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POLICE



KERALA

DEPARTMENT

No.U5-147693/2016/PHQ

Police Headquarters,

Thiruvananthapuram

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04712721547

Dated. 05-01-2017

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2/1/17Circular No.01/2017

Sub : House-trespass under section 451 IPC and House-trespass having made preparation, for hurt, assault and wrongful restraint under section 452 IPC to be distinguished for the purpose of registering FIR – guidelines – reg.

Ref : 1. Order of the Hon'ble High Court of Kerala dated 06-08-2016 in Bail Application No.5412/2016.  
2. Letter dated 19-08-2016 in Bail Application No.5412/16 from Shri.C.Sreedharan Nair, Director General of Prosecution, Kerala and State Public Prosecutor.

The Director General of Prosecution, Kerala vide Letter 2nd cited has brought to the attention of the State Police Chief, the court order 1st cited, wherein the Hon'ble High Court of Kerala has expressed grave concern over misuse of section 452 IPC by the Police. In that Bail Application, the main offences alleged against the Petitioner were bailable, the Petitioner was not armed with any weapon and nobody was injured. Yet the crime happened to be registered under section 452 IPC by the Police which offence is non-bailable. Consequently, the Petitioner was compelled to seek pre-arrest bail under section 438 of the Code of Criminal Procedure, 1973. The Hon'ble court had observed that whenever a House trespass is alleged, the police would mechanically register FIR under section 452 IPC without understanding the allegation in the complaint, or without understanding the difference between Sections 451 and 452 IPC. It was also held that if the misuse is continued, it will have to be viewed seriously and appropriately dealt with by the Hon'ble court on the judicial side.

The offence of house-trespass in order to commit offence punishable with imprisonment as provided under section 451 IPC is a bailable offence for which punishment is for two years and fine and if it is for theft, the punishment is seven years and the offence is non-bailable. All offences under section 451 IPC are also compoundable. The offence of house-trespass after preparation for hurt, assault or wrongful restraint as provided under section 452 IPC, on the other hand, is a non-bailable and non-compoundable offence. Whenever the accused is not armed with any weapon and there are no injuries at all to the complainant, there is no need for incorporating section 452 IPC. As pointed out by the Hon'ble court, when the main offences are bailable, and the offence of house trespass alleged is also bailable practically, the Petitioner can very well surrender before the learned Magistrate having jurisdiction, and seek regular bail.



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