

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.Rev.Pet.No. 227 of 2015 ()

AGAINST THE ORDER IN COMPLAINT NO.K/4169/2014 of SUB
DIVISIONAL MAGISTRATE, KOTTAYAM.

REVISION PETITIONER/2ND RESPONDENT:

RAJENDRAN NAIR, AGED 38 YEARS,
S/O. RAMAKRISHNAN NAIR,
KALLUTHAZHA HOUSE, T.P. PURAM P.O.,
VAZHOOR-686 504.

BY ADV. SRI.K.R.SUNIL

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. K.K. SREEDHARAN NAIR, AGED ABOUT 70 YEARS,
SREEMANDIRAM, THEERTHAPADAPURAM P.O.,
VAZHOOR-686 505.
3. THE VILLAGE OFFICER, VAZHOOR VILLAGE OFFICE,
VAZHOOR-686 504.

R2 BY ADV. SRI.T.A.UNNIKRISHNAN

R2 BY ADV. SRI.K.S.PRAVEEN

R1 & R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 27-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 227 of 2015

Dated this the 27th day of July, 2015

ORDER

The revision petitioner is the 2nd respondent before the Sub Divisional Magistrate, Kottayam, in a complaint filed by the 2nd respondent herein under Sec.133 of the Code of Criminal Procedure.

2. The case of the 2nd respondent is that some rubber trees standing in the property of the revision petitioner are slanting over the roof of the house of the 2nd respondent in a condition endangering life of the 2nd respondent, his family members and his property. The Village Officer has filed a report stating that the branches of four rubber trees are slanting over the house of the 2nd respondent in a dangerous condition.

After considering the report filed by the Village Officer, the Sub Divisional Magistrate passed a conditional order under Sec.133 of the Cr.P.C. Thereafter, the petitioner entered appearance and filed objection and after hearing both parties, the Sub Divisional Magistrate passed the final order under Sec.138 of the Cr.P.C. directing the petitioner to cut and remove the branches of the rubber trees which are slanting over the house of the 2nd respondent. This order is under challenge in this revision petition.

3. The case of the revision petitioner is that though the branches of three rubber trees are slanting over the house of the 2nd respondent, the direction was issued to cut and remove the branches of all trees which are standing near the property of the 2nd respondent. He further submitted that he had already cut and removed all the branches of the trees which were slanting over the house of the 2nd respondent. In view of the submissions at the Bar, this Court directed the Village Officer, Vazhoor, to inspect the

property and file a report as to whether the petitioner had cut and removed the branches of the rubber trees which were slanting over the house of the 2nd respondent.

4. In compliance with the above direction, the Village Officer filed a report stating that after the order of the Sub Divisional Magistrate, Kottayam, the petitioner cut and removed the branches of the three rubber trees that slanting towards the property and house of the 2nd respondent. Out of the three rubber trees, the entire branches of the two trees are found cut and removed completely and now its remaining timber is standing on the property. The branches of the third rubber tree that slanting over the house of Sreedharan Nair is also found cut and removed. But the timber of one tree from which branches are totally removed is in a dangerous position, since it is slanting towards the house of Sreedharan Nair. It is also reported that there is every chance of falling of the said timber in case of thunderstorm and heavy rain in

the rainy season.

5. The learned counsel for the petitioner submits that he has no objection in cutting and removing the slanting timber which is leaning towards the house of the 2nd respondent in a dangerous position. But the 2nd respondent has not given consent to cut that tree on a reason that the timber will fall on his property. So, the co-operation of the 2nd respondent is also required to cut and remove that slanting timber tree.

In view of the above submissions, I direct the concerned Village Officer to take steps to cut and remove the said tree under his supervision at the expense of the revision petitioner and the 2nd respondent will co-operate with the said attempt. The above said direction shall be executed within a period of three weeks from the date of receipt of a copy of this order. Annexure-A4 order will stand modified accordingly.

(K. HARILAL, JUDGE)

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