

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

Crl.Rev.Pet.No. 1298 of 2014 ()

AGAINST THE ORDER IN MC 55/2013 of SUB.DVL.MAGISTRATE, KOLLAM
DATED 24-06-2014

REVISION PETITIONER/RESPONDENT:-

THRIVENI, AGED 50 YEARS
KIZHAKKE THOTTUVA VILA VEEDU, EAST CHERRY
PANAYAM VILLAGE, PANAYAM, KOLLAM.

BY ADV. SMT.MINI GANGADHARAN

RESPONDENTS/COUNTER PETITIONERS & STATE:-

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1. THE SUB DIVISIONAL MAGISTRATE,
CIVIL STATION, KOLLAM - 691 012.
 2. THE VILLAGE OFFICER,
PANAYAM VILLAGE, KOLLAM.
 3. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 4. RAJAN, NARAYANA MANDIRAM,
EAST CHERRY, PANAYAM VILLAGE
PANAYAM, KOLLAM.

R4 BY ADV. SMT.M.LALITHA NAIR
R1 TO R3 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE A1: TRUE COPY OF THE INFORMATION FROM THE VILLAGE OFFICER UNDER THE RIGHT TO INFORMATION ACT STATING THAT THE 4TH RESPONDENT HAS NO PROPERTY IN HIS NAME, HIS PROPERTY IS NOT LEFT AFTER ACQUISITION.

ANNEXURE A2: THE TRUE PHOTOSTAT COPY OF DECREE IN O.S.NO.505/2010 OF THE MUNSIFF'S COURT, KOLLAM WITH RESPECT TO THE SUBJECT PROPERTY.

ANNEXURE A3: THE TRUE PHOTOSTAT COPY OF THE CONDITIONAL ORDER IN M.C.NO.55/2013 DATED 20.3.2013 PASSED BY THE 1ST RESPONDENT.

ANNEXURE A4: TRUE COPY OF THE INFORMATION FROM THE VILLAGE OFFICER UNDER THE RIGHT TO INFORMATION ACT STATING THAT THE 4TH RESPONDENT HAS NO PROPERTY IN HIS NAME OR IN THE NAME OF HIS WIFE IN RESURVEY NO.55/5, 55/6, 55/16, 55/14, 55/15, 55/7-3, 55/7-2 OF PANAYAM VILLAGE.

ANNEXURE A5: TRUE COPY OF THE E.P.NO.186/2012 IN O.S.NO.505/2010 ON THE FILE OF THE MUNSIFF'S COURT, KOLLAM, PENDING AGAINST THE 4TH RESPONDENT FOR PROSECUTION FOR HAVING NOT VACATED MY PREMISES IN OBEDIENCE TO THE DECREE FOR PERMANENT INJUNCTION PASSED AGAINST THE 4TH RESPONDENT.

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.1298 of 2014

Dated 6th February, 2015

ORDER

This revision petition is directed against an order passed by the Sub Divisional Magistrate, Kollam exercising his preventive jurisdictional power to deal with public nuisance embedded in Section 133 of the Code of Criminal Procedure. The 4th respondent and the petitioner are neighbours. True that there is a contention for the petitioner that the 4th respondent has intruded into her property and in the said circumstances, she was constrained to approach the competent Civil Court to evict him. But, it is an indisputable fact revealed from the pleadings that the 4th respondent is residing in a separate house along with his family situated in a property that lies conterminous with the property belonging to the petitioner. Whether the 4th respondent is having exclusive ownership over the property is not a point relevant for consideration in this proceedings and in fact, that was not at all considered or decided by the Sub Divisional Magistrate as well, in the impugned order. The 4th respondent moved the petition that culminated in the impugned order contending that certain trees viz., a mango tree, branches of Vatta and Tamarind trees, standing in the property of the petitioner are leaning over his residential building in such a manner

posing danger to it and also to the lives of the inhabitants. It is in the said circumstances that he sought for an order to cut and remove such trees mentioned in the petition. Earlier, on receipt of the said petition it was got enquired into through the Village Officer, Panayam and after obtaining the report and prima facie satisfying about the existence of circumstances for passing a conditional order a provisional order has been passed by the first respondent under Section 133(1)(d) Cr.P.C. The petitioner would admit the receipt of the said order. As per the said order the petitioner was asked to explain why the provisional order should not be finalised and to submit objection, if any. Thereupon, the petitioner entered appearance and filed objection. After hearing the petitioner and the 4th respondent and obtaining a further report through Tahsildar, Kollam the first respondent passed the impugned order for cutting and removing the branches of the aforesaid trees, virtually to avert the danger and nuisance. The captioned revision petition has been filed challenging the said order.

2. I have heard the learned counsel for the petitioner, the learned counsel appointed by the High Court Legal Services Committee to represent the 4th respondent in this proceedings and also the learned Public Prosecutor.

3. The learned counsel appearing for the petitioner raised various contentions to mount challenge against the order passed by the first respondent. At the same time, it is to be noted that no grievance relating failure to comply with the mandatory procedures have been made in this revision petition. It is contended by the learned counsel that a civil dispute was pending between the petitioner and the 4th respondent and the suit was virtually decreed in her favour whereby the 4th respondent was enjoined from encroaching upon the property belonging to the petitioner. It is the further contention that the 4th respondent is residing in the property actually belonging to the petitioner and the petitioner is taking steps for getting the 4th respondent evicted from that property. In short, it is contended that the 4th respondent got no *locus standi* to approach the first respondent with such a petition. At the same time, the learned counsel would admit the fact that even now, the 4th respondent is residing in the house in question situated in the property in dispute. In the said circumstances, the question to be decided is whether existence of any civil proceedings would be a bar for exercising the power under Section 133 Cr.P.C ? There can be no doubt with respect to the settled position that neither an injunction nor pendency of a civil dispute or even the fact that the dispute involved is of

civil nature would bar a proceeding under Section 133 Cr.P.C. and if such a conditional order has been passed the learned Executive Magistrate is bound to pass a final order. The reason is very much obvious. The nature of relief which would be granted by the Executive Magistrate under Section 133 Cr.P.C. is only to remove the nuisance immediately and in the said proceedings the Executive Magistrate is not empowered to decide the civil rights rather, the rights over the property involved in the dispute. The indisputable position obtained in this case is that the 4th respondent along with his family is residing in a house over which the trees in question are leaning in such a manner to pose danger to their lives. In such circumstances, irrespective of the ownership of the property in which they are residing, the inhabitants of the said building are having a right to invoke the remedy available under Section 133 Cr.P.C. The learned counsel drew my attention to Annexures A1 and 2 and also furnished a copy of the judgment in O.S.No.505 of 2010 of the Court of Additional Munsiff, Kollam. The petitioner relies on Annexure-A1 to canvass the position that the 4th respondent is not having any property in the said Village. I do not think that the said report, even if it is taken as true, would have any relevance as far as this case is concerned owing to the admitted position that the 4th respondent is residing in the house in question situated in the aforesaid disputed

property along with his family members and the grievance is relating dangerous position of the trees in question. In such circumstances, the position of law leaves no room for any doubt and a bare perusal of the provisions under Section 133(1)(d) Cr.P.C. would answer the situation. It reads thus:-

"133. Conditional order for removal of nuisance.-(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

.....

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary;"

A scanning of the provisions under Section 133 (1)(d) Cr.P.C. would reveal that for earning the *locus standi* to approach the concerned Magistrate for an order under Section 133(1)(d)Cr.P.C. the ownership of the property in question is not relevant. When once it is admitted that as on today the 4th respondent is residing in the house constructed in the property in dispute and the branches of the trees which are rooted in the

property of the petitioner are leaning over the said house in such a condition is likely to cause injury to the persons living in the neighbourhood such persons are having the right to seek for an order under Section 133(1)(d) Cr.P.C. In this case, it is evident from the statement of the petitioner that she is not legally entitled to challenge *locus standi* of the 4th respondent as admittedly, the 4th respondent is residing in the house situated in the property in dispute along with his family. In such circumstances, the question to be decided is whether the first respondent is justified in passing the impugned order. Evidently, the 4th respondent sought for cutting and removing of a mango tree and branches of Vatta and Tamarind trees rooted in the property of the petitioner. After obtaining the reports and after hearing the petitioner as also the 4th respondent and after satisfying that the branches of the said trees are standing in such a situation to pose danger to the lives of the 4th respondent and his family members the first respondent passed the impugned order for cutting and removing the branches of the aforesaid trees. In other words, the first respondent did not issue any order for cutting and removing the trees as such and what was ordered is only cutting of branches of the trees in question and essentially it is an order passed by the Executive Magistrate to deal with a situation contemplated under Section 133(1)(d) Cr.P.C. Now, the said order was finalised after

complying with the procedures and obviously, the petitioner had not raised any procedural illegalities. I do not find any illegality in the order passed by the first respondent that invites any interference in invocation of the revisional jurisdiction. In the said circumstances, this revision petition is liable to fail and accordingly, it is dismissed. The learned counsel for the petitioner in the said circumstances, sought for a reasonable time to comply with the directions in the order. In the circumstances, 10 days' time from today is granted to the petitioner to cut and remove the branches of the aforementioned trees as directed vide the impugned order. It is made clear that in case of failure on the part of the petitioner to do so, in compliance with the impugned order, it will be open to the Village Officer, Panayam to do the needful to comply with the directions with police assistance and to recover the amount incurred from the petitioner, as directed in the impugned order.

Sd/-
C.T.RAVIKUMAR
Judge

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