

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 63 OF 2015**

MRS. PHILOMENA VALES AND ANR.

... **Petitioners****V/S**STATE OF GOA, THROUGH INCHARGE OF
AGASSAIM POLICE STATION AND 10 ORS.,... **Respondents.**

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate
for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondent No.1.

Mr. Premanand Kholkar, Advocate for the respondents No.6, 7, 9 and 11.

Coram : C. V. BHADANG, J.**Date : 17 JUNE 2015.****P.C.**

By this petition the original non-applicants are challenging the order dated 26th May, 2015, passed by the Joint Mamlatdar-III and Executive Magistrate, Tiswadi Taluka, Panaji Goa, under Section 133 of Code of Criminal Procedure. It is contended that the learned Executive Magistrate by the conditional order had straightway directed the debris to be removed. The learned counsel for the petitioner has placed reliance on the decision of this Court reported in **“2010 ALL MR (Cri) 1155, Mr. Rohan Vaman Savaikar & Ors. vs. State rep. by Shri. Terence Vaz, PSI Bicholim Police Station & Ors.”**, in order to submit that the impugned order which directs removal of the alleged nuisance without an opportunity to appear before the Magistrate and to show cause is not legal and proper.

2. On hearing learned counsel for the petitioner and learned Public Prosecutor, it appears that by an order dated 3 June 2015, this Court had granted ad-interim relief while directing the petitioner to show cause before the Executive Magistrate as to why the conditional order be not made absolute.

3. It is undisputed that till today the petitioner has not filed any reply showing cause against the impugned order. The learned counsel for the petitioner submits that the petitioner shall file his reply, thereby showing cause against the impugned order, on the next date of hearing i.e. on 19 June 2015. It is needless to mention that the petitioner is at liberty to raise all the contentions as may be available to him in law before the Executive Magistrate, including as to whether the alleged nuisance is a 'public nuisance' or not. Upon the petitioner filing his reply showing cause, the learned Magistrate shall consider the same in accordance with law, and shall pass appropriate order within a period of two weeks thereafter. The ad-interim relief granted by this Court shall remain in force till 4 July 2015 or till disposal of the case by the Executive Magistrate, whichever is earlier. The rival contentions between parties are kept open.

4. The criminal writ petition is disposed of accordingly.

5. Parties to act upon the authenticated copy of this order.

C. V. BHADANG, J.