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"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 30TH DAY OF JULY 2025 / 8TH SRAVANA, 1947

CRL.MC NO. 10891 OF 2024

CRIME NO.944/2023 OF Edathala Police Station, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.491 OF 2024

OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ALUVA

PETITIONER:

BY ADVS.
SRI.S.RAJEEV
SRI.V.VINAY
SRI.M.S.ANEER
SMT.DIPA V.
SHRI.SARATH K.P.
SHRI.ANILKUMAR C.R.
SHRI.K.S.KIRAN KRISHNAN



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RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 SUB INSPECTOR OF POLICE,
EDATHALA POLICE STATION,
ERNAKULAM, PIN - 683112
- 3 AL AMEEN,
AGED 26 YEARS
S/O.ASHRAF, ASARIKUDY HOUSE, NEAR SIVAGIRI
VIDHYANIKETHAN SCHOOL ERUMATHALA KARA,
THOTTUMUGHAM - KEEZMAD VILLAGE,
ERNAKULAM, PIN - 683105

BY ADVS.
SHRI.HASHIM K.M.
SHRI.JITHIN ALEXANDER SUNNY
SHRI.MOHAMMED ASHRAF
SHRI.AASIF MUHAMMED P.M.

OTHER PRESENT

SRI. M.C. ASHI, SR.PP.

THIS CRIMINAL MISC.CASE HAVING BEEN FINALLY HEARD ON
21.07.2025, THE COURT ON 30.07.2025 PASSED THE FOLLOWING:



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'CR'

V.G.ARUN, J

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Crl.M.C.No.10891 of 2024

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Dated this the 30th day of July, 2025

ORDER

The Constitution of India, while guaranteeing fundamental rights, also expects its citizens to abide by their fundamental duties. One such fundamental duty, enumerated in Article 51A, is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. Although not specifically mentioned in Article 51A, it is also the duty of every Indian citizen to respect the freedom fighters who were instrumental in liberating our country from foreign rule. Our transition from 'native Indian subjects' to 'proud Indian citizens' wouldn't have been possible, but for the untiring and selfless crusade led by Mahatma Gandhi and other national



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leaders. To borrow the words of Will Durant the American Historian on Mahatma Gandhi, “not since Buddha has India so revered any man. Not since St. Francis of Assissi has any life known to history been so marked by gentleness, disinterestedness, simplicity of soul and forgiveness of enemies.” The preface became essential as this case is about a youngster, then a law student, who is facing prosecution on the allegation of having denigrated the image of Mahatma Gandhi.

2. The essential facts are as under;

The petitioner is the accused in Crime No.944 of 2023 registered at the Edathala Police Station for offences punishable under Sections 153 and 426 of IPC. The crime is registered on the allegation that on 21.12.2023, at about 04:30 pm, while preparing for the Christmas celebrations at the Bharata Mata School of Legal Studies, of which the petitioner was a student, he placed a pair of cooling glasses over the nose, and a Christmas wreath around the neck, of the statue of Mahatma Gandhi installed inside the campus. The petitioner is



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also alleged to have commented that Gandhi is long dead. The petitioner's act was video-graphed and posted in the WhatsApp group of students. This led to discontent and complaints being submitted to the Principal of the college. Hence, apart from registration of the crime, the petitioner was also suspended from the college for five days and made to pay a fine of Rs.5000/- to the Kerala State Legal Services Authority.

3. Adv.S.Rajeev, the learned counsel appearing for the petitioner, fairly admitted that the petitioner's conduct is unjustifiable. The counsel then contended that the conduct, though deplorable, cannot result in criminal prosecution since, for attracting the offence under Section 153 of IPC, the objectionable conduct should not only be malignant or wanton, but should also be illegal. For an act to be illegal, it should be in contravention of a law or regulation. No Central law or any law enacted by our State prescribes punishment for defiling the statue of Mahatma Gandhi. Although a private bill with such an objective was moved, it did not get the assent of the Parliament.



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4. Learned counsel then contended that in order to attract the offence of mischief, the act must have been done with intent to cause, or with the knowledge that it is likely to cause, wrongful loss or damage to the public or to any person, and should have resulted in destruction or damage to the property or diminution in its value. According to the counsel, the petitioner's act has neither resulted in wrongful loss or damage to the public or to any person, nor has it caused destruction or damage to any property, or diminution in the value or utility of the property.

5. Alternatively, it is contended that Section 426 being a non-cognisable offence, once prosecution for the offence under Section 153 is held unsustainable, registration of the crime itself will be rendered invalid in view of the interdiction contained in Section 155 of Cr.P.C. In support of this argument, reliance is placed on the decision of the Apex Court in **B.N.John v. State of U.P. and Another** [2025 SCC OnLine SC 7].



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6. Finally it is submitted that the act was not premeditated, but committed on a rush of blood. Realising his folly, the petitioner had removed the glasses and the garland immediately. Learned counsel also pleaded to take a lenient view in the matter, considering the young age of the petitioner.

7. Advocate M.C.Ashi, the learned Public Prosecutor submitted that, the question as to whether the act committed by the petitioner is wanton or malignant and was done with the intention to cause damage has to be decided based on the evidence to be tendered before the trial court. Hence, it will be inappropriate for this Court to intervene in exercise of the inherent power under Section 528 of BNSS.

8. Adv. Hashim.K.M, the learned counsel appearing for the 3rd respondent submitted that the petitioner's unwholesome act had resulted in a riotous situation due to the wide spread discontent and agitation among students. Hence, the offence under Section 153 of IPC is attracted and no leniency should be shown in matters of this nature.



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9. Undoubtedly, the conduct of the petitioner is deplorable and he should have known that the rights and freedom guaranteed by the Constitution ought to be tempered and moulded by the fundamental duties cast upon him.

10. The question to be considered here is whether the petitioner can be prosecuted and punished for his egregious conduct. As rightly contended, for the alleged act to fall within the ambit of Section 153 of IPC, apart from being malignant or wanton, it should also be illegal. Here, it is essential to note that all immoral acts are not illegal acts. Illegal acts are behaviours or actions explicitly prohibited by law, enforceable by the State, and subject to legal penalties like fines or imprisonment. On the other hand, immoral acts are behaviours considered wrong or unethical according to societal norms, personal values, or moral frameworks, which may not necessarily violate laws. Pertinently, even the Prevention of Insults to National Honour Act, 1971 does not contain any provision against defilement of the images/statues of our



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national leaders. The principle "*Nullum crimen sine lege*" meaning, "no crime without law", which is fundamental to criminal law, assumes relevance in this context. The principle emphasises that a person cannot be convicted of a crime, unless his act is defined as a crime by law, when it is committed. This principle, also known as the principle of legality, ensures fair warning to individuals about what actions are considered criminal. The outcome of the above discussion is that, while the objectionable conduct of the petitioner is undoubtedly immoral, it cannot be termed as illegal in the absence of a law preventing and prescribing punishment for such act.

11. I also find merit in the contention of the learned counsel for the petitioner that the allegations do not constitute the offence of mischief punishable under Section 426 of IPC. Of course, the act can be termed mischief in common parlance, but for constituting an offence punishable under Section 426, the act should fall within the definition of mischief under



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Section 425 of IPC, extracted below for easy reference;

"425. Mischief.- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"."

The essential ingredients for constituting mischief are (i) causing destruction of property, or (ii) change in any property or in the situation thereof, or (iii) destroying or diminishing the value or utility of the property, or (iv) injuriously affecting the property. Further, the above said acts should have been done with the intent to cause, or with the knowledge that it is likely to cause, wrongful loss or damage to the public or to any person. Therefore, even if the act committed by the petitioner hurt the sentiments of others, it cannot be termed as mischief as the act did not result in any of the situations enumerated in Section 425 of IPC.



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For the aforementioned reasons, the Crl.M.C is allowed. Annexure II final report and all further proceedings in C.C.No.491 of 2024 on the files of the Judicial First Class Magistrate-I, Aluva, is quashed.

sd/-

V.G.ARUN, JUDGE

sj



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APPENDIX OF CRL.MC 10891/2024

PETITIONER ANNEXURES

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| Annexure I | THE CERTIFIED COPY OF THE FIR AND FIS
IN CRIME NO.944/2023 OF EDATHALA POLICE
STATION DATED 26.12.2023 |
| Annexure II | THE CERTIFIED COPY OF THE FINAL REPORT
WITH STATEMENT OF WITNESSES IN CRIME
NO.944/2023 OF EDATHALA POLICE STATION
DATED 26.01.2024 |
| Annexure III | THE TRUE COPY OF THE ORDER OF THE
PRINCIPAL, BHARATA MATHA SCHOOL OF
LEGAL STUDIES DATED 17.01.2024 AND
RECEIPT SHOWING PAYMENT OF FINE ISSUED
BY KELSA DATED 19.01.2024 |