

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

Crl.Rev.Pet.No. 946 of 2015

**AGAINST THE ORDER IN C.M.P.NO.1743 OF 2015 IN C.C.NO.1168 OF 2014 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THAMARASSERY,
DATED 11-05-2015**

REVISION PETITIONER(S)/PETITIONERS/ACCUSED 1 TO 3 :

- 1. NANDAKUMAR, AGED 46 YEARS,
S/O.KANNAN, THAYYULLAPARAMBATH HOUSE, NARIPATTA,
VADAKARA, KOZHIKODE DISTRICT.**
- 2. ASWANTH, AGED 25 YEARS,
S/O.SANKARAN, MALAYANTAKANDY HOUSE, P.O.KAKKATTIL,
VADAKARA, KOZHIKODE DISTRICT.**
- 3. RAJAN, AGED 53 YEARS,
S/O.KANNAN, POOVULLAPPARAMBATH HOUSE, NARIPATTA,
VADAKARA, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU**

RESPONDENT(S)/RESPONDENT/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1:** COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.169 OF 2014 OF KUTTIADI POLICE STATION, KOZHIKODE RURAL DATED 01.03.2014.
- ANNEXURE A2:** COPY OF THE ASSIGNMENT DEED NO.2165 OF 2008 EXECUTED BY ONE SUDHA IN FAVOUR OF THE 1ST PETITIONER ON 31.10.2008 REGISTERED BY THE SUB REGISTRAR'S OFFICE, KAKKATTIL, KOZHIKODE.
- ANNEXURE A3:** COPY OF THE POSSESSION CERTIFICATE ISSUED BY THINNUR VILLAGE OFFICE DATED 22.02.2014.
- ANNEXURE A4:** COPY OF THE BASIC TAX RECEIPT DATED 24.02.2014 ISSUED BY VILLAGE OFFICER, THINNUR.
- ANNEXURE A5:** COPY OF THE LOCATION SKETCH ISSUED BY VILLAGE OFFICER, THINNUR DATED 24.02.2014.
- ANNEXURE A6:** COPY OF THE PLAINT IN O.S.NO.115 OF 2011 ON THE FILE OF THE MUNSIFF'S COURT, NADHAPURAM DATED 06.06.2014.
- ANNEXURE A7:** COPY OF THE INTERIM REPORT FILED BY THE ADVOCATE COMMISSIONER IN I.A.NO.701 OF 2014 I O.S.NO.115 OF 2014 BEFORE THE MUNSIFF'S COURT, NADHAPURAM DATED 25.06.2014.
- ANNEXURE A8:** COPY OF THE FINAL REPORT FILED BY THE ADVOCATE COMMISSIONER IN O.S.NO.115 OF 2014 BEFORE THE MUNSIFF'S COURT, NADHAPURAM.
- ANNEXURE A9:** CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE SUB INSPECTOR OF POLICE, KUTTIADI POLICE STATION IN CRIME NO.169 OF 2014 DATED 03.07.2014.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

K.HARILAL, J.

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Crl.R.P.No.946 of 2015

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Dated this the 30th day of July, 2015

ORDER

The revision petitioners are accused Nos.1 to 3 in C.C.No.1168/2014 on the files of the Judicial First Class Magistrate's Court-II, Thamarassery. The offences alleged against the petitioners are under Sections 447 and 427 of the IPC read with Section 3(1) of the Prevention of Damage to Public Property Act, 1984.

2. The prosecution case was initiated on the basis of a complaint filed by the Headmistress, Government Lower Primary School, Kumbalachola, alleging the commission of the offences punishable under Sections 447 and 427 of the IPC read with Section 3(1) of the Prevention of Damage to Public Property Act, 1984. According to the complaint, the petitioners trespassed into the property owned and possessed by the Government Lower Primary School,

Kumbalachola and demolished a building on 27.2.2013 and illegally taken away the coconuts plucked from 15 coconut trees situated in the property. As per the allegations, the 1st accused and his son in law, the 2nd accused and an unidentified person, who are the revision petitioners herein, allegedly committed the offences. According to the 1st revision petitioner, he is the owner in possession of property of an extent of 27¼ cents comprised in Re.Sy.No.158/1 of Thinnur Village, Vadakara Taluk, Kozhikode District. The revision petitioners further contended that 1st revision petitioner obtained possession certificate dated 22.02.2014 from the Thinnur Village Office, Vadakara Taluk, Kozhikode District. The 1st revision petitioner also paid basic tax to the property before the Thinnur Village. So also, he obtained location sketch from the Village Office with respect to the property comprised in Re.Sy.No.158/1. Thus, according to the revision petitioners, the property absolutely belongs to them and the lower Primary School, Kumbalachola has

neither right nor possession over the said property. With the above grounds, the revision petitioners filed the application under Section 239 of the Cr.P.C seeking discharge.

3. Heard the learned counsel for the revision petitioners.

4. The learned counsel for the revision petitioners advanced arguments challenging the findings of the court below that the prosecution has a prima facie case against the revision petitioners. The sum and substance of the argument made by the learned counsel for the petitioners is that the documents produced by the revision petitioners in this revision petition establish the title and possession over the disputed property. According to him, as the 1st revision petitioner is the title holder in possession of the property, the prosecution against him for the offences under Sections 447 and 427 is not maintainable and the alleged encroachment is illegal.

5. The sole question arises for consideration in an application under Section 239 of the Cr.P.C is, is the charge against the revision petitioners groundless? Put it differently, whether the final report and the documents sent along with the report disclose the offence, which if unrebutted, would warrant conviction. Going by the impugned order, in view of the final report, it could be seen that the Village Officer has reported that the disputed property belongs to the school and he has produced a certificate and site plan to the Investigating Officer. These documents revealed that the shed, which belongs to the school was demolished. That apart, the Headmistress of the school filed a complaint alleging that the revision petitioners trespassed into the property and demolished the shed.

6. It is true that the case of the revision petitioners is that the disputed property belongs to them and the title and possession of the property is supported by valid

documents and revenue records. Even if it is true, those documents cannot be considered in an application under Section 239 of the Cr.P.C. in view of the decision in **State of Orissa v. Devendra Nath Pandhi** [2005 (1) KLT 80 SC]. Certainly, the revision petitioners can raise all these contentions and produce documents during the course of trial, to establish their title and possession over the said property. But the court below is justified in finding that the defence version and documents relied on by the accused cannot be considered in an application under Section 239 of the Cr.P.C. There is no illegality or impropriety in the impugned order under challenge. Hence, this revision petition will stand dismissed with the above observations.

The trial court is further directed to pass judgment after trial untrammelled by the observations made above.

Sd/-
K.HARILAL, JUDGE.

stu

//True copy//

P.A to Judge