

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1293 of 2014 ()

CMP NO.1583/2014 IN C.C.854/2013 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-11, PERAMBRA

REVISION PETITIONERS/PETITIONERS/2ND, 4TH AND 5TH ACCUSED:

1. GANESAN
S/O.ACHUTHAN NAMBIYAR, ANJUTHENGULLATHIL HOUSE
PANANGAD AMSOM, NIRMMALLUR DESOM, BALUSSERY
KOZHIKODE DISTRICT - 673 612.
2. SHIVANANDAN MASTER,
S/O.NARAYANAN NAIR, VALANHATH HOUSE, PANANGAD
NIRMMALLUR DESOM, BALUSSERY
KOZHIKODE DISTRICT - 673 612.
3. RAVI, S/O.GOPALAN, AMAYATT HOUSE,
PANANGAD AMSOM, NIRMMALLUR DESOM, BALUSSERY
KOZHIKODE DISTRICT - 673 612.

BY ADVS.SRI.SANTHARAM.P
SMT.REKHA ARAVIND

RESPONDENT(S)/RESPONDENT:

1. STATION HOUSE OFFICER, BALUSSERY
KOZHIKODE, 673 612.
2. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI 31.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 21-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1293 of 2014

Dated this the 21st day of November, 2015.

ORDER

The revision petitioners are the accused in C.M.P.No.1583 of 2014 in C.C.No.854 of 2013 on the files of the Court of the Judicial Magistrate of First Class-II, Perambra. The petitioners filed C.M.P.No.1583 of 2014 for discharge under Section 239 Cr.P.C. The court below dismissed the said petition. Aggrieved by the said order, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that on 10.4.2013 at 10 p.m., the petitioners and the other accused formed themselves into an unlawful assembly and in prosecution of the common object of the said assembly, trespassed into the landed property of the de facto complainant and demolished the compound wall to an extent of 57 metres, causing a loss to the tune of Rs.10,000/- to the de complainant. The above

case was investigated by the police. The police thereafter filed the final report before the court.

4. The contention of the revision petitioners is that the property involved in this case is the property of Narasimha Temple wherein the petitioners are trustees and hence even if the trial of the case is proceeded with, there is no chance for culminating the trial in conviction and in the said circumstances, the learned counsel has pleaded for discharge. It has been further submitted by the learned counsel for the revision petitioners that a civil case is pending between the temple and the de facto complainant before the Munsiffs Court, Koyilandy, wherein an order of injunction was passed by the Munsiffs Court, restraining the de facto complainant from trespassing into the property of the temple and in the said circumstances also, the revision petitioners are entitled to discharge.

5. Whether the compound wall, which was allegedly demolished, forms part of the property of the above said

Narasimha Temple or not is a matter for the evidence, particularly when it appears from the final report that the compound wall in question belongs to the de facto complainant.

6. At the stage of Section 239 of the Code, the court is called upon to ascertain only as to whether the allegation is groundless. That alone needs to be considered at this stage. No detailed evaluation of the materials or possible defence needs to be undertaken at this stage. Once the court finds that there is *prima facie* case to proceed with, it has to be held that the charge is not groundless. After through the records, the court below rightly held that it could not be said at this stage that the charge against the petitioners was groundless. In the said circumstances, the court below rightly dismissed the petition. Having gone through the relevant inputs, I do not find any infirmity in the order impugned, warranting interference by this Court.

In the result, this revision petition stands dismissed.

However, the court below is directed to grant exemption to the revision petitioners from their personal appearance before the court below on all days except on days when their presence is utmost necessary.

**B. SUDHEENDRA KUMAR
JUDGE**