPC is the point to be decided. Section 353 IPC is extracted hereunder:

“Sec.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.”

8. To constitute an offence under Section 353



IPC, the accused should assault or use criminal force,

- i. to any person being a Public Servant in execution of his duty as such public servant or,
- ii. with the intention to prevent or deter that person from discharging his duty as such public servant or,
- iii. in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant.

Therefore, assault or use of criminal force on any person who is a public servant is the main ingredient to attract the offence under Section 353 IPC.

9. "Force" is defined under Section 349 IPC. 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 other's sense of feel. It will be better to extract Section 349 IPC also:

"S. 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.

(firstly) - By his own bodily power.



(secondly) - By disposing any substance in such a 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.”

10. From the above section, the important ingredient is that the force should contact with any part of the other's body or with anything that the other is wearing or carrying or with anything so situated that such contact affects the other's sense of feeling. The person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in three ways mentioned in the section itself as firstly, secondly and thirdly.

11. “Criminal force” is also mentioned in Section 350 IPC. Section 350 IPC is also extracted hereunder:

**S. 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.”

A perusal of Section 350 IPC also would show that, to attract the definition of “Criminal force”, the accused should intentionally use force to any person without that person’s consent, in order to commit 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.

12. In the light of the above definition clauses in IPC, this Court again perused the allegations against the petitioner. As I mentioned earlier, the overt act is only to the effect that the petitioner



snatched a file from CW2, who is an office clerk attached to CW1 and threw the file onto the table of CW1. Because of that, the files in the table of CW1 fell down. The accused also hit a plastic chair on the floor. These are the main overt acts attributed to the petitioner.

13. I am of the considered opinion that, even if the same is accepted in toto, it cannot be said that any criminal force is used by the petitioner towards CW1 and CW2. To attract the definition of criminal force as narrated in Section 350 r/w Section 349 IPC, force should be used on another person. In this case, it cannot be said that any force is used by the petitioner against CW1 or CW2. The petitioner only snatched a file from CW2 and threw the same onto the table of CW1. It is true that the petitioner hit a plastic chair on the floor. At that time also, there is no criminal force used against any person, nor is



there any intention to use force to cause or knowing it to be likely that by such force he will cause injury, fear or annoyance to the person to whom the force is used. There is no such case for CW1 and CW2. Therefore, it cannot be said that, even if the entire allegations are accepted, any criminal force is used by the petitioner.

14. The next question is whether the acts of the petitioner will attract the definition of “assault”. “Assault” is defined under Section 351 IPC. The same is extracted hereunder:

“S.351. Assault—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, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation



such a meaning as may make those gestures or preparations amount to an assault. ”

15. To constitute “assault”, he who makes a gesture or preparation should create an apprehension in any other person that he is about to use criminal force on that person. In this case, CW1 or CW2 has no case that they have an apprehension that the gestures of the accused or preparation are made to use criminal force against them. Explanation to Section 351 IPC clearly states that mere words do not amount to an assault. But, it is further stated in the explanation that the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault. As I mentioned earlier, CW1 or CW2 does not have such a case. Therefore, assault is also not present in this case. Unless assault or criminal force is used, Section 353



IPC is not attracted.

16. Moreover, it is a settled position that a physical act, either causing motion or cessation of motion of a person, is required to attract the offence of criminal force. If criminal force or assault is not there, the offence under Section 353 IPC is not attracted. The criminal force as contemplated under Section 353 IPC means criminal force exercised against a person and not against an inanimate object or substance. This Court in **Devaki Amma v. State of Kerala** [1981 KHC 313] has considered this point in detail. The relevant portion is extracted hereunder:

“4. The wording of S.353 IPC makes it clear that assault or use of criminal force to a public servant while he was doing his duty as such is a necessary ingredient of that offence. Under S.349 IPC., 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, etc. What is contemplated under S.353 IPC is not merely use of force but use of criminal force to any person mentioned therein. Even under S.349 IPC, cessation of motion contemplated was that of the substance which was caused to move. This again indicates that what was mainly intended under the section was use of force to any person. To attract the definition of 'criminal force' under S.350 IPC, there must be intentional use of 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. In other words, the criminal force contemplated under this section is intended to mean criminal force as applied to a person and not as applied to an inanimate object or substance. There is an essential distinction between the offences punishable under S.353 and 186 IPC. The ingredients of the two offences are distinct and different. While the former is a cognizable offence, the



latter is not. A mere obstruction or resistance unaccompanied by criminal force or assault will not constitute an offence under S.353 IPC. Where an accused voluntarily obstructs a public servant in the discharge of his duties, S.186 IPC is attracted. But under S.353, there must be in addition to the obstruction use of criminal force or assault to the public servant while he was discharging his duty. It may also be noted that the quality of the two offences is also different. While S.186 occurs in Chap. X dealing with contempts of the lawful authority of public servants, S.353 appears in Chap. XVI which deals with offences affecting the human body. This is also a clear indication that use of criminal force contemplated under S.353 IPC is against a person and not against any inanimate object. There is considerable force in the contention of the counsel for the petitioners that the offence really disclosed from the records is only one punishable under S.186 IPC and that by giving a label of S.353 IPC the prosecution wanted to circumvent the salutary provisions in S. 195(1)(a) Cr.P.C. In support of his contention, the counsel relied on the decision in Durgacharan v. State of Orissa (AIR 1966 SC 1775), where the Supreme Court



held that the provisions of S.195 cannot be evaded by resorting to devices or camouflages of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Penal Code, though in truth and substance the offence falls in the category of the offences mentioned in S.195. This is a clear instance where the prosecution wanted to evade the provisions in S.195 by charging the petitioners under S.353 IPC. In *Dr. S. Dutt v. State of U.P.* (AIR 1966 SC 523: 1966 (1) SCR 493) while dealing with a similar question, the Supreme Court held that it is not permissible for the prosecution to drop a serious charge and select one which does not require the procedure under S.195 Cr.P.C.; and that if the offence was under S.186 IPC, a complaint in writing was necessary. Admittedly in the instant case there is no complaint in writing of the public servant made to the court as contemplated under S. 195(1)(a) Cr. P. C. In the absence of a complaint as contemplated under S.195(1), although an offence under



S.186 IPC is disclosed from the records, prosecution against the petitioners cannot be continued, as there is a specific prohibition to take cognizance of the offence punishable under S.186 IPC., except upon a complaint in writing under S. 195(1)(a) Cr. P. C.”

[underline supplied]

17. Similarly, in **Durga Prasad and Others v. State of Kerala** [2014 (3) KHC 704], this Court considered the same point after relying on **Devaki Amma's** case (supra). In the light of the above dictum and also going through the allegation in the final report filed against the petitioner, I am of the considered opinion that the offence under Section 353 IPC is also not maintainable.

18. It is true that the gestures made by the petitioner in front of CW1, who is a Tahsildar, ought to have been avoided. But, it seems that he made such gestures because of the sad plight of his father-



in-law, who is aged 76 years. It is nothing but the sudden gestures of a son-in-law when his father-in-law is in an embarrassing situation. The petitioner, who works as a bank manager, should have avoided such a situation in a government office. But, as I mentioned earlier, it is only a sudden provocation from the side of the petitioner. No criminal offence is made out. I am of the considered opinion that the offence under Section 353 IPC is not attracted in the present case.

19. As I said earlier, the bureaucracy that forgets the people forgets its purpose. A citizen approaching a public servant may react in various ways, but patience should be the guiding attitude in such situations. It is true that a public servant can act only in accordance with the law. However, keeping this in mind, bureaucrats should behave, and that is the key to the success of democracy. Red tape



behaviour will create unpleasant situations. In the present case, if officials had adopted a pragmatic approach, the entire incident could have been avoided. That is why it is often said that bureaucracy should serve democracy, not be its master. I leave it there.

The upshot of the above discussion is that this Criminal Revision Petition is to be allowed.

Therefore, this Criminal Revision Petition is allowed. The impugned order is modified, and the Revision Petitioner is discharged for all charges, including the offence under Section 353 of the IPC, by allowing the entire prayers in C.M.P. No.6757/2024 in C.C. No.2273/2020 on the file of the Judicial First Class Magistrate Court – II, Kollam.

nvj/DM

Sd/-
P.V.KUNHIKRISHNAN
JUDGE



APPENDIX OF CRL.REV.PET 490/2025

PETITIONER ANNEXURES

ANNEXURE I	TRUE COPY OF THE F.I.R, F.I STATEMENT AND SCENE MAHAZAR IN CRIME NO.2741/2020 OF KOLLAM EAST POLICE STATION
ANNEXURE II	TRUE COPY OF THE FINAL REPORT SUBMITTED BY THE POLICE IN CRIME NO. 2741/2020 OF KOLLAM EAST POLICE STATION

//TRUE COPY//

PA TO JUDGE