

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1884 of 2013 ()

MC 141/2012/M(2950/12/M) of SUB.DVL.MAGI.COURT,FORT COCHIN

REVISION PETITIONER/COUNTER PETITIONER:

KUNJU MUHAMMED, AGED 53 YEARS
S/O. IBRAHIM, MAROTTICAKAL HOUSE, NOCHIMA
N.A.D.(P.O.), ALUVA, ERNAKULAM-683563.

BY ADV. SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENTS/PETITIONER/NOT A PARTY:

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1. THE REVENUE DIVISIONAL OFFICER
FORT KOCHI, KOCHI-682001.
 2. THE VILLAGE OFFICER
ALUVA EAST, ALUVA-683101.
 3. KHADEEJA BEEVI
W/O. MUHAMMED ASHRAF, AMIAN HOUSE, NOCHIMA
N.A.D. P.O., ALUVA-683563.
 4. SUB INSPECTOR OF POLICE
ALUVA EAST POLICE STATION, ALUVA-683101.

R3 BY ADV. SMT.AYSHA YOUSEFF
R3 BY ADV. SRI.V.K.SIDHIQUE
R3 BY ADV. SMT.SAJITHA SIDHIK
R1, R2 & R4 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1884 of 2013

Dated this the 21st day of December 2015

ORDER

The revision petitioner is the counter petitioner in M.C.No.141/12/M on the files of the Court of the Sub Divisional Magistrate, Fort Kochi.

2. The third respondent filed a complaint before the learned Sub Divisional Magistrate alleging that the revision petitioner had removed the red earth from the eastern boundary of the property of the revision petitioner, causing land sliding of the third respondent's western boundary and thereby causing danger and nuisance to the third respondent herein.

3. On receipt of the said complaint, the learned Magistrate called for a report from the Village Officer concerned. Thereafter, the leaned Magistrate issued a conditional order under Section 133(1) of the Code directing the revision petitioner to construct a protection wall along the eastern boundary of his property within 30 days or to appear before the learned Magistrate on 7.12.2012 at 11 a.m., and show cause why the conditional order should not be made absolute.

4. The revision petitioner appeared before the leaned Magistrate and filed objection. Thereafter, the learned Magistrate made the conditional order absolute under Section 138(2) of the Code. Aggrieved by the said

order, this revision petition has been filed.

5. Heard.

6. It has been argued by the learned counsel for the revision petitioner that there was no allegation that the sand was removed from any place adjacent to any public way or public place, causing danger to the public and in the said circumstances, the learned Magistrate had no jurisdiction to initiate proceedings under Section 133 of the Code and consequently, the order impugned cannot be sustained. The provisions of Section 133(1)(e) of the Code would show that the excavation must be adjacent to any public way or public place causing danger to the public. In this case, there is no allegation that the sand was removed from any

place adjacent to any public way or public place, so as to cause danger to the public. In the said circumstances, the learned Magistrate had no jurisdiction to entertain the petition under Section 133 of the Code. For the said reason, the order impugned cannot be sustained.

7. The learned Public Prosecutor has submitted that even though the revision petitioner had appeared before the learned Magistrate and filed objection, the learned Magistrate did not record evidence in the matter as in a summons case, as mandated under Section 138(1) of the Code before making the conditional order absolute under Section 138(2) of the Code and in the said circumstances also, the order impugned cannot be sustained. It is true that

the learned Magistrate did not record evidence in the matter as mandated under Section 138(1) of the Code before making the conditional order absolute under Section 138(2) of the Code. However, since the learned Magistrate had no jurisdiction to entertain the application under Section 133 of the Code, no useful purpose would be served by directing the learned Magistrate to comply with the provisions of Section 138(1) of the Code. Since the learned Magistrate had no jurisdiction to entertain the present application, as there was no allegation of removal of sand or excavation adjacent to any public way or public place causing danger to the public, the order impugned cannot be sustained.

In the result, this revision petition stands allowed and the order impugned stands set aside. However, this order will not take away the right, if any, available to the third respondent in getting his grievance redressed through the Civil Court.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

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PA to Judge