

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.Rev.Pet.No. 249 of 2015

AGAINST THE ORDER IN A3-3353/2014 of SUB DIVISIONAL
MAGISTRATE, MUVATTUPUZHA, DATED 30/12/2014.

REVISION PETITIONER(S)/PETITIONER:

CHACKO, AGED 70 YEARS,
S/O.THOMMEN, KATHUKKUZHIYIL HOUSE,
KINGINIMATTAM,
KOLENCHERRY, ERNAKULAM-682311.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT (S) /STATE/COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. THE SUB DIVISIONAL MAGISTRATE COURT,
OFFICE OF THE SUB DIVISIONAL MAGISTRATE COURT,
MUVATTUPUZHA, PIN 686661.

3. K.C.MATHAI,
KUDILUMARIYIL HOUSE, KINGINIMATTAM, KOLENCHERRY,
ERNAKULAM-682311.

R3 BY ADV. SRI.N.K.POULOSEKUTTY

R3 BY ADV. SRI.C.Y.VINOD KUMAR

R1 & 2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.249 of 2015

Dated this the 10th day of June, 2015

ORDER

The revision petitioner is the respondent in the proceedings initiated by the 2nd respondent under Sec.133 of the Code of Criminal Procedure on the application filed by the 3rd respondent herein. The 3rd respondent filed a complaint before the 2nd respondent to the effect that trees which are standing in the western boundary of the petitioner's property are in a dangerous situation and its branches have to be cut and removed. Based on the said complaint, the Village Officer, Ikkaranadu South Village, had conducted a preliminary enquiry and on the basis of the said preliminary enquiry, the 2nd respondent, on 19/9/2014, passed a conditional order under Sec.133

(1) of the Cr.P.C. ordering that the branches of the jack fruit tree, vatta and anjili have to be cut and removed within a period of 15 days.

2. On receipt of the said conditional order, the petitioner entered appearance and sought for time to file objection and also to adduce evidence. Thereafter, the petitioner cut down the branches of the above mentioned trees, as directed by the 2nd respondent by the said conditional order. The grievance of the petitioner is that even after the cutting of the branches, as directed by the 2nd respondent, the 2nd respondent again passed the impugned order under Sec.138 of the Cr.P.C. directing the revision petitioner to cut and remove the entire trees themselves. The said order was passed without affording an opportunity of being heard or to adduce evidence.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the

respondents. The learned counsel appearing for the parties advanced arguments in support of their respective contentions.

4. Going by the impugned order passed under Sec.138 of the Cr.P.C., it could be seen that nothing stated about the compliance of the conditional order under Sec.133 of the Cr.P.C., though the petitioner contended that in compliance with the conditional order, he had cut and removed all the branches of the trees, as directed by the 2nd respondent. So also, it seems that the petitioner was not heard before passing the impugned order and no opportunity had been given to adduce evidence also.

5. In the above view of the matter, I find that the impugned order is passed without due application of mind and the same is not in terms with the statutory mandate under Sec.138 of the Cr.P.C.

6. Consequently, the impugned order is set aside and the matter is remanded back to the 2nd

respondent for fresh consideration, after affording an opportunity of being heard and also to adduce evidence to both parties. The 2nd respondent is directed to pass order afresh within a period of two months from today.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge