

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

Crl.Rev.Pet.No. 1141 of 2003 ()

**AGAINST THE ORDER IN M.C.No.5/2002 of SUB.DIVISIONAL
MAGISTRATE,MUVATTUPUZHA DATED 27-03-2003**

REVISION PETITIONER(S)/COUNTER PETITIONER:

**LILLYKUTTY, W/O.JOSEPH,
VAMATTATHIL HOUSE,
MILLUMPADY, KUTTAMANGALAM VILLAGE.**

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S)/PETITIONER:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA.**
- 3. VARKEY JOSE, PARANKIMALIL,
MILLUMPADY, KUTTAMANGALAM.**

R1 & R2 BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.Rev.Pet.No. 1141 of 2003

APPENDIX

PETITIONER'S ANNEXURES

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| ANNEXURE A1 | TRUE COPY OF THE ORDER OF THE TAHSILDAR,
KOTHAMANGALAM DATED 01.01.2001 |
| ANNEXURE A2 | TRUE COPY OF THE COMPLAINT NO.A3 1033/2001
BEFORE THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA DATED 08.03.2001 |
| ANNEXURE A3 | TRUE COPY OF THE ORDER IN M.C.NO.5/2002 DATED
27.03.2003 THE 2ND RESPONDENT. |

RESPONDENT'S ANNEXURES

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Crl.R.P.No.1141 of 2003

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Dated this, the 23rd day of January, 2015.

ORDER

Counter petitioner in M.C.No.05/2002 on the file of the Sub Divisional Magistrate Court, Muvattupuzha is the revision petitioner herein.

2. The proceedings was initiated on the basis of a complaint filed by the third respondent herein alleging that a jack tree standing in the property of the revision petitioner was posing danger to his property and life of the members of the residents of the house. On the basis of the complaint, a report was called for from the Village Officer through the Tahsildar and Tahsildar filed a report stating that, though the branches of the tree were earlier cut and removed, the threat still subsists as the root and branches of the tree were decayed and posing danger and it is likely to fall at any time. Thereafter, a conditional order was passed under Section 133(1) of the Code of Criminal Procedure, directing the revision petitioner to cut and remove the tree within three days or to appear and submit her objections as to why the conditional order should not be made absolute by appearing on 11.04.2002 at 11.a.m.

Thereafter, she appeared and filed objection denying the allegations. She had stated in the objection that, the tree was standing 40 feet away from the house of the petitioner in the lower court and none of the branches were extending towards the house of the petitioner in the lower court and it was tied with an iron rope. Earlier, the branches were cut and removed on the basis of the complaint filed and he was in the habit of filing complaint after complaint so as to harass the revision petitioner and she prayed for dropping further proceedings. Thereafter, she filed an authorisation letter authorising her son-in-law to appear on her behalf. Since the Sub Divisional Magistrate was not satisfied with the objections filed, it was posted for evidence and the petitioner in the lower court was examined as PW1 and no evidence was adduced on the side of the counter petitioner who is the revision petitioner herein. After considering the evidence and the report of the Tahsildar, the Sub Divisional Magistrate made the conditional order absolute by the impugned order which is being challenged by the revision petitioner by filing this revision.

3. Though notice was served on the third respondent, there was no appearance for the third respondent. So, heard

the Counsel for the revision petitioner and the learned Public Prosecutor.

4. The Counsel for the revision petitioner submitted that the court below has not properly appreciated the evidence and there is no eminent danger which requires cutting and removal of the tree invoking the power under Section 133 of the Code of Criminal Procedure. The fact that long time lapsed also will go to show that there is no possibility of threat as claimed.

5. The Public Prosecutor supported the order of the court below.

6. It is seen from the records that the proceedings were initiated on the basis of a petition filed by the third respondent herein alleging that a jack tree standing in the property of the revision petitioner was posing danger and unless it is cut and removed, the life of the inmates of the house of the third respondent is in danger. It is seen from the file that on receipt of the complaint, a report has been called for and the Tahsildar had send a report stating that, though the branches of the trees were earlier cut and removed on the basis of an earlier complaint, the threat still subsists as the

root of the trees were decayed and the trunk was also in a decayed condition and it is likely to fall at any time. It is on that basis, the learned Sub Divisional Magistrate passed a conditional order under Section 133(1) of the Code of Criminal Procedure, directing the revision petitioner to cut and remove the tree within three days or to appear and submit her objections or to show cause as to why the order should not be made absolute. On that basis, she appeared and filed her objections, in which, she had denied the allegations. She had further stated that, on the basis of the complaint filed by the petitioner earlier, the branches were cut and removed and the tree was tied with an iron rope and it is the habit of the third respondent filing successive complaints with the same allegations and the tree is not in a dangerous position. Since the magistrate was not satisfied with the objections filed, the case was posted for evidence. That shows that the magistrate was not satisfied with the objections and convinced that the denial was not bona fide. On that basis, petitioner in the lower court was examined as PW1. He was not cross examined by the revision petitioner or her authorised representative. So, under the circumstances, it can only be presumed that since

they had nothing to say about the allegations made by the third respondent that the witness was not cross examined. Though it was posted for evidence of the counter petitioner, no evidence was also adduced and thereafter, evidence was closed and after hearing both sides, the impugned order has been passed. The documents produced by the revision petitioner before this court as Annexure A1 also will go to show that even on an earlier occasion, similar complaint was filed and the branches of the tree were cut and removed and the report of the Tahsildar shows that, though the branches were cut and removed, the dangerous condition still subsists as the roots of the tree were decayed and also trunk is also in a decayed condition and it is likely to fall any time. In the objection also it is mentioned that, it was tied with an iron rope also. That shows that there is a possibility of danger of keeping the tree as apprehended by the third respondent. So, under the circumstances, the Sub Divisional Magistrate had considered all the materials and the evidence and rightly passed the impugned order confirming the conditional order passed. There is no illegality committed by the court below in passing the impugned order which warrants interference at the

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hands of this court. So, the revision fails and the same is dismissed. Interim order of stay granted is vacated and Crl.M.P.No.4509/2003 is dismissed.

Office is directed to communicate this order to the court below at the earliest.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge