

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.Rev.Pet.No. 892 of 2015 ()

MC 261/2014/D(D-4121/14) of SUB DIVISIONAL MAGISTRATE COURT,
FORT KOCHI

REVISION PETITIONER(S)/RESPONDENT:

M.M.PAPPU, AGED 75 YEARS
S/O. MATHU, MAMPILLY HOUSE, NJARAKKAL P.O.
NJARAKKAL VILLAGE, ERNAKULAM DISTRICT-682 505.

BY ADV. SMT.REENA ABRAHAM

RESPONDENT(S)/ PETITIONER & STATE :

1. THE SUB DIVISIONAL MAGISTRATE
FORT KOCHI-682 001.

2. K.R.JOSEPH
S/O. RAPHEL(LATE), KUZHUVELIL HOUSE, NJARACKAL
ERNAKULAM DISTRICT-682 505.

3. THE SECRETARY
NJRACKAL GRAMA PANCHAYAT, NJARACKAL P.O.
ERNAKULAM DISTRICT-682 505.

4. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

R3 BY ADV. SRI.S.SHANAVAS KHAN
R1 & R4 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 28-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.892 of 2015

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Dated this the 28th day of July, 2015

ORDER

The revision petitioner is the respondent in the proceedings of the 1st respondent dated 9.2.2015 initiated under Section 133 of the Code of Criminal Procedure on a complaint filed by the 2nd respondent herein. The grievance projected in the complaint filed by the 2nd respondent is that a coconut tree standing in the property of the petitioner is slanting towards the house of the 2nd respondent in a dangerous manner and coconut from the above tree falls down on the residential house and the land in between the fencing and the residential house.

2. On receipt of the complaint, the 1st respondent called for a report from the Village Officer and the Village Officer has reported that the allegation in the complaint is true and the coconut tree is slanting over the residential

building of the 2nd respondent in a dangerous condition. Pursuant to the said report, the 1st respondent issued a conditional order under Section 133(1) of the Cr.P.C directing the petitioner to straighten the coconut tree by tying with a rope within a period of 25 days. Thereafter, the petitioner entered appearance and the present petitioner was also impleaded in the proceedings and the matter was heard. After considering the report of the Village Officer and the evidence adduced by the petitioner and the 2nd respondent, the court below directed the 3rd respondent to take proper steps to remove the dangerous coconut tree invoking jurisdiction and power under Section 238(b) of the Panchayat Raj Act. The legality of the said order is under challenge in this revision petition .

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner advanced arguments assailing the findings whereby the 1st respondent

found that the coconut tree is slanting in a dangerous position so as to cause eminent danger to the life of the 2nd respondent. According to the learned counsel, the petitioner has already straighten the coconut tree by tying ropes. So, there is no chance of eminent danger to the life of the 2nd respondent.

5. Per contra, the 2nd respondent himself entered appearance in person and contended that the slanting coconut tree will cause eminent danger to the life of the 2nd respondent and his family and the coconut from the coconut tree often falls down so as to cause danger to the property and the life of the family members.

6. Going by the impugned order, it is seen that the Village Officer filed a report stating that the coconut tree is slanting over the roof of the 2nd respondent's house in a dangerous position and that may cause eminent danger to the life and property of the 2nd respondent and his family members. In the light of the above report, though the 1st

respondent passed a conditional order under Section 133 of the Cr.P.C, after taking evidence and hearing both parties, the 1st respondent has passed final order vacating the interim order and directing the 3rd respondent to take proper steps to cut and remove the coconut tree invoking power under Section 238(b) of the Cr.P.C.

7. Going by the proceedings as well as the submissions at the Bar, indisputably, it is seen that the coconut tree is slanting over the property and residential building of the 2nd respondent and the coconut may fall down over the residential building as alleged in the complaint. Even though the petitioner submits that the dangerous situation can be abated by straightening the slanting coconut tree by tying with the rope, I am of the opinion that the same is not a permanent remedy. I do not find any reason to disbelieve the report filed by the Village Officer. In the absence of any material contrary to the admitted fact that coconut tree is slanting in a dangerous situation causing eminent danger to

the life and property of the 2nd respondent, I do not find any reason to interfere with the impugned order under challenge.

Therefore, this revision petition is devoid of merits and dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge