

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.Rev.Pet.No. 1091 of 2003 ()

**AGAINST THE ORDER IN M.P. 6/2003 of SUB DVL.MAGISTRATE,
THALASSERY, DATED 07-03-2003**

REVISION PETITIONER(S):

**CHAPPAYIL THAMBAYI,
WIFE OF LATE T. KANNAN,
PERALAM VILLAGE, KANNUR DISTRICT.**

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENT(S):

- 1. T.V.HAREENDRAN,
MANIYERI HOUSE, VELLOOR VILLAGE,
VELLOOR P.O., PAYYANUR VIA, KANNUR DISTRICT.**
- 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

Crl.R.P.No.1091 of 2003

Dated this the 10th day of February, 2015

O R D E R

Counter petitioner in M.P.No.6/2003 on the file of the Sub Divisional Magistrate Court, Thalassery, is the revision petitioner herein.

2. The proceedings was initiated by the Sub Divisional Magistrate, Thalassery, under Section 133 of the Code of Criminal Procedure (hereinafter called 'the Code'), on the basis of a complaint filed by the first respondent herein alleging that, the revision petitioner had obstructed a public pathway being enjoyed by the first respondent herein and the local people by constructing a compound wall and though a stepping stone was provided for the public to pass through the pathway that was also removed by her and they wanted the intervention of the Sub Divisional Magistrate as the petitioner is working in Military service and serving in Jammu and Kashmir. A report was called for from the Village Officer and on the basis of the report, proceedings were initiated under Section 133 of the Code and

conditional order under Section 133(1) was passed, directing the revision petitioner to remove the obstruction caused to the public pathway within ten days or to appear before court on 14.02.2003 at 3.00 p.m., to shaw cause why this order should not be made absolute.

3. The Village Officer submitted that, the order has been served on the revision petitioner and her thumb impression was obtained and since she did not appear, the learned Sub Divisional Magistrate passed the final order under Section 138 (wrongly shown as Section 136 of the Code) of the Code, making the conditional order absolute. Aggrieved by the same, the present revision has been filed by the revision petitioner/counter petitioner before the court below.

4. Though notice was served on the adult member, namely father of the first respondent, he did not appear and the service was deemed to be complete.

5. Heard the counsel for the revision petitioner

and Public Prosecutor and perused the records.

6. The counsel for the revision petitioner submitted that, the petitioner was in the habit of putting her signature and she never put her thumb impression and no notice was served on her. So without giving an opportunity, the impugned order has been passed. So he prayed for setting aside the order and sought an opportunity to prove her case. He had also submitted that, the alleged construction was made eight years prior to the filing of the complaint and there was no public pathway established. So under the circumstance he prayed for allowing the revision.

7. Learned Public Prosecutor submitted that, in spite of service of notice since counter petitioner did not appear, and the Sub Divisional Magistrate was perfectly justified in making the conditional order absolute and no illegality has been committed by the court below.

8. It is an admitted fact that, on the basis of the complaint given by the first respondent herein, who was

working in Military Service in Indian Army and serving in Jammu and Kashmir, alleging that, the revision petitioner had blocked a public pathway running through the property mentioned in the petition by constructing a compound wall and also removed the steps provided for going to the pathway and wanted the interference of the Sub Divisional Magistrate in this regard. On the basis of the report obtained from the Village Officer, the Sub Divisional Magistrate issued conditional order under Section 133(1) of the Code, directing the revision petitioner to remove the obstruction caused to the public pathway within ten days from the receipt of the order or to appear before that court on 14.02.2003 at 3.00 p.m., to show cause why the order should not be made absolute. This order was dated 18.01.2003. Thereafter, it is seen from the file that, earlier the notice issued to the revision petitioner was returned by the Village Officer stating that, the counter petitioner refused to receive the same as the name shown is not

correct, but later it is seen that, notice was sent in the same address, but a thumb impression was seen put and it was mentioned in the order that, the Village Officer submitted that, notice was served and the thumb impression of the petitioner was obtained. However this fact was denied by the counsel for the revision petitioner.

9. This court is not going to the merits of the allegation made, as to whether the notice was served or not, but considering the fact that, right in respect of the property is involved and the question of existence of public pathway itself is in dispute, this court feels that, an opportunity has to be given to the revision petitioner to meet the case on merit for which the impugned order under challenge has to be set aside and the matter has to be remitted to the authority below for fresh consideration in accordance with law.

In the result, the revision petition is allowed and the order passed by the Sub Divisional Magistrate in

M.P.No.6/2003 is set aside and the matter is remitted to the court below for fresh disposal in accordance with law. The revision petitioner is directed to appear before the Sub Divisional Magistrate Court, Thalassery, on 25.03.2015 at 3.00 p.m., and if the parties appear, the authority below is directed to take the case on file and issue notice to the petitioner in that case and give an opportunity to the revision petitioner to file objection to the conditional order and then after giving opportunity to the parties to adduce evidence, dispose of the case afresh in accordance with law.

Office is directed to communicate this order to the concerned court, immediately and also sent back the records to the court below at the earliest.

Sd/-

K. Ramakrishnan, Judge

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P.A. to Judge