

## Benny Mathew Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 8, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 " Section 482  
Indian Penal Code, 1860 " Section 34, 425, 430

**Hon'ble Judges:** A. Badharudeen, J

**Bench:** Single Bench

**Advocate:** Shahul Hameed Mooppan, K.M.Varghese, T.A.Niyas, Abhijith Harindran, Arun T.S., T.P.Pradeep,  
P.K.Sathees Kumar, Minikumary M.V., R.K.Prasanth, Jijo Joseph, Jibu T S

**Final Decision:** Allowed

### Judgement

A. Badharudeen, J

1. This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings in

C.C. No.687/2023 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam. The petitioners herein are the accused in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, in detail. Also heard the learned counsel appearing for the defacto

complainant. Perused the relevant materials available.

3. In this matter, the prosecution alleges commission of offence punishable under Section 430 read with 34 of the Indian Penal Code, by the accused.

Initially as on 24.09.2023, the FIR was registered on the basis of the FIS lodged by the defacto complainant, who is residing on rent in one of the flats

in RDS Retreat Apartments, Ernakulam. The prosecution allegation is that, the accused herein who are the President, Secretary and Treasurer of the

RDS Retreat Apartments Owners Welfare Association, disconnected the water supply to the rental flat, where the defacto complainant has been

residing for the last 15 years and thereby her basic amenities for drinking water and to do cooking etc. were denied.

4. While seeking quashment of the proceedings, the learned counsel for the petitioners argued that, the petitioners/accused, being the office bearers of

the RDS Retreat Apartments Owners Welfare Association, vested with administration of the apartment complex comprising of several dwelling units,

has been controlling the supply of water to various flats, supplied by the Kerala Water Authority and for the supply of water, each member of the

association will have to pay the charges for the same. It is submitted by the learned counsel for the petitioners that, water connection to the defacto

complainant's rental residence was stopped, when she left huge arrears towards water charges and failed to pay Rs.51,334/- towards the said head,

after issuing Annexure.R3(e) notice. Thereafter, the defacto complainant paid Rs.51,334/- and accordingly water supply was reconnected. Therefore,

in the facts of the given case, offence punishable under Section 430 read with 34 of the Indian Penal Code would not attract. It is specifically pointed

out by the learned counsel for the petitioners that, as of now also Rs.50,000/- is due from the defacto complainant and the petitioners are not in a

position to supply water without remitting the fee prescribed for the same, as they would not bear the costs by themselves.

5. The learned counsel for the petitioners would further submit that, in order to attract offence punishable under Section 430 of IPC, mischief must be

committed by a person, by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural

purposes, or for food or drink for human beings or for animals. In the instant case, water supply to the flat of the defacto complainant was

disconnected, after giving notice demanding payment of huge arrears of water charge and thereafter reconnected the water supply on payment of

arrears. Therefore, the said overt acts would not constitute mischief defined under Section 425 of IPC, so as to attract the offence punishable under

Section 430 of IPC.

6. It is submitted by the learned counsel for the petitioners that, even going by the mahazar prepared on 25.09.2023, water supply was not found only

in the tap inside the bathroom of the flat and other places water supply was found. It is submitted that, water supply to the bathrooms of the apartment

would be provided only during morning and evening as agreed between the flat owners and the association. Therefore, in the mahazar prepared on

11.30 hours on 25.09.2023, the narration that there was no water supply at the bathroom of the flat of the defacto complainant, is not a reason to hold

that there was failure to give water after payment of Rs.51,334/-. Therefore, the quashment sought for is liable to be allowed.

7. Strongly opposing quashment of the proceedings sought for, and highlighting the ingredients to attract offence punishable under Section 430 of IPC,

the learned counsel for the defacto complainant filed a counter statement along with documents marked as Annexures.R3(a) to (g), to contend that

the offences alleged are made out, prima facie, for which, trial is necessary. The contentions raised by the learned counsel for the defacto complainant

could be seen from paragraph Nos. 5 to 7 of the statement. The same are as under:

5. It is submitted that the majority of the flat owners left the apartment due to the misbehavior and autocratic attitude of the petitioners and one Binoy

Mohan Mathew who is a relative of the defacto complainant and a Flat owner initiated a Civil Suit against the petitioners before the Hon'ble Munsiff

Court at Ernakulam. True copy of the OS 1207/2024 of the Munsiff Court, Ernakulam is produced herewith and marked as Annexure R3(d).

Petitioners falsely implicated him a criminal case and the the Hon'ble high Court of Kerala quashed the same. As the above Binoy Mohan Mathew

questioned the illegal activities of the petitioners, they are in enimical terms with the defacto complainant also.

6. Being so a notice for disconnection of water was issued to the owner of the defacto complainant's Flat demanding an amount of Rs 51,334/-. But

the owner of the Flat questioned some amounts in the notice and asked the office bearers for clarifications and he did not pay the demanded amounts.

True copy of the Notice dated 23.08.2023 issued by the Secretary of Association is produced herewith and marked as Annexure R3(e).

7. It is submitted that from 11.09.2023 onwards the petitioners disconnected the water supply to the Flat of the defacto complainant. The controlling

valves of the water supply to the Flat of the defacto complainant are installed in the balcony of the Flat of the 1<sup>st</sup> petitioner's son. Water supply for

drinking cooking and primary needs in bath room was disrupted from 11.09.2023. Even though the owner of the flat of the defacto complainant was

reluctant to remit the demanded amount in Ext R3-e notice because of the disputes between him and Association, the defacto complainant transferred

this amount to the Flat owner as she had suffered a lot due to the lack of water in the Flat, especially living alone. The Flat owner transferred Rs

51,344 demanded in the Notice on 22.09.2023 to the Account of the Association through UPI payment. True copy of the screen shot of the UPI

Payment is produced herewith and marked as Annexure R3(f). Even after the remittance of the demanded amount, petitioners did not care to supply

water to the Flat of the defacto complainant. Hence on 23.09.2023, defacto complainant preferred a complaint to the SHO of Ernakulam Town North

police Station. True copy of the Acknowledgement receipt dated 23.09.2023 is produced herewith and marked as Annexure R3(g). Even though the

police contacted the petitioners and directed to supply water to the defacto complainant, they did not comply with the directions and on 24.09.2023 at

7.22 pm FIR No. 2373/2023 was registered against the petitioners for the offences punishable under Sections 430 and 34 of I.P.C.

8. According to the learned counsel for the defacto complainant, the petitioners have no legal right to disconnect the water supply to the flat of the

defacto complainant unilaterally, since the association is one registered under the Travancore Cochin Literary Scientific and Charitable Societies

Registration Act, 1955 and the disputes between the members have to be resolved through the competent civil court.

9. The learned Public Prosecutor also opposed the quashment of the proceedings by sharing the arguments tendered by the learned counsel for the

defacto complainant.

10. On perusal of the records available, the allegation in the present crime is confined to disconnection of water supply provided to the rental flat of the

defacto complainant by the accused persons, who are the office bearers of RDS Retreat Apartment Owners Welfare Association. According to the

prosecution, the disconnection of water supply at the instance of the petitioners herein is an offence punishable under Section 430 read with 34 of IPC.

11. Whereas, the specific contention of the learned counsel for the petitioners is that, since the water supply was provided on undertaking by the

members of the association to pay required fee for the same and water supply to the flat of the defacto complainant was disconnected when there is

failure to remit the water charge, no offence under Section 430 read with 34 of IPC would attract in the facts of the present case. Even otherwise, no

mischief could be found in the overt acts at the instance of the petitioners to attract the offences alleged.

12. As extracted in paragraph Nos. 5 to 7 of the statement filed by the 3rd respondent, it is true that, there are certain disputes between certain flat

owners and the association and the learned counsel for the defacto complainant reiterated the same to point out maladministration on the part of the

petitioners. However, this Court needs to address the question as to whether, the offence punishable under Section 430 read with 34 of IPC is made

out, prima facie, from the prosecution records.

13. In this connection, it is relevant to refer Section 430 of IPC. The same is as under:

430. Mischief by injury to works of irrigation or by wrongfully diverting water. "Whoever commits mischief by doing any act which causes, or which he knows to be

likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness

or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

14. Thus, when a person commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of

water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any

manufacture, the same constitutes an offence punishable under Section 430 of IPC. Mischief is one of the most cardinal ingredient to attract offence

under Section 430 of IPC. Section 425 of IPC deals with mischief, wherein it has been provided that, 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”.

15. Section 430 deals with diminution of supply of water, wherein it has been provided that, the word  
“diminution” is derived from the verb

“diminish”, which lexicographically means “lessen”. The words “diminution of the supply of water for agricultural purposes” in section

430 cannot be limited to the cases only where the water has been allowed either to go waste or has been diverted for non-agricultural purposes. The

section read as a whole also refers to cases, where the water is intended for use for all purposes including for food or drink for human beings or for

animals or for cleanliness or for carrying on any manufacture.

16. In such cases, the Courts should decide whether any unlawful or dishonest intention has been established. It is not every interference with the

distribution of water that constitutes mischief under the IPC. It is only interference which cannot be justified by the assertion of bona fide right that

would constitute mischief.

17. Thus, the crucial question to be considered is whether the petitioners herein committed any mischief defined under Section 425 of IPC, so as to

attract the offence under Section 430 of IPC?

18. The one and only allegation against the petitioners herein, who are the office bearers of RDS Retreat Apartment Owners Welfare Association, is

that they disconnected the water supply provided to the rental flat possessed by the defacto complainant, when she failed to clear the arrears towards

the water charges to the tune of Rs.51,334/-, as evident from Annexure.R3(e) notice issued on 23.08.2023. Thus, after issuing notice as on

23.08.2023, when the defacto complainant failed to pay the water charge due, the water supply was disconnected on 12.09.2023. Thereafter on

remitting the arrears towards the water charge, water supply was reconnected. It is in view of this development, in the mahazar prepared on 11.30

hours on 25.09.2023, except in the bathroom water supply was found. As far as the non-availability of water in the bathroom is concerned, the

argument advanced by the learned counsel for the petitioners is that, as part of internal arrangement between the flat owners and association, water

supply to the bathrooms is restricted and the same is available only during morning and evening. The same is not in dispute. Thus, the sum and

substance of the prosecution allegation is confined in the matter of disconnection of water supply of the rental flat of the defacto complainant by the

petitioners for failure to pay the charges towards the same. As of now also, according to the learned counsel for the petitioner, Rs.50,000/- is in

arrears towards the water charge and the defacto complainant has been enjoying the water provided by the association, in view of the interim order

passed by this Court.

19. In this connection, it is relevant to refer that, if water is provided by the Kerala Water Authority, the Authority has the right to disconnect water

supply in the event of failure to pay the water charges, after issuing notice.

20. Even though, it is argued by the learned counsel for the defacto complainant that, since the association was registered under the Travancore

Cochin Literary Scientific and Charitable Societies Registration Act, 1955, the association has no right to disconnect the water supply and the disputes

between the members have to be resolved through the competent civil court, the said contention could not be appreciated for the simple reason that, if

all flat owners defaulted water supply, the association would be forced to file civil suit to get the water charges realized, through process of court, the

intend of the association and its functioning would be in trouble.

21. In the decision reported in Uttam Basu v. Geeta Mullick [(1987) 1 Crimes 512 (Cal)] it is held that, to sustain conviction under Section 430 IPC, it

must be proved that there was regular or habitual diminution of supply of water. Mere stoppage of water for a temporary period (here landlady was

accused of stopping water supply to tenant) would not do.

22. In the present case, the petitioners disconnected the water supply provided to the rental flat possessed by the defacto complainant, when she failed

to clear the arrears towards the water supply charges, after issuing notice as on 23.08.2023. Thereafter, on remitting the arrears towards the water

charge, water supply was reconnected. However, according to the petitioners, as of now also Rs.50,000/- is in arrears.

23. Thus, the overt acts at the instance of the petitioners would not amount to an act of mischief defined under Section 425 of IPC and punishable

under Section 430 of IPC, where the disconnection of water supply already reconnected soon after payment of defaulted arrears.

24. Therefore, the prosecution against the petitioners is found to be without sufficient materials, prima facie, and the same would require quashment.

Accordingly, the petition is liable to succeed.

25. In the result, all further proceedings in C.C. No.687/2023 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam, as against the

petitioners stand quashed.

It is specifically made clear that, the defacto complainant has to pay the water charges, without fail, to get the water supply without interruption,

otherwise the association is free to take action, as per law.