

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.MC.No. 2170 of 2015

J-128/15 OF THE SUB DIVISIONAL MAGISTRATE COURT, PERINTHALMANNA

PETITIONER(S)/PETITIONER :

**M.P.KUNHAHAMMEDKUTTY,
S/O.MUHAMMED KUNHI (LATE), MARUTHI ROAD, MELAKKOM,
KARUVAMBRAM P.O., MANJERI, MALAPPURAM DISTRICT.**

BY ADV. SRI.R.RANJITH (K/489/2011)

RESPONDENT(S)/STATE & RESPONDENTS :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682 031
FOR THE SUB DIVISIONAL MAGISTRATE, PERINTHALMANNA,
MALAPPURAM DISTRICT.**
- 2. THE ASSISTANT ENGINEER,
P.W.D. (BUILDING DIVISION), T.B.ROAD, MANJERI,
MALAPPURAM DISTRICT, PIN - 676 121.**
- 3. THE EXECUTIVE ENGINEER,
P.W.D. (BUILDING DIVISION), T.B.ROAD, MANJERI,
MALAPPURAM DISTRICT, PIN - 676 121.**

BY PUBLIC PROSECUTOR SRI.R.GITHESH

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE-A: TRUE COPY OF THE PETITION FILED BY THE PETITIONER
BEFORE THE S.D.M., PERINTHALMANNA, DATED 01.01.2015.

ANNEXURE-B: TRUE COPY OF THE COMMUNICATION ISSUED BY
THE S.D.M., PERINTHALMANNA TO THE VILLAGE OFFICER,
EDAVANNA DATED 01.01.2015.

ANNEXURE-C: TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER,
EDAVANNA, DATED 05.01.2015.

ANNEXURE-D: TRUE COPY OF THE COMMUNICATION ISSUED BY
THE LEARNED S.D.M., PERINTHALMANNA TO THE
SECRETARY, EDAVANNA GRAMA PANCHAYATH
DATED 27.01.2015.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2170 of 2015

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Dated this the 28th day of July, 2015

ORDER

The prayer in this Crl.M.C. is as follows:

“..... to direct the Sub Divisional Magistrate, Perinthalmanna to pass appropriate orders on Annexure A filed under Section 133 of the Code of Criminal Procedure as expeditiously as possible, in the interests (sic) justice.”

2. This Court had passed interim orders in this case on 8.6.2015, 23.6.2015 and 8.7.2015. In view of the subsequent developments, it may be germane only to refer to the third interim order rendered by this Court on 8.7.2015 in this case, which reads as follows:

“In this case, it was informed on instructions from the first respondent Sub Divisional Magistrate, Perinthalmanna (Sub Collector, Perinthalmanna) as per letter No. J128/2015 dt. 21.4.2015 that dangerous trees was already cut and removed by the PWD authorities and as of now no threat or danger is existing to the petitioner in this case.

2. When the matter was taken up for consideration on 8.6.2015, the petitioner's counsel asserted that this submission made by the Sub Collector is actually wrong. Accordingly, this Court had directed the learned Public Prosecutor concerned on 8.6.2015, to get specific instructions from the Sub Collector/Sub Divisional Magistrate about the factual state of affairs and that the Sub Collector shall file a statement as to the exact details of in this regard within a period of one week .

3. Thereafter the said respondent Sub Divisional

Magistrate has filed a statement dated 1.7.2015 wherein it is stated in paragraph 7 thereof that the said dangerous trees were already cut and removed by PWD authorities and as of now no threat or danger is existing to the petitioner in this case.

4. Today also when the matter was taken up for consideration Sri. Ranjith R, the learned counsel for the petitioner reiterated that the aforestated submissions made by the Sub Collector in the paragraph 7 of the aforestated statement dt. 1.7.2015 is factually wrong and that the dangerous trees have not yet been cut and removed by PWD authorities or any other authorities and that they have only cut the two branches of the said trees and the same had not yet been removed from the site in question.

5. Earlier this Court had issued order dated 23.6.2015 to the said Sub Divisional Magistrate to furnish instructions on this aspect in the matter. Since it has been repeated even in the statement dated 1.7.2015 that the dangerous trees in question has already been cut and removed by the PWD authorities. Since it is controverted by the petitioner, it is ordered as follows:

District Collector, Malappuram will immediately make a site inspection whether trees are situated and ascertain as to whether the dangerous trees mentioned in Anx.A petition has in fact been cut and removed as stated by the Sub Collector, Perinthalmanna."

3. Pursuant to the directions issued by this Court on 8.7.2015, now the District Collector, Malappuram has filed a report along with the memo dated 16.7.2015 of the Public Prosecutor Pleader concerned, which reads as follows:

"On direction from the Hon'ble High Court of Kerala, inspection was conducted at the PWD Rest House compound, Edavanna. The Rest House is situated in Edavanna Village at Ernad Taluk. There are 09 big trees about 10-30 years old, like "Kanjiram", "Poduvanny", Mahagony, Mango Tree and Tamarind Tree in the Rest House compound, adjacent to the compound wall. A Cinema Theatre building with asbestos roof, owned by Sri.Kunhimohammed Kutty, S/o. Muhammed Kunju, Mauthi Road, Melakkam, Karuvambram, Manjeri is situated approximately 8 meters away from the compound wall. On enquiry with the local people, it is found that the theatre is non-operative since the last two years. The branches of the "Poduvanny", Mango Tree and Tamarind tree have been cut completely except the trunk. No other trees in the Rest House

compound are found to be in a harmful state or a threat to the theatre building. The above facts are submitted for the perusal of the Honourable High Court.”

4. The learned Public Prosecutor submits on instructions that in view of the report now submitted by the District Collector, the grievances of the petitioner stand redressed and that the matter may be closed accordingly recording the said report, as it is clearly stated therein that the branches of the “Poduvanny” tree, mango tree and tamarind tree have been cut completely, except the trunk. Sri.R.Ranjith, the learned counsel for the petitioner submits that the subsisting trunk of the tree now causes cracks in the compound wall of the PWD, which will fall into the parking lot of the petitioner. This Court is not prepared to countenance such a plea and if the petitioner has any common law or civil law rights disclosing any justifiable cause of action in that regard, it is for the petitioner to proceed in such matters in the manner known to law. It is further submitted by the petitioner that after cutting down of the branches of the tree in question, the remnants of the branches have been left over in the compound of the petitioner and that the PWD authorities are bound to ensure that such remnants are taken away from the petitioner's compound and not to cause any inconvenience to the

petitioner. If in fact any such grievance persists to the petitioner, it is for him to make appropriate representation before the competent departmental authorities concerned, who will then make sure about the correctness of such plea and if, actually such remnants of the cut branches have been kept in the petitioner's compound, then the authorities concerned shall ensure that the same is removed from the petitioner's compound.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge