

**(1963) 05 KL CK 0001**  
**In the High Court Of Kerala**  
**Case No : Criminal R.P. No. 15 of 1963**

Joseph and Others

APPELLANT

Vs

Mathai

RESPONDENT

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**Date of Decision :** 28-05-1963

**Acts Referred:**

Travancore-Cochin Co-operative Societies Act, 1951 — Section 49(5)

**Citation :** (1963) KLJ 585

**Hon'ble Judges :** P. Govinda Menon, J

**Bench :** Single Bench

**Advocate :** K. Velayudhan Nair and K.J. Joseph, for the Appellant; V.J. Joseph, P.M. Kurivila, P.K. Varghese and M.C. Cheriyan, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Govinda Menon, J.—This revision petition has been filed against the order by the District Magistrate, Ernakulam in Criminal Miscellaneous Petition No. 2338 of 1962 ordering search and seizure of certain records from the petitioners. The respondent herein had presented a petition to the District Magistrate purporting to be one u/s 49 (5) of the Travancore-Cochin Co-operative Societies Act through the Deputy Registrar of Co-operative Societies for issuing a search warrant to search and take possession of records and properties belonging to the Society and to hand them over to him. The learned District Magistrate accordingly ordered a search and the Sub-Inspector of Police conducted a search, seized and handed over to the respondent the records. The question for decision is whether the District Magistrate was legally justified in issuing the search warrant. Section 49 (5) is in the following terms:

If the managing committee of a society is reconstituted in a meeting of the general body of the society or if the managing committee is dissolved by the Registrar under subsection (1) and if the out-going members of the old committee refuse to hand over charge of the records and properties to the new committee or the person or persons appointed by the Registrar under sub-

section (1), the new committee or the person or persons appointed by the Registrar under sub-section (1) as the case may be, may apply through the Registrar to the Magistrate within whose jurisdiction the society functions to take steps to secure the records and properties and the Magistrate may for this purpose enter and search any place where such records or properties are kept or enter and search any place where he has reason to believe that they are kept, and seize them or may by warrant authorize any police officer not below the rank of Sub-Inspector to enter and search any such place and to seize such records and properties. The records and properties so secured shall be handed over to the new committee or to the person or persons authorized by the Registrar as the case may be.

The Section contemplates the case of a petition by a newly constituted managing committee of a society or where the existing committee is dissolved and somebody is appointed to manage the affairs of the society u/s 49 (1) and the out-going members of the committee refusing to hand over charge of the records, the new committee or the person appointed by the Registrar under sub-section (1) applying to the Magistrate through the Registrar to search in a place where there is reason to believe that the records would have been kept and to seize them and to hand them over to the new committee or to the person or persons authorized by the Registrar. The petition is by the party direct and there is no question of an order or certificate by the Registrar. On receipt of an application the Magistrate has necessarily to see whether the terms of Section 49 (5) are satisfied.

2. In this case the application was neither by the managing committee of a society newly constituted or by a person appointed to manage the affairs of the society after the existing committee is dissolved by the Registrar under sub-section (1). The respondent was only a President of the old Committee and if the new committee had taken away the records from him, his remedy, if any, is not by a petition u/s 49 (5). The view of the District Magistrate that he cannot go behind the authorization of the Registrar and decide whether the application is made by a person competent to file the application u/s 49 (5) is wrong. It is, therefore, clear that the original order made by the District Magistrate issuing a search warrant to the Sub-Inspector of Police is clearly wrong and unsustainable in law. The argument of the learned counsel for the respondent that the Magistrate in passing the order for search and delivery of the properties functioned as a persona designate and exercised only a special jurisdiction conferred on him by the Act and not devisable by this court cannot be maintained. This question has been elaborately considered in the decision in *Bathula Krishna Brahmam and Others Vs. Daram Chenchu Reddy and Others*, and the view taken therein has been followed by this Court in *Sreedharan Nambiar v Narayanan Nambiar* ( 1959 K. L. T. 1168 : 1959 K. L. J. 1195). But having regard to the fact that the search has already been effected and the documents had already been handed over to the respondent, I do not think there, is any need for interference in revision with the order already passed. After all there is no

finality attached to the order. If the petitioners feel aggrieved, they have their remedy by way of a suit or by other appropriate proceedings. The revision petition has, therefore, to be dismissed. Order accordingly.