

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

Crl.MC.No. 4353 of 2015 ()

AGAINST THE ORDER IN CRRP 1/2015 of ADDL. SESSIONS COURT (SPL. COURT)
KOTTAYAM, DTD 24.03.2015 &
AGAINST THE ORDER/JUDGMENT IN K.NO. 3107/2014 of SUB
DVL.MAGISTRATE, KOTTAYAM DATED

PETITIONER(S)/PETITIONERS/REVISION PETITIONERS:

-
1. V.T.RAVEENDRA NATH, AGED 56 YEARS,
S/O.THRILOCHANAN, VALLIYARA HOUSE,
KUMARAKOM P.O., KUMARAKOM VILLAGE,
KOTTAYAM DIST. PIN - 686 563.
 2. SUMOL RAVEENDRA NATH, AGED 50 YEARS,
W/O.V.T.RAVEENDRA NATH, VALLIYARA HOUSE,
KUMARAKOM P.O., KUMARAKOM VILLAGE,
KOTTAYAM DIST. PIN - 686 563.

BY ADVS.SRI.P.N.SASIDHARAN
SRI.RIJO JOY

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

-
1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 31.
 2. SUB DIVISIONAL MAGISTRATE (RDO)
KOTTAYAM. PIN - 686 546.
 3. RAJAN K.NAIR, AGED 48 YEARS,
S/O.BHASKARAN NAIR, THIRUVATHIRA, KURIYIL HOUSE,
KUMARAKOM P.O., KUMARAKOM VILLAGE,
KOTTAYAM DIST. PIN - 686 563.

R3 BY ADV. SRI.P.S.KRISHNA PILLAI
R1 & R2 BY PUBLIC PROSECUTOR SMT. P. MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
14-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Crl.MC.No. 4353 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

:

- ANNEXURE-A1: TRUE COPY OF THE SALE DEED NO.168/1992 DT.17.1.1992 OF KOTTAYAM SRO IN FAVOUR OF THE 1ST PETITIONER
- ANNEXURE-A2: TRUE COPY OF THE PLAINT IN O.S.362/14 DATED 16.5.14 OF THE MUNSIFF'S COURT, KOTTAYAM.
- ANNEXURE-A3: TRUE COPY OF THE COMMISSION REPORT DT.27.6.14 FILED BY THE ADVOCATE COMMISSIONER IN AANX A2 SUIT.
- ANNEXURE-A4: TRUE COPY OF THE COMPLAINT DATED 28.5.2014 FILED BY THE 3RD RESPONDENT BEFORE THE RDO KOTTAYAM U/S.133 CR.PC.
- ANNEXURE-A5: TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER KUMARAKOM DATED 31.5.2014 SUBMITTED BEFORE THE RDO, KOTTAYAM.
- ANNEXURE-A6: TRUE COPY OF THE INTERIM ORDER DATED 6.8.2014 OF THE SUB DIVISIONAL MAGISTRATE, KOTTAYAM.
- ANNEXURE-A7: TRUE COPY OF THE FINAL ORDER BEARING NO.K 3107/14 DATED 26.11.2014 SUB DIVISIONAL MAGISTRATE, KOTTAYAM.
- ANNEXURE-A8: TRUE COPY OF THE INTERIM ORDER DATED 7.1.2015 IN CRL.MP NO.42 OF 2015 IN CRL.RP NO.1 OF 2015 OF THE SESSIONS COURT.
- ANNEXURE-A9: TRUE COPY OF THE ORDER OF THE SESSIONS COURT, KOTTAYAM DATED 24.3.2015 IN CRL.RP NO.1 OF 2015.
- ANNEXURE-A10: TRUE COPY OF THE ORDER DATED 12.6.2015 IN CRL.MP NO.703 OF 2015 IN CRL.RP NO.1 OF 2015.

RESPONDENT(S) ' EXHIBITS

:

NIL

//True Copy//

P.A. to Judge

K. RAMAKRISHNAN, J.

Crl.M.C No.4353 of 2015

Dated this the 14th day of September, 2015

ORDER

Revision petitioners in Crl.R.P.No.1/2015 on the file of the Additional Sessions Judge-II(SPL), Kottayam is the petitioners herein. The petitioner and the 3rd respondent are neighbors and there is a dispute regarding the pathway which is alleged to be passing through the property of the petitioners and a civil suit is pending in respect of the same as O.S.No.362/2014 before the Munsiff Court, Kottayam, and in that suit, the Munsiff court has passed an order of maintain status quo on the existing pathway. In the meantime, 3rd respondent herein filed a petition before the 2nd respondent for cutting and removing a coconut tree alleged to be standing in a dangerous position. The R.D.O by order in K 3107/2014 dated 06.08.2014 allowed the application and directed the petitioners to cut and remove

the disputed coconut tree alleged to be standing in a dangerous position. This was challenged by the petitioner by filing Crl.R.P.No.1/2015 before the Sessions Court, Kottayam and the Sessions Judge had admitted the revision and granted Annexure-A8 interim order and made over the case to the Additional Sessions Court-II (SPL), Kottayam, for disposal. Learned Additional Sessions Judge by Annexure-A9 order dismissed the revision petition for default and thereafter the petitioners filed Crl.MP.No.703/2015 to recall the order and hear the case on merit. But the learned Additional Sessions Judge by impugned Annexure-A10 order dismissed the application. The petitioner has filed this petition challenging Exts.A9 and A10 orders under Section 482 of the Code of Criminal Procedure (hereinafter called the 'Code').

2. Heard the counsel for the petitioners Sri.P.N. Sasidharan, counsel for the 3rd respondent Sri.P.S.Krishna

Pillai, counsel for the first respondent and Smt.P. Maya, Public Prosecutor appearing for the 2nd respondent.

3. The counsel for the petitioners submitted that, the court below should not have dismissed their revision for default and it ought to have been disposed of on merit. Further since it is an illegal order passed recalling the order by the same court will not amount to review the order under Section 362 of the Code of Criminal Procedure.

4. On the other hand, the learned counsel appearing for the 3rd respondent submitted that since there was no representation, court below was perfectly justified in dismissing the application and subsequent order passed rejecting the application for recalling the order is also perfectly justifiable.

5. It is an admitted fact that the petitioners are the counter petitioners in the proceedings before the 2nd respondent in K 3107/2014 which was initiated on the basis

of a complaint filed by the 3rd respondent alleging that a coconut tree in the property of the petitioners was standing in a dangerous position and the 2nd respondent had passed Annexure-A6 and A7 orders directing the petitioners to cut and remove the disputed coconut tree. It is also an admitted fact that the petitioners filed Crl.R.P.No.1/2015 before the Sessions Court, Kottayam, against that order and an interim stay was granted and thereafter it was made over to Additional Sessions Court-II(SPL), Kottayam, for disposal as per Annexure-A9 impugned order and the learned Additional Sessions Judge dismissed the revision for nonprosecution. The petitioners filed Crl.MP.No.703/2015 to recall that order and hear the revision on merit, but that petition was dismissed by Annexure-A10 order.

6. Once the revision is dismissed by the Sessions Court, then the remedy of the petitioner is to challenge the same before this court by filing an application

under Section 482 of the Code of Criminal Procedure as no 2nd revision is maintainable. So the court below was perfectly justified in dismissing the application filed by the petitioners as Crl.M.P.No.703/2015 to recall the order by Annexure-A10 impugned order which does not call for any interference.

7. But as far as Annexure-A9 order is concerned, once the revision is admitted on file, the court below is bound to go into the irregularities or impropriety alleged to have been committed by the subordinate authorities pointed the revision petition and then pass orders on merit and it cannot be dismissed for default for nonprosecution. So under the circumstances Annexure-A9 order passed by the court below suffers illegally and it has to be set aside and the matter has to be remitted to the court below for fresh disposal in accordance with law.

So the order of the Additional Sessions Court-II

(SPL), Kottayam, in Crl.R.P.No.1/2015 dismissing the revision for nonprosecution is set aside and the matter is remitted to the court below for fresh disposal in accordance with law. Parties are directed to appear before the court below on 19.10.2015. The court below is directed to expedite disposal of the revision, after hearing both sides as early as possible at any rate within three months from the date of receipt of this order.

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

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge