

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

Cr1.Rev.Pet.No. 1385 of 2014

AGAINST THE ORDER IN MC 533/2013 of SUB DIVISIONAL
MAGISTRATE, KOLLAM DATED 23/4/2014.

REVISION PETITIONER(S)/PETITIONER:

VALLERIYAN,
ZAVIERBHAVANAM, ARAVILA, SAKTHIKULANGARA.

BY ADVS.SRI.PRATHEESH.P
SMT.BINDU GEORGE

RESPONDENT(S)/COUNTER PETITIONER AND STATE:

1. STATE OF KERALA,
REPRESENTED BY THE SUB DIVISIONAL MAGISTRATE,
KOLLAM.

2. GEORGE,
PALLITHEKKATHIL, ARAVILA, SAKTHIKULANGARA,
KOLLAM.

R2 BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
BY ADV. SRI.P.R.MILTON
BY ADV. SMT.SALI. P. MATHEW (MUNNAR)
R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 11-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1385 of 2014

Dated this the 11th day of June, 2015

ORDER

The revision petitioner is the petitioner in M.C. No.533 of 2013 on the files of the Sub Divisional Magistrate, Kollam. The above M.C. was initiated under Sec.133 of the Code of Criminal Procedure on the application of the petitioner alleging that one 'Mahagani' tree standing in the 2nd respondent's property is leaning over the residential building of the petitioner. On the application, the 1st respondent called for a report from the Village Officer and the Village Officer reported that the branches of one Mahagani tree standing in the 2nd respondent's property is dangerously leaning over the residential building of

the petitioner. On the basis of the said report, the 1st respondent had issued a conditional order under Sec.133(1) of the Cr.P.C. requiring the 2nd respondent to cut and remove the branches of the tree which are leaning over the property and the residential building of the petitioner. Though, in compliance with the conditional order, the 2nd respondent had cut and removed the branches of the tree, that fact was not brought to the notice of the 1st respondent at the time when the case was heard under Sec.138 of the Cr.P.C., according to the 2nd respondent. However, on 29/1/2014, at the time of hearing, the petitioner stated that the 2nd respondent/counter petitioner did not obey the conditional order passed under Sec.133 (1) of the Cr.P.C. On the basis of the above submission, the 1st respondent passed the impugned order under Sec.138 of the Cr.P.C. directing the 2nd respondent to cut and remove the branches of the Mahagani tree standing in the 2nd respondent's property. This order is under challenge in this revision

petition on the ground that even though the Village Officer has reported that the entire tree itself has to be cut and removed, the final order under Sec.138 of the Cr.P.C. is limited and confined to the removal of branches of the tree only.

2. The learned counsel for the revision petitioner advanced arguments contending that despite the recommendation of the Village Officer to cut and remove the entire tree, the 1st respondent has limited the same to the extent of branches only.

3. Per contra, the learned counsel for the 2nd respondent advanced arguments to justify the impugned order under challenge.

4. Going by the report filed by the Village Officer, it is seen that the Village Officer has stated that the cutting and removal of the tree itself is desirable considering the danger that may happen in future. The said observation implies that, at present, there is no imminent danger causing apprehension in the mind of the petitioner. In support of the arguments

advanced by the learned counsel for the 2nd respondent, he has produced a photograph also. It is also contended that in compliance with the impugned order under challenge, he had already cut and removed all branches of the tree which are leaning over the property and the residential building of the petitioner. In view of the photograph produced by the learned counsel for the 2nd respondent, it is felt that the apprehension of the petitioner stands removed by cutting and removal of the branches of the tree and the entire tree, as a whole, need not be cut and removed from the 2nd respondent's property, as there is no imminent danger.

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

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge

