

Shibin Shiyad Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 11, 2025

Acts Referred: Bharatiya Nagarik Suraksha Sanhita, 2023 " Section 482
 Bharatiya Nyaya Sanhita, 2023 " Section 115(2), 121(1), 123, 132 189(2), 190, 191(2), 191(3)

Hon'ble Judges: P.V.Kunhikrishnan, J

Bench: Single Bench

Advocate: Francis Assisi, Ajeesh S.Brite, Darsana, Hrithwik C.S

Final Decision: Allowed

Judgement

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P.V.Kunhikrishnan, J",,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

1. Whether the police officer in Mufti can arrest a person without showing his identity card is the question to be decided in this bail application.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

2. This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS') by the accused in Crime No. 1482/2024.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

of Kottayam East Police Station. The petitioner is the 1st accused. The above case is registered against the petitioner and others alleging offences.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

punishable under Secs. 189(2), 191(2), 191(3), 190, 115(2), 132, 123 and 121(1) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').",,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

3. The above case is registered based on the statement given by the Grade Sub Inspector, Antony Michael attached to Vakathanam Police Station." ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

The statement was given on 24.10.2024 at 8.30 pm. According to the Sub-Inspector, he and CPO 8130 Shebin Peter were on Mufti duty in connection" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

with the NDPS Special Drive. They were travelling on a motorbike within the jurisdiction of their Police Station. On that day, at 4.30 pm, when they" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

reached Kaithepalam bridge, they joined duty with the mobile party of Kottayam East Police Station. At that time, the defacto complainant and the" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

policeman accompanying him found two persons going on a bike and when there was a suspicion about them, the defacto complainant and the" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

accompanying policeman followed them. At that time, they saw the persons, who were on the bike chatting with three other individuals. The defacto" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

complainant and the accompanying policeman stopped the bike and informed them that they were policemen and asked them why they were standing.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

there. At that time, it is stated that two of them sprayed a liquid on their face and body. Thereafter, they ran away from the place. Subsequently, the" ,,,,,,,,,,,,,,,,,,,,,,

East Police Station SI and the police party stopped three persons among them. The defacto complainant and the accompanying police constable went, ,,,,,,,,,,,,,,,,,,,,,,

to the hospital for treatment. Hence, it is alleged that the accused persons wrongfully restrained and deterred the public servants from discharging" ,,,,,,,,,,,,,,,,,,,,,,

their official duty. Hence, it is alleged that the accused committed the offences." ,,,,,,,,,,,,,,,,,,,,,,

4. Heard the counsel for the petitioner and the Public Prosecutor., ,,,,,,,,,,,,,,,,,,,,,,

5. The counsel for the petitioner submitted that the only non-bailable offences alleged are under secs. 132, 123, and 121(1) BNS. It is submitted that" ,,,,,,,,,,,,,,,,,,,,,,

even if the entire allegations are accepted, the above offences are not attracted. The main point raised by the counsel for the petitioner is that the" ,,,,,,,,,,,,,,,,,,,,,,

policemen were in Mufti and they did not show their identity cards to the accused. Unless the same is shown, they cannot claim the benefit of Sec." ,,,,,,,,,,,,,,,,,,,,,,

132 and 121(1) of the BNS, when they are in mufti is the submission. The Public Prosecutor seriously opposed the bail application. The Public" ,,,,,,,,,,,,,,,,,,,,,,

Prosecutor submitted that it is a clear case in which the petitioner and the other accused assaulted the public servants when they were discharging, ,,,,,,,,,,,,,,,,,,,,,,

their official duty. The Public Prosecutor also made available the wound certificate of the injured and submitted that the offences under Secs. 132 and, ,,,,,,,,,,,,,,,,,,,,,,

121(1) are made out. It is also submitted that pepper spray is used by the accused and therefore, Sec. 123 of the BNS is also attracted." ,,,,,,,,,,,,,,,,,,,,,,

6. When this case came up for consideration, this Court requested the Public Prosecutor Sri. Hrithwik CS to address the point raised by the counsel" ,,,,,,,,,,,,,,,,,,,,,,

for the petitioner. The Public Prosecutor submitted that Mufti policing is necessary in certain situations. The Public Prosecutor submitted that, if a" ,,,,,,,,,,,,,,,,,,,,,,

police officer in uniform reaches a place, in some cases, the accused would escape immediately. Therefore, Mufti policing is necessary, especially in" ,,,,,,,,,,,,,,,,,,,,,,

drug cases. The Public Prosecutor took me through the Government order constituting the Narcotic Special Action Force to tackle the drug-related, ,,,,,,,,,,,,,,,,,,,,,,

crimes and the order renaming it as 'Anti Narcotic Task Force'. The Public Prosecutor submitted that in narcotic cases, Mufti policing is necessary to" ,,,,,,,,,,,,,,,,,,,,,,

find out the culprits. This Court directed the Public Prosecutor to again verify the provisions in which Mufti policing is permitted as per law. The Public, ,,,,,,,,,,,,,,,,,,,,,,

Prosecutor again sought time and the case was adjourned. Thereafter, the Public Prosecutor submitted that Sec. 294 of the Kerala Police Manual" ,,,,,,,,,,,,,,,,,,,,,,

says about Mufti Patrols., ,,,,,,,,,,,,,,,,,,,,,,

7. This Court considered the contentions of the petitioner and the Public Prosecutor. Admittedly, there is no mention of Mufti policing in BNSS or in" ,,,,,,,,,,,,,,,,,,,,,,

the Kerala Police Act. This Court in Avinash v. State of Kerala [2021 (6) KLT 354] observed like this : ,,,,,,,,,,,,,,,,,,,,,,

13. "The uniform of a policeman is his direct identification. A policeman in uniform is visible and a citizen immediately knows that he is a policeman which,

will inform that the said individual is in charge of his protection and prevention of offences. It carries an undeniable symbolic value besides representing the

State authority. The police uniform also symbolises pride, respect and authority over the citizens."

14. ,

15. ,

16. ,

17. Since the police officer takes pride in his/her uniform and the visibility of a police officer is very critical for the police and society, the requirement of wearing"

the same while on duty except where deviations are permissible, shall be scrupulously observed."

18. I direct the State Police Chief to look into the matter and issue appropriate directions to ensure that the police officers comply with the relevant statutory,

provisions/guidelines making it mandatory to wear the uniform while on duty except when it is permissible under law to deviate from the said mandatory,

requirement."

8. In the light of the above dictum, the policemen should be in uniform, while discharging their duty. The Public Prosecutor relied on Sec. 294 of the"

Kerala Police Manual. It will be better to extract the same.

294. "All Policemen on beat or patrol duty should perform their duties in uniform unless for special and limited purposes mufti patrols are specifically

ordered. That the lathie is an essential part of the uniform of a Police constable should also be never overlooked." (emphasis supplied),

9. A reading of the same would show that, all policemen on beat or patrol duty should perform their duty in uniform unless, for special and limited"

purposes, mufti patrols are specifically ordered. Therefore, even as per Sec. 294 of the Kerala Police Manual, Mufti policing is possible only for"

special and limited purposes and that also with specific order to that effect.

10. Nowadays, several criminal activities like defrauding people are done by criminals using uniforms of police, customs, CBI etc. Even the name"

boards of Judges in vehicles are misused by the criminals to commit offences. Therefore, the police department should be aware that the general"

public is aware of these types of criminal activities by misusing the uniform of police, customs, CBI etc. They may question the people coming in Mufti"

claiming that they are police officers. Therefore, if in any special situation, Mufti policing is necessary, a specific order to that effect is to be passed."

Moreover, the Mufti police people should carry their identity cards and a copy of the order authorising them to do the duty in mufti. They should"

introduce themselves as policemen and also show their identity cards before intercepting or questioning the suspected people. Without the same, if the",,,,,,,,,,,,,,,,,,,,,,

public questions a mufti police, nobody can blame them. Mufti police may be more vulnerable to physical harm or attack, as they are not easily",,,,,,,,,,,,,,,,,,,,,,

recognizable. Kerala is a state where literacy rate is high. Most of the people are sensitive. Therefore policemen should be vigilant while doing mufti,,,,,,,,,,,,,,,,,,,,,,,,,

policing to protect themselves also.,,,,,,,,,,,,,,,,,,,,,,

11. In the present case, the Public Prosecutor submitted that the defacto complainant and the accompanying police officer were doing Mufti policing",,,,,,,,,,,,,,,,,,,,,,

based on order No. 567/GL/DCRB/2024/K dated 15.10.2024 of District Police Chief, Kottayam. This Court directed the Public Prosecutor to produce" ,,,,,,,,,,,,,,,,,,,,,,

the same and the Public Prosecutor made available the same. The same is extracted hereunder :,,,,,,,,,,,,,,,,,,,,,

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