

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Crl.Rev.Pet.No. 2113 of 2014 ()

MC 54/2014 of SUB DIVISIONAL MAGISTRATE, MANANTHAVADY, WAYANAD
DATED 18-11-2014

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

THRESIAMMA CHACKO, AGED 66 YEARS
W/O.CHACKO, KARIKKAKUNNEL HOUSE, NADAVAYAL P.O.
NADAVAYAL, WAYANAD DISTRICT.

BY ADVS.SRI.C.M.NAZAR
SRI.MANSOOR.B.H.

RESPONDENT(S)/STATE & COMPLAINANT:

* 1. SUB DIVISIONAL MAGISTRATE
MANANTHAVADY, WAYANAD. (DELETED)

2. K.M.THOMAS
IRATTAMUNDAKKAL HOUSE, NADAVAYAL P.O.
NADAVAYAL VILLAGE, WAYANAD - 673 121.

3. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

* SUB DIVISIONAL MAGISTRATE, MANANTHAVADY, WAYANAD IS
DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 9.12.2014
IN Crl.R.P.No.2113/2014.

R2 BY ADV. SRI.MATHEW KURIAKOSE
R3 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 2113 of 2014

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Dated this the 22nd day of June, 2015

ORDER

The revision petitioner is the respondent and the 2nd respondent is the complainant in M.C No. 54/14 of the Sub-Divisional Magistrate's Court, Mananthavady, Wayanad District, which was initiated under Section 133 of the Code of Criminal Procedure. This revision petition is filed challenging the order dated 18th November, 2014, directing the revision petitioner to cut and remove a coconut tree, which is slanting over the building of the 2nd respondent, within 7 days from the date of the impugned order.

2. The allegation in the above M.C was that 4 coconut trees, standing in the property of the revision petitioner, was slanting over the property of the 2nd respondent. It is also specifically contended that among the 4 trees, one tree is slanting over the ration shop owned and possessed by the 2nd respondent.

3. The revision petitioner filed an objection contending that the alleged coconut trees are not causing any kind of threat or danger as apprehended by the 2nd respondent. It is also contended that the order passed by the Secretary of the Panchayat was challenged before the Tribunal for Local Self Government Institution, Thiruvananthapuram and an interim order has been passed by the Tribunal staying all further proceedings initiated by the Secretary of the Panchayat. After considering the objection raised by the revision petitioner, the 1st respondent passed the impugned order, under Section 138 of the Code of Criminal Procedure, affirming the order passed under Section 133 (1) of the Code of Criminal Procedure. The legality and propriety of this order are under challenge in this Revision Petition.

4. Though this revision petition has been filed on various grounds, the learned counsel for the revision petitioner canvassed the point that the order passed by the

Secretary of the Panchayat was challenged before the Tribunal for Local Self Government Institution and the Tribunal has passed an interim order staying all further proceedings initiated by the Panchayat. Therefore, it is not proper and legal to pass any order under Section 138 of the Code of Criminal Procedure.

5. Going by the impugned order, it is seen that the 1st respondent has considered the above contention and rightly held that power granted to the Sub Divisional Magistrate, under Section 133 of the Code of Criminal Procedure, is independent and the same is intended to curb eminent danger and threat to life of the people. In the impugned order, it is specifically stated that the Village Officer has filed a preliminary report stating that the coconut tree having 20 years, which is slanting over the ration shop of the 2nd respondent, would cause danger to life and property of the 2nd respondent. It is also stated that the Deputy Tahsildar also submitted his Inspection Report endorsing

the recommendation made by the Village Officer. I do not find any reason to disbelieve the report filed by the Village Officer as well as the Inspection Report filed by the Deputy Tahsildar. There is no illegality or impropriety in the impugned order under challenge and there is no reason to interfere with the impugned order under challenge.

Hence, this revision petition will stand dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge