

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 205 of 2015 ()

G-NO. 12570/2014 of SUB COLLECTOR, PERINTHALMANNA
DATED 17-11-2014

G-NO. 12570/2014 of SUB COLLECTOR & SUB DIVISIONAL
MAGISTRATE, PERINTHALMANNA DATED 28-01-2015

REVISION PETITIONER/ COUNTER PETITIONER:

C.T.MATHEW, AGED 73 YEARS
S/O.C.P.THOMMAN, RESIDING AT CHEMBAKASSERY HOUSE
VETTELAPPARA AMSOM, AREEKODE DESOM, ERANAD TALUK
MALAPPURAM DISTRICT

BY ADVS.SRI.TOM E.JACOB
SRI.LIJI.J.VADAKEDOM

RESPONDENT(S)/STATE :

1. THE SUB DIVISIONAL MAGISTRATE, PERINTHALMANNA
MALAPPURAM DISTRICT

2. SHERLY
W/O.JOHN, RESIDING AT KARIYANIMATTOM HOUSE
MARUPPANIL (KOORANKALLU), VETTELAPPARA VILLAGE
VETTELAPPARA P.O., MALAPPURAM DISTRICT - 679639

BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

stu

K.HARILAL, J.

=====

Crl.R.P.No.205 of 2015

=====

Dated this the 1st day of June, 2015

ORDER

The revision petitioner is the respondent in the proceedings of the court of Sub Divisional Magistrate, Perinthalmanna, initiated under Section 133 of the Code of Criminal Procedure on a complaint filed by the second respondent herein. The allegation against the revision petitioner is that on 6.4.2013, the revision petitioner herein has obstructed the water channel by filling mud in his property and that there is likelihood of the revision petitioner further lifting his property so as to prevent free flow of water through the above water channel. On receipt of the said complaint, the first respondent issued a notice dated 17.11.2014 to the revision petitioner requiring him to be present before the 1st respondent on 12.12.2014 at 10.30 A.M. for hearing on the petition filed by the second

respondent.

2. On getting the above notice, the revision petitioner approached his counsel and entrusted the matter. Thereafter, on 12.12.2014, in the evening, the counsel informed that there was no sitting on 12.12.2014 and hence the matter is adjourned. It was further informed that the counsel will ascertain the adjourned posting date and it will be informed to the revision petitioner. Thereafter, nothing was heard from the counsel for the revision petitioner and on 6.2.2015, the revision petitioner received an order dated 28.1.2015 issued by the first respondent requiring the petitioner to remove the obstructions within a week and to report the same.

3. According to the petitioner, the said order is passed under Section 138 of the Cr.P.C. without passing a conditional order under Section 133(1) of the Cr.P.C. The notice dated 17.11.2014 was one requiring the presence of the revision petitioner to participate for an enquiry only and

the same was not a conditional order as contemplated under Section 133(1) of the Cr.P.C. Hence, the order dated 28.1.2015 passed under Section 138 of the Cr.P.C. is illegal and unsustainable under law. This is the grievance of the revision petitioner in this revision petition.

4. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

5. The learned counsel for the petitioner advanced arguments highlighting the illegality in the procedure adopted by the 1st respondent by passing an order under Section 138 of the Cr.P.C without passing a conditional order under Section 133(1) of the Cr.P.C.

6. Going by the impugned order dated 28.01.2015, it is seen that the said order is purportedly passed in exercise of the jurisdiction and power under Section 138 of the Cr.P.C, though the Section is not specifically mentioned in the order. An order under Section 138 of the Cr.P.C is to be preceded by an order under Section 133(1) of the Cr.P.C.;

but the notice dated 17.11.2014 is only a notice requiring the revision petitioner to participate for an enquiry and it is not a conditional order, as contemplated under Section 133 (1) of the Cr.P.C. Thus, since the final order dated 28.1.2015 is not preceded by a conditional order, as contemplated under Section 133(1) Cr.P.C, the final order dated 28.1.2015 purportedly passed in exercise of the jurisdiction and power under Section 138 of the Cr.P.C is per se illegal, liable to be set aside and I do so.

7. The matter is remitted back to the 1st respondent to proceed, in accordance with law, as contemplated under Chapter X of the Cr.P.C. and pass an order afresh, after affording an opportunity of being heard to both parties.

The revision petition is allowed accordingly.

Sd/-
K.HARILAL, JUDGE.

stu

//True copy//

P.A to Judge