

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Crl.Rev.Pet.No. 2046 of 2014 ()

**(AGAINST THE ORDER IN CMP.NO.6753/2014 IN CC.NO. 1342/2013 OF JUDICIAL
FIRST CLASS MAGISTRATE COURT -II, NEYYATTINKARA DATED 16/6/2014)**

REVISION PETITIONER(S)/ACCUSED NO.1 & 2 :

- 1. SEKHARAN NAIR, S/O. KUNJUKRISHNA PILLAI,
K.S. BHAVAN, NEAR MUDIPPURA,
KULATHOOR VILLAGE, UCHAKKADA P.O., NEYYATTINKARA,
TRIVANDRUM.**
- 2. VASUNDARA DEVI,
W/O. SEKHARAN NAIR, K.S. BHAVAN, NEAR MUDIPPURA,
KULATHOOR VILLAGE, UCHAKKADA P.O., NEYYATTINKARA,
TRIVANDRUM.**

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SHOBHANA KUMARI,
D/O. PONNAMMA PILLAI, ANUPAMA NIVAS, MURIYATHOTTAM,
PARASSALA, THIRUVANANTHAPURAM - 695 505.**

R1 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

R2 BY ADVS. SRI.RAM MOHAN.G.

SRI.G.P.SHINOD

SRI.MANU V.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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CRL.R.P.NO.2046/2014

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX A COPY OF THE FINAL REPORT IN C.C.NO.1342/2013 FILED BEFORE THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATINKARA**

**ANNEX B COPY OF THE JUDGMENT DATED 6/2/2014 IN A.S.NO.34/2010 AND
132/10 ON THE FILE OF SUB COURT, NEYYATINKARA.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

B.KEMAL PASHA, J.

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Crl.R.P No. 2046 of 2014

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Dated this the 19th day of March, 2015

ORDER

A suit for partition was filed by the co-owners and an order of temporary injunction was obtained in the said suit. Later, it is alleged that by violating the said order, the petitioners herein had allegedly committed trespass into the property and cut and removed certain trees and allegedly committed theft of the same. A private complaint was filed by the 2nd respondent herein, which was referred to the Police under Section 156(3) Cr.P.C. Consequently, a final report was filed against the present petitioners alleging offences punishable under Sections 188, 379, 426, 441 and 506(ii) read with Section 34 IPC. The petitioners, who are the accused in that case, approached the court below for discharge. The court below, after hearing the parties, has passed the impugned order, thereby dismissing the petition seeking discharge. The petitioners have come up in revision.

2. Heard the learned counsel for the petitioners, the learned counsel for the 2nd respondent and the learned Public Prosecutor.

3. It is the admitted case of both the sides that presently the decree passed in the matter has been set aside and the matter has been remitted to the IInd Additional Munsiff's Court, Neyyattinkara. It is true that an F.A.O is pending against the matter. When the preliminary decree has been set aside, it seems that the parties are still continuing as co-owners. Of course, the 2nd respondent has got a case that the 1st petitioner herein is not a co-owner; whereas, he claims through his wife, who is one of the co-owners. In the suit, joint possession and enjoyment of the parties over the said property have been pleaded. When separate position has not been granted to the parties, it can only be considered that they are tenants in common in respect of the property. Matters being so, the offences under Sections 188, 379, 426 and 441 read with Section 34 IPC will not lie at present. It seems that there are allegations for

constituting an offence under Section 506(ii) IPC in the case. Of course, it is a matter to be proved whether such an offence has been committed or not.

4. Matters being so, the impugned order is liable to be modified. The petitioners are entitled to be discharged for the offences punishable under Sections 188, 379, 426 and 441 read with Section 34 IPC. As far as the offence under Section 506(ii) read with Section 34 IPC, is concerned, the matter can be proceeded with.

In the result, this Crl.R.P is allowed in part by modifying the impugned order as observed above. The court below is directed to dispose of the matter, as expeditiously as possible, by considering the fact that it is a matter relates to the year 2013.

B.KEMAL PASHA, JUDGE

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