

(1970) 10 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 4879 of 1969

M.K. Prakash

APPELLANT

Vs

A.P. Parukutty Moopilamma and Others

RESPONDENT

Date of Decision : 15-10-1970

Acts Referred:

Contempt of Courts Act, 1971 — Section 3

Citation : AIR 1971 Ker 248

Hon'ble Judges : V. Balakrishna Eradi, J;P. Govindan Nair, J

Bench : Division Bench

Advocate : T. Narayanan Nambiar and O. Balanarayanan, for the Appellant; K. Bhaskaran and P. Thankappan, (for Nos. 1, 2 and 5); P.C. Balakrishna Menon and V.P. Mohankumar, (for No. 3); T.L. Viswanatha Iyer and E.R. Venkitarama Iyer, (for No. 4), for the Respondent

Final Decision : Allowed

Judgement

Govindan Nair, J.—This is a petition against respondents 1 to 5 for contempt of the Munsiff-Magistrate's Court, Perambra and of this Court, the 3rd respondent being the Munsiff-Magistrate himself. The case against respondent 5 has not been pressed and no charges have been framed against him.

2. Charges have been framed against each of the other four respondents and along with the charges, statements of allegations have also been furnished indicating the basis of the charges.

2 (1). The charges against the 1st respondent. A. P. Parukutty Mooppil-amma are similar to those against her son the 2nd respondent, Achuthankutty Nair, and they can be summarised as follows: It is alleged that they took, proceedings before the Police and Forest authorities without good faith as a device "to help the iurisdiction of the Court" of the Munsiff-Magistrate of Perambra in order to cause oppression and injustice to the petitioner and to gain unlawful advantage; and without any colour of right and in order to over-reach and defeat the petitioner of his valuable rights, abused the process of that court. There is a

further charge that the acts referred to in paragraphs 8 to 13 of the accompanying statement of facts were calculated to impede the course of justice by defeating the orders, liable to be passed by this Court in Criminal Revision Petition No. 176 of 1969 and Criminal M. P. No. 309 of 1969 pending before this Court.

2 (2). The charges against the 3rd respondent, the Munsiff-Magistrate. Perambra, are that he has wilfully allowed the process of the Munsif Magistrate's Court, Perambra, to be abused by the other respondents and that he has aided and abetted the other respondents in so abusing the process of the Court: and in so doing he has not only acted in a manner wholly unwarranted by law, but has also wilfully impeded and diverted the course of justice by defeating the final orders liable to be passed by this Court in Criminal Revision Petition No. 176 of 1969 and Criminal M. P. No. 309 of 1969 already referred to.

2 (3). The charges against the 4th respondent K. P. Ramaswami. the Inspector of Police, Quilandy are that he without any good faith, and in order to overreach and defeat the petitioner of his valuable rights, aided and abetted the other respondents in abusing the process of the Munsiff-Magistrate's Court, Perambra. and that without any bona fides and under the guise of submitting the final report suggested that the timber logs seized by the Police may be released to the 1st respondent while he knew or ought to have known that the question of the disposal of logs was essentially one Which the Court has to decide for itself on the basis of the materials placed before it and besides that his acts as set forth in the statement of facts, were calculated to impede the course of justice by defeating the orders liable to be passed by this Court in Criminal Revision No. 176 of 1969 and Criminal M. P. No. 309 of 1969.

3. Disputes existed between the lather of the petitioner, one Manakkal Krishnan, and the first respondent about the title to and possession of a malava-ram. The petitioner's father laid claim to "Kalpadiyan Thirumudiyan" malava-ram. Respondent 1 contended that there is no such malavaram and that it formed part of her own malavaram called "Ola-thukki Ariyalakkan". These rival contentions gave rise to a series of litigations. The earliest of these is O. S. No. 81 of 1953 of the Subordinate Judge's Court. Tellicherry wherein the petitioner's father was the 9th defendant and the 1st respondent herein, the 3rd defendant. Though the trial Court held that the area claimed by the petitioner's father which was identified by the Commissioner deputed by Court as plots X-1 to X-6 was in the possession of the 1st respondent and that she was entitled thereto, this finding was set aside and the matter left open in A. S. No. 75 of 1956 (K) taken before this Court by the petitioner's father.

4. This controversy continued. The first respondent challenged the grant of a permit to the petitioner's father for felling trees from his malavaram in O. P. No. 1460 of 1967 before this Court. This petition was dismissed but writ appeal 124 of 1967 was taken from the order of dismissal. During the pendency of that writ appeal the petitioner's father died and the petitioner who was a comparatively

young man then, was, it is alleged, persuaded to execute two documents on the 2nd March, 1968 transferring the rights under the permit obtained by the petitioner's father which in the meantime had been transferred to the petitioner, and disclaiming any right to the Kalpadiyan Thirumudivan malavaram for 6 1/2 lakhs of Rupees. On the basis of these documents the writ appeal was not pressed and it was dismissed. Only a sum of Rs. 1,85,000/- had been actually paid to the petitioner pursuant to those documents of 2-3-1968 out of 6 1/2 lakhs of Rupees and according to him, he realised that he had been duped. It is alleged that he therefore went against the terms of the documents and began to assert his right to the malavaram claimed by his father. He managed to obtain a clarification of the permit issued to his father and finally got a permit for felling timber from 200 acres non-submergible area, on 25-3-1969. The area for which the permit was issued is near the Kakkayam Dam. The land near the water front is liable to be submerged. He then started operating on his permit with the aid of a large number of workers and the assistance of his friends and even supported by elephants on 25-3-1969 itself. On the 28th of March, 1969 the 2nd respondent filed a petition before the Superintendent Of Police (vide Ext. P-2). We shall deal with this petition in detail presently. Suffice it to say now that action was taken on this petition and a first information was filed before the Munsiff-Magistrate. Perambra by the Circle Inspector, Quilandy on 31-3-1969.

5. Even before this, one Shri P. S. Narayanan Nair, Secretary, Perambra Mandalam K. S. S. P. Committee, Kozhikode moved a petition before the State Government alleging that the operation of the permit by the petitioner would cause soil erosion and therefore loss to the general public. Very prompt action, it is alleged, was taken on this petition by the Government by writing a letter to the Collector which was followed by a teleprinter message on the 28th March, 1969 staying the operation of the permit by the petitioner. Pursuant to this, the operation of the permit was stopped by the Range Officer Flying Squad on 31-3-1969 and the order passed by the Divisional Forest Officer on the 1st of April, 1969 stopping the operation of the permit pursuant to the direction of the State Government was challenged by the petitioner in O. P. No. 2045 of 1969 before this Court. He also moved C. M. P. No. 5062 of 1969 in the O. P. and got an order (Ext. P-1) on 18-4-1969 permitting him to remove the trees already cut though the Range Officer. Kuttiadi had filed an affidavit in Court on 11-4-1969 in answer to the C. M. P. stating that no trees had been cut by Prakash.

6. The 1st respondent too held permits for felling trees from 275 acres in the malavaram by the end of December, 1968. On the ground that she resorted to illicit cutting, the Collector stopped operation by her and prevented her from removing the trees cut. She moved the State Government and the State Government again very promptly passed an order on 1-4-1969; it is said, the same day the Government was moved, and communicated the order by a teleprinter message permitting the 1st respondent to remove the timber, even those illicitly cut by her which as seen from the Case Diary amounts to 7000 or 8000 logs. The petitioner immediately challenged the order of Government by

filing O. P. No. 2405 of 1969 and sought to restrain the removal of the timber by the 1st respondent by C. M. P. No. 5869 of 1969. The Ranee Officer, Kuttiadi filed an affidavit in answer to this petition also and urged that the timber should be allowed to be removed. This Court passed an order on 2-5-1969 allowing the removal of the timber.

7. For the sake of completeness we may also refer at this stage to the fact that the permit issued to the petitioner was cancelled by the Government on 12-9-1969 and O. P. No. 4146 of 1969 has been filed by the petitioner to set aside that order.

8. According to the petitioner the stoppage of operation of the permit of the petitioner effected by the end of March. 1969 the obtaining of permission by the 1st respondent for removal even of timber cut illicitly and its communication by teleprinter and the cancellation of the permit of the petitioner have all been engineered by respondents 1 and 2 and have been brought about as a result of the extraordinary influence, respondents 1 and 2 wielded over the then Minister for Forests and the concerned officers of the Police and Forest Departments.

9. It is the case of the petitioner that without good faith and with a view-to cause oppression and injustice respondents 1 and 2 petitioned the Police and Forest authorities and abused the process of the Munsiff-Magistrate's Court to defeat the petitioner and that acts were committed by them with the help of the 3rd respondent, the Munsiff-Masistrate and the 4th respondent, the Circle Inspector which have impeded the course of justice by defeating the orders liable to be passed by this Court in Criminal R. P. No. 176 of 1969 and Cr. M. P. No. 309 of 1969. The following facts are relied on for this purpose: Before the felling operation pursuant to the petitioner's permit was stopped by the Range Officer on 31-3-1969 as stated already, a petition dated 28-3-1969 was moved by the 2nd respondent before the Superintendent of Police. Kozhikode (vide Ext. P-2) alleging likelihood of trespass by the petitioner on the area in the possession of the first respondent, intimidation of the watchmen at the 1st respondent, and stating that a large number of persons had collected at the spot and that a breach of the peace was likely. The Superintendent of Police forwarded the petition to the Circle Inspector, Quilandy, for "registering a case and investigation". He also directed that the action taken in the matter must be reported to him. The Circle Inspector in turn directed the Sub Inspector, Kayanna to register a case. The Sub Inspector, Kayanna registered a case under Sections 143, 147 and 506 of the Indian Penal Code on the 29th March, 1969 and returned the petition to the Circle Inspector, for investigation. The then Circle Inspector, Quilandy, one Mohandas investigated the matter by visiting the malavaram concerned on the 30th March and by questioning certain persons he seized on that day 587 logs of timber (the value of which was estimated at Rs. 10000/- in Ext. P-8 (A) Kychit) -- prepared a maha-zar Ext. P-7 and entrusted the loss with sureties and obtained Ext. P-8 (A) Kychit from them. The kychit indicated that the trees had been cut by the petitioner from the malavaram

claimed by him. Thereafter a first information was filed before the Munsiff-Magistrate. Perambra by the Circle Inspector. Quilandy on 31-34969.

10. The 5th respondent, Appa Nayar, an Advocate of Perambra filed a petition Ext. P-3 on the 22nd April. 1969, on behalf of the first respondent before the third respondent, Munsiff-Magistrate, for the release of the timber seized. Notice to the Circle Inspector was ordered on this petition and the petition was adjourned to 25th of April, 1969. On that day the petitioner filed Ext. P-4 petition also praying that the timber seized may be released to him claiming the timber as his own. Both these petitions were adjourned to 28th April. Subsequent thereto Advocate Shri Narayanan Nair, said to be the junior of Appa Nayar, filed a petition (Ext. P-13) before the 3rd respondent on the same day praying for summoning certain endorsements made by the Range Officer, Kuttiadi, and the Divisional Forest Officer on a petition (Ext. P-16) put in by the 2nd respondent before the Divisional Forest Officer, Kozhikode, through the Range Officer, Kuttiadi. He also filed a memo Ext. P-14, praying that a clerk of the Divisional Forest Officer should be directed to produce the endorsements. Shri Narayanan Nair had no vaklath in the case. The 3rd respondent passed orders on the same day without any notice to the petitioner calling for the documents and also directing the issue of summons- By this process the endorsements made on Ext. P-16 petition were brought to Court on the 28th of April.

11. The Range Officer in his endorsement stated that the facts mentioned in the petition Ext. P-16 were correct. He had also asserted that the area from which the timber was cut does not fall within the area covered by the permit issued to the petitioner and that the trees were actually cut by Parukutty Mooppilamma illicitly from an area for which there was no permit. The Divisional Forest Officer endorsed the views of the Range Officer on the same day on which the Range Officer made his endorsements and informed the Superintendent of Police, Kozhikode that the Range Officer, Kuttiadi will be acting according to the instructions issued by the department and the High Court and he may be given necessary aid of the police. On the very day on which the endorsements were received in Court, the third respondent. Munsiff-Magistrate passed the order Ext. R directing the seized logs to be entrusted to the custody of the Range Officer, Kuttiadi as suggested by the Circle Inspector (Ext. P-17) on instructions from the Superintendent of Police. The petitioner filed CrI. R. P. No. 176 of 1969 (Ext. P-5) from the order Ext. R questioning inter alia the jurisdiction of the Munsiff-Magistrate to pass the order. He also filed CrI. M. P. No. 309 of 1969 praying for the interim custody of the timber seized. Notice was ordered on the CrI. R. P. and the entire records from the Munsiff-Magistrate's Court were called up. They were sent to this Court on the 12th of June, 1969.

12. On the 16th of July, 1969 (see Case Diary in Case No. 22/69 which has been produced before this Court as directed by this Court) the 2nd respondent filed a petition before the Superintendent of Police, Kozhikode, stating that the investigation conducted by the Inspector was one-sided that biased and that the

Inspector had not questioned the 2nd respondent and the Forest Range Officer, Kuttiadi, the Divisional Forest Officer and the 2nd respondent's watchman one Madhavan Nair, and requesting that all these persons may be questioned. It must be stated here that the 2nd respondent, the watchman Madhavan Nair and the Forest Range Officer, Kutliadi had already been questioned during the investigation into the petition dated 28-3-1969 (see Case Diary). The Inspector that conducted the investigation on the application dated 28-3-1969 was one Mohan Das. He seems to have completed the investigation by 7-5-1969 and his report dated 7-5-1969 as seen from the Case Diary is that no offence had been made out, that the trees were cut by the petitioner from the area to which he was entitled and that the case should be re-referred. On 12-5-1969 he has recorded in the Case Diary that an order had been received from the Superintendent of Police, Kozhikode "that this case should be disposed of only after investigation and taking S. P.'s orders". The final report prepared by him concluded with the observation that the investigation was complete and the case was a fit one to be referred as a mistake of fact. He stated nothing as to what should be done with the timber. Thereafter Mohan Das was transferred from the area and by the time the application dated 16-7-1969 requesting for a reinvestigation had been made, the 4th respondent had been appointed in his place. The Superintendent of Police sent the petition dated 16-7-1969 to the 4th respondent for necessary action. The 4th respondent questioned the 2nd respondent, the Range Officer, Kuttiadi, one Assistant Conservator of Forests who was holding charge as Divisional Forest Officer, and the watchmen Madhavan Nair and Sreedharan Nair. The 2nd respondent Achuthankutty Nair, the watchmen Madhavan Nair and Sreedharan Nair gave versions which were quite opposite to what they had given to the Circle Inspector Mohan Das. All of them had stated before Mohan Das that the petitioner had cut the trees after trespassing on the malavaram of the first respondent- But in the subsequent statement given before the 4th respondent they have asserted that there was no trespass at all and no trees were cut by the petitioner and that the trees were all cut by the workmen of the first respondent. Parukutty Mooppilamma. The 4th respondent seems to have completed his investigations by the end of July 1969 and drew up a report on 4-8-1969 (see Case Diary). This report refers to the original petitions pending in this Court and the averments made in the affidavits filed by the Range Officer Kuttiadi before this Court as well as the opinion of the Divisional Forest Officer. Besides he refers only to what the watchmen said when he questioned them. He has recorded the conclusion that the case should be referred as one of mistake of fact and he added that the timber should be returned to the complainant. He then sought the opinion of the Assistant Public Prosecutor and after obtaining his opinion made a final report on 20-9-1969 which was filed in Court on 24-9-1969. He stated therein that the case may be referred as one of mistake of fact and the timber logs may be returned to the 1st respondent, Parukutty Mooppilamma. On the 26th September, 1969, the 3rd respondent Munsiff-Magistrate passed the order Ext. P-6 to the effect :

"Notice given. Case referred as mistake of fact. Further action dropped. Return timber logs to complainant."

No notice was given to the petitioner before ordering "Return timber logs to complainant". There was no posting of the case for considering this aspect. There was no hearing. The order does not seem to have been passed in open Court. Further on the same day, the Munsiff-Magistrate wrote a letter Ext. P-10 to the Forest Range Officer, Kuttiadi stating that the timber in his custody should be released forthwith to the first respondent. The timber was accordingly released and it is stated in the counter affidavit of the first respondent that the released timber has been sold.

13. The petitioner filed Crl. Revision Petition No. 593 of 1969 against the order releasing the timber to the first respondent and that petition and Crl. R. P. No. 176 of 1969 have come up for hearing before us along with this petition.

14.-15. From the facts established in the case the following conclusions emerge :--

For a considerably long period disputes existed between Manakkal Krishnan and his son the petitioner who claimed under him on the one hand, and the first respondent on the other (her affairs being looked after by her son the second respondent) regarding the title and possession to an extensive malavaram (Kalpadiyan Thirumudiyan), apparently a valuable property. There was no decision of any Court or any competent authority resolving these disputes. Manakkal Krishnan obtained a permit under the Madras Preservation of Private Forests Act, 1949 to cut timber from this malavaram. The grant of the permit implies that the authority empowered to grant the permit was prima facie satisfied that Manakkal Krishnan was the "owner" of the malavaram within the meaning of the term as defined in the above Act from which the trees were allowed to be cut. The grant of the permit was challenged by the first respondent. After Manakkal Krishnan's death the petitioner admittedly became entitled to the rights of Manakkal Krishnan. He was at that time comparatively young, about 21 years of age. The first respondent made an attempt to purchase the rights of the petitioner by payment of a very large sum of money. The documents of the 2nd March, 1968 evidence this attempt. Those documents by themselves, we consider, are ineffective to transfer the rights in the malavaram, if any, of the petitioner. The fact that the first respondent decided to pay such a large sum of money as 6 1/2 lakhs of Rupees for getting rid of the petitioner's claims clearly indicates that the petitioner and Manakkal Krishnan before him had substantial interest in the malavaram. The petitioner for his own reasons--he says he realised that he was duped--repudiated the terms of the agreement, if agreement it can be termed, embodied in the documents of 2nd March, 1968. Thereafter he tried to assert his rights to the malavaram. He applied for and obtained a permit for cutting trees from 200 acres, "non-submergible area" on the 25th March, 1968. This attempt to get a permit must have been known to the first and 2nd respondents. Even before the grant of the permit a petition had

been moved by Shri Narayanan Nair, already referred to before the Government for stopping the operation of the permit by the petitioner. The suggestion of the petitioner is that this petition by Shri Narayanan Nair was at the instance of the first and second respondents. This suggestion seems to be well founded. It is difficult to accept the theory that the said Narayanan Nair was such a public spirited person having the preservation of private forests in the interests of general public in mind to such an extent as to be on the look out for any person obtaining a permit for cutting timber from a very vast private forest. He could not also have been aware to which area the permit related and whether the cutting of the trees would really be harmful. It is strange that he had no complaint whatever regarding the permits which had already been issued to the first respondent before the end of December, 1968 for felling trees from 275 acres which according to the evidence in the case must be from an area adjoining the area for which permit had been granted to the petitioner. The petition of the 24th March by Shri Narayanan Nair must therefore have been inspired by respondents 1 and 2. Shri Narayanan Nair must have been a man of more than ordinary influence with the State Government. That must be the reason why he was made to apply to the Government and on his application the State Government was prepared to act promptly by stopping the operation of the permit by a teleprinter message. Though the teleprinter message was sent, it does not appear that it had the effect of stopping the operation by the petitioner nor does it appear that the operation by the petitioner was stopped by the Forest authorities before 31st March, 1969. That is clearly the reason for the application before the Superintendent of police by the second respondent on behalf of the first respondent on the 28th March, 1968. This application had two objects; to stop the cutting of the trees by the petitioner pursuant to his permit by securing police interference and to get at the timber already cut by the petitioner. The allegations contained in the petition do not disclose any cognizable offence having been actually committed. Yet strangely the Superintendent of Police directed that a case should be registered which indicates that he was prepared to help the first and second respondents to the extent they wanted though there was no justification for it. The answers given by the 2nd respondent when he was questioned by the 4th respondent pursuant to his application dated 16-7-1969 to the Superintendent of Police requesting that there should be a reinvestigation, clearly show that the allegations in the petition dated 28th March, 1969 were baseless and untrue. The application of the 28th March, 1969 was therefore without any good faith and solely for the purpose of causing oppression and injustice to the petitioner by securing the interference of the police in what was only a civil dispute. Viewed in this light, there can be no doubt that the seizure of the timber must also have been at the instance of respondents 1 and 2 who from what has already been stated seem to be able to exercise influence over the police. The entries made by the 4th respondent in the Case Diary at pages 122 and 131 themselves show that the allegations in the petition dated 16-7-1969 for reinvestigation that the 2nd respondent and the Forest Range Officer had not been questioned by the Inspector Mohan Das was devoid of truth. The

reinvestigation petition was thus clearly based on false premises. This was known to the 4th respondent. Yet the 4th respondent purported to conduct a reinvestigation which action is difficult to explain except on the basis that he was actively trying to help respondents 1 and 2.

16. They have also been able to exercise the same influence with the forest authorities. The Range Officer. Kuttiadi was willing to endorse on 24-4-1969 on an application moved only the previous day by the second respondent before the Divisional Forest Officer through the Range Officer, asserting categorically that the facts mentioned in the petition of the second respondent were correct. He had also stated that the logs taken into custody by the Police were from the area from where the illicit cutting took place. It must be repeated here that the first respondent had indulged in illicit cutting. The Range Officer further asserted that the trees were cut by the workers of the first respondent Parukutty Mooppilamma and that no trees were cut on the permit issued to Prakash. He also recommended that the Superintendent of Police may be addressed to give direction to the M. S. P. men to give protection for the removal of the logs by the first respondent Parukuttv Mooppilamma. The Divisional Forest Officer acting on the petition dated 23-4-1969 on the very same day on which the Range Officer made the endorsement sent a communication to the Superintendent of Police, Kozhikode stating that "it appears that Shri M. K. Prakash has no claim over the timber logs lying in the area in question....." He further stated that the Range Officer, Kuttiadi will be acting according to the instructions issued by the department and the Hon"ble High Court "and he may be given necessary aid of the police already posted there." The office of the Divisional Forest Officer at Kozhikode is several miles away from the Office of the Range Officer. Kuttiadi at which place the Range Officer made his endorsements. Yet the petition dated 23-4-1969 had been dealt with at both places on the same day. After receipt of the petition dated 23-4-1969 it was impossible to investigate and find out from which area the timber was seized by the police and by whom that timber was cut before the endorsements were made on 24-4-1969. There is no evidence, nor even an assertion in the case, to indicate that at any time any investigation was made by the Range Officer before the endorsement was made by him on the 24th March, 1969 or before 18-4-1969 on which date an affidavit was filed by the Range Officer, Kozhikode in answer to C. M. P. No. 5062 of 1969 in O. P. No. 2405 of 1969 in this Court. Yet he was willing to make the assertions that he made in the endorsement and the Divisional Forest Officer was prepared to rely solely on this endorsement to recommend to the Superintendent of Police. The petition dated 23-4-1969 was made by the 1st and 2nd respondents without good faith knowing fully well that the Forest authorities were prepared to support their case and with a view to make use of endorsements to help the jurisdiction of the Munsiff-Magistrate's Court. An application was made on the very next day (25-4-1969) after the case had already been adjourned to 28-4-1969 for calling for the endorsements as items of evidence before the Court for the purpose of determination of the question of the disposal of the timber.

17. In the above circumstances, it is evident that the application moved before the 3rd respondent Munsiff-Magistrate on the 22nd April, 1969 for custody of the logs seized by the police was without bona fides and with a view to cause oppression and injustice. It is equally manifest that, that application and the petition of the 25th April, 1969 were clear instances of abuse of the process of Court. The petition of 25-4-1969 was moved after the case had already been adjourned. It was moved by an Advocate without vakalath who should normally not have been heard. Neither the petition nor the memo for issue of process contain even the seal of the Court. No notice was given on this petition to the petitioner who had also on that day filed an application to have the seized timber released to him claiming it as his own. The first and second respondents were utilising the jurisdiction of the Court of the Munsiff-Magistrate, Perambra deliberately for advancing their own case of setting at the timber at any cost and without good faith.

18. The Range Officer seems to have been questioned by Circle Inspector Mohan Das on the 30th March, 1969, and his statements indicate that the trees were cut by the petitioner pursuant to the permit issued to the petitioner. He also executed a kychit Ext. P-8 on the 7th May, 1969 pursuant to the order passed by the Munsiff-Magistrate on the 28th April, 1969 which contains a definite statement that the trees entrusted to him were cut from the land claimed by the petitioner. He seems to have subsequently realised that he had made inconsistent statements in the affidavit before this Court in answer to C. M. P. No. 5062 of 1969 and in the endorsement that he made on Ext. P-16 petition on 24-4-1969 on the one hand, and in the kychit Ext. P-8 on the other. He claims to have written a letter to the then Circle Inspector stating that what was contained in the kychit Ext. P-8 was not correct and stating further that a copy of that communication had been sent to the Munsiff-Magistrate's Court, No such copy is in the records of the Court. No copy was evidently sent. The letter to the Inspector if it was sent at all was presumably an attempt to safeguard his position.

19. The application made by the second respondent on the 16th of July before the Superintendent of Police also had only one object, namely, to get at the timber which was entrusted by the Court to the Range Officer, Kuttiadi. As already seen the grounds stated in support of the request for reinvestigation were false to the knowledge of the 2nd respondent. The second respondent was willing to go back on what he had stated to the Circle Inspector formerly and even to make statements completely inconsistent with what is contained in the petition dated 23-3-1969 which he stated before Mohan Das the former Circle Inspector was true. It is clear that the object was somehow to get at the timber.

20. The first respondent denies knowledge of anything that happened after the 28th of April, 1969 before the Munsiff-Magistrate. But this cannot be accepted. It must certainly have been known to her what her son was doing. He was acting on her behalf admittedly in many if not all matters.

21. It is most strange that the 4th respondent in a simple matter of the complaint himself confessing that there was no case to be proceeded with deemed it necessary to seek the opinion of the Assistant Public Prosecutor as to what should be done with the case. The opinion of the Assistant Public Prosecutor is a very lengthy one and deals mainly with the question as to whom the timber should be returned, something with which the police were not really concerned. Having armed himself with his opinion the 4th respondent made a final report to the Court recommending that the timber may be returned to the 1st respondent knowing fully well that the question is one to be decided by the Court on the materials available before it. He must certainly have known that Crl. R. P. No. 176 of 1969 was pending before the High Court and that the question of the custody of the timber is a matter to be dealt with by the High Court. Yet he was bold to state before the court of the Munsiff-Magistrate Perambra that the timber may be returned to the first respondent. There can be no doubt that he was abetting and aiding the first and second respondents in abusing the process of the court and he was helping them to interfere with the administration of justice by defeating any orders liable to be passed by this Court in Crl. R. P. No. 176 of 1969 and Crl. M. P. No. 309 of 1969.

22. While it is extremely regrettable that the officers of the Police and the Forest Departments should have taken such a biased and unjust attitude, it is shocking that the Munsiff-Magistrate was also willing to aid and abet respondents 1 and 2 in their abuse of the process of the court. For the disposal of the application of 22nd April, 1969 moved by the first respondent's Advocate, the Munsiff-Magistrate relied on material that was obtained behind the back of the petitioner who had also applied for the timber being returned to him claiming it as his own. He was willing to pass orders calling for endorsements made by the Forest Officers on a petition moved by an Advocate who had no vakalath in the case and behind the back of the petitioner. He referred to those documents in the order Ext. R though he states in the affidavit before this Court that he has not relied on these documents. He did not care to see whether the petition moved by the Advocate Shri Narayanan Nair which was received in court bore the seal of the court. The petition itself was filed after the case had already been adjourned to 28-9-1969. No notice was given to the petitioner on this application.

23. Acting on the final report filed in court on the 24th September he ordered the release of the timber to the first respondent, on the 26th of September. All the records in the case were at the time in the, High Court. The 3rd respondent was aware of the pendency of the Crl. R. P. No. 176 of 1969 and Crl. M. P. No. 309 of 1969 and he must certainly have been aware that the High Court was seized of the matter of determining the question of custody of the timber. His explanation that he felt that he was free to pass an order because only the question of interim custody was involved in the Crl. R. P. No. 176 of 1969 and Crl. M. P. No. 309 of 1969 is puerile. He passed an order on the final report directing the release of the timber without even caring to issue notice to the petitioner. It is admitted that the statement in the order "notice given" was intended to mean

that only a notice was given by the Circle Inspector of Police to the complainant regarding the proposal to refer the case. The 3rd respondent appears to have been willing to act on any motion by any person made on behalf of the first and second respondents and was ready to ignore the fundamental rules of procedure and act in a manner not only illegal but in a most non-judicial manner.

24. The case between the petitioner and the first and second respondents had gained a certain amount of notoriety not only in the area but even in the whole of the State. The allegations here are that even the then Minister of Forests was unjustly favouring the respondents 1 and 2. The case before the Munsiff-Magistrate would naturally have attracted quite a good deal of public attention. That one party before the court could take freedom with the court by treating the court casually by showering petitions before it and in the most informal fashion and at any time get whatever orders he wanted would certainly shake the confidence of the general public in the administration of justice. The third respondent defiled the seat of justice by permitting such things being done in his court. He has in violation of the principles of natural justice and in a most non-judicial manner interfered with the course of justice by ordering the release of the timber during the pendency of Crl. R. P. No. 176 of 1969. He says in his affidavit that an order dated 2nd May, 1969 passed by this Court in C. M. P. 5869 of 1969 in O. P. No. 2405 of 1969 was shown to him. A certified copy of this order has been obtained from this Court only by the first respondent. If this was shown to him, it must have been shown to him by the first respondent or her Advocate or by the second respondent or his agents. This could not have been in the open court. There was no posting of the case to 26-4-1969. The certified copy of the order is not part of the records of the case and the inference is irresistible that the 3rd respondent permitted the parties to approach and influence him. That he was prepared to go to any length to support respondents 1 and 2 is clear from the letter Ext. P10 that he wrote on the 26th of September to the Range Officer, Kuttiadi directing that the logs should be released to the mother of the complainant "urgently". This is a very strange procedure, unheard of, and reveals an anxiety on the part of the Munsiff-Magistrate to help respondents 1 and 2. The urgency can only be to circumvent any possible orders of stay that may be passed by this Court. The conduct of the Munsiff-Magistrate indicates a disregard for judicial procedure which enabled him to brush aside all Principles of natural justice and act in a non-judicial manner. The conclusion is inevitable that he was favouring respondents 1 and 2 by interfering with the due course of justice and by defeating the orders that are liable to be passed by this Court. It must be remembered that the petitioner had claimed the logs before the Munsiff Magistrate saying that it belonged to him. Even against the interim order entrusting the logs to a public servant, the Range Officer, he had filed a Criminal Revision Petition before this Court claiming the logs and seeking interim custody. Notice had been ordered on the Criminal Revision Petition and the entire records called up before this Court for the purpose of the Revision. The Munsiff Magistrate must have been fully aware of the proceedings pending before this

Court and their import. Even so without notice to the petitioner the Magistrate ordered "return timber logs to the complainant". When the Kvchit (Ext. P8(A)) filed with the first information report and also the subsequent kychit executed by the Range Officer (Ext. P8) showed that seized logs had been cut by the petitioner it is inconceivable that the Magistrate could have directed that they should be "returned" to the complainant. To make things worse the 3rd respondent wrote a letter to the Range Officer to return the logs forthwith. The obvious result of the Munsiff-Magistrate's order was that any order that the High Court might make in the petitioner's favour in Crl. R. P. No. 176 of 1969 or in Crl. M. P. No. 309 of 1969 would be defeated. Having regard to all the circumstances there can be no doubt that the order was intended to achieve that result and was made for that purpose.

25. This is a case of a somewhat peculiar nature, and as far as we can see one of first impression in this Court. This is the first time a judicial officer has been arrayed before this Court as having committed contempt both of his own court and of this Court. It is a serious matter and we have heard elaborate arguments from all concerned.

26. Courts should be chary in the exercise of the jurisdiction to commit for contempt which jurisdiction if it has any justification for its existence, remains not for the protection of the Judges, but solely in the interests of the public and in the interests of the administration of justice; the object being to keep the stream of justice pure, clear and unsullied. While it is necessary that judicial officers should not conduct themselves in a manner which will shake the confidence of the public in the administration of justice, and therefore should adhere to the high norms that their offices demand, it is equally necessary to remember that it is human to err and that one should not imply from mere errors alone, however grave, that there has been interference with the due course of justice. Therefore there can be errors of judgment, wrongful orders, even assumption of jurisdiction which did not exist by judicial officers; but these by themselves, nobody has suggested and nobody would dare suggest, would be sufficient to commit for contempt. The degree of proof that is required in a contempt proceeding is that insisted upon in a criminal proceeding and although mens rea strictly speaking, is not required to constitute the offence, courts will be slow to punish where there is no mens rea. Real prejudice which can be regarded as substantial interference with the due course of justice must be established 1968 KLT 157 : AIR 1968 Ker 301.

27. We shall now consider whether all or any of the respondents have been guilty of contempt of the Munsiff-Magistrate's Court. Perambra or of this Court in the light of the conclusions that we have reached in paragraphs 14 to 24 above and bearing in mind the principles we have Stated in paragraphs 25 and 26 above.

28. We shall first take up the case against respondents 1 and 2. They have been clearly petitioning the police and forest authorities without good faith and with a view to help the jurisdiction of the court in order to cause oppression and

injustice to the petitioner. They have also been guilty of the abuse of the process of the court of Munsiff-Magistrate, Perambra and such abuse was with a view to over-reach and defeat the petitioner of his rights. The question is whether we should hold that respondents 1 and 2 are guilty of contempt of the Munsiff-Magistrate's Court. Perambra. Mere abuse of the process of the court is not necessarily contempt. In this connection the following passage from the judgment of Lord Goddard, in *R. v. Weiszi*; *Ex parte Hector Mac Donald Ltd.*, reported in 1951 (2) All ER 408 is apposite:

"This was simply a naked action for the recovery of money alleged to have been won by betting which the Gaming Act, 1845, prohibits. Such an action is, therefore, an abuse of the process of the court, but it is not necessarily a contempt to bring it. To attempt, however, to deceive the court by disguising the true nature of the claim is a contempt. It is putting forward what the old cases called a feigned issue, that is to say. not the true, but a fictitious case, of action."

Normally, mere abuse of the process of the court is punished by striking out the pleadings and by ordering exemplary costs, rarely, will there be a punishment for contempt. But what has been stated already indicates that respondents 1 and 2 have been equally guilty as the 3rd respondent in defeating the orders liable to be passed by this Court in *Crl. R. P. No. 176 of 1969* and *Crl. M. P. No. 309 of 1969* and thus have interfered with the due course of justice and they were privy to the contempt. Having regard to the circumstances that respondents 1 and 2 are lay persons who may not be conversant with the legal implications of their conduct we consider in the interest of justice action need be taken only against the 3rd respondent Munsiff-Magistrate.

29. The 3rd respondent has aided and abetted the first and second respondents in the abuse of the process of the court. We have referred to the relevant facts. He was willing to misuse his powers and functions as a judicial officer and has deliberately acted not only in an illegal but in a most non-judicial manner. He has allowed his court becoming the object of ridicule in the eyes of the public by abetting respondents 1 and 2 in their abuse of the process of the court. He has shaken the confidence of the public in the administration of justice. He has created an impression that some persons can have anything done before his court and get any order they want. He has made administration of justice a mockery. There cannot be a more severe blow for judicial administration. He is therefore clearly guilty of the contempt of his own court.

30. It is rare that a judicial officer is charged with the offence of contempt of his own court but it is not something unknown to law or even so rare. Two decisions of the High Courts of India in *Muhammad Shafi v. Choudhary Qadir Bakhsh*, Magistrate. 1st Class Lahore reported in *AIR 1949 Lah 270*) & *1966 All CR 118* are instances where judicial officers have been held guilty of contempt of their own courts. We may extract a passage from the judgment in the Lahore case.

"It is clear that the respondent used contemptuous words regarding Mian

Muhammad Salim, Sub Judge in relation to the work that he was carrying on in the execution of his duty, that is, in issuing a temporary injunction. If the abuse of the witnesses who appear in a Court of law is to be regarded as contempt of Court on the ground that it would intimidate other witnesses and thus impede the course of justice, it must be held that the intimidation of a lawyer, who is representing one of the parties, is also contempt of Court as it would seriously interfere with the administration of justice.

It is of the greatest importance that the prestige and dignity of the Courts of law should be preserved at all costs. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, so that litigants may have the Utmost confidence that they would be treated in a considerate manner by Courts of law. No Judge or Magistrate has any business to lose his temper in a Court of law. to get up from his chair and to make contemptuous remarks about other Judges or counsel appearing on either side. If parties to a litigation feel that they are likely to be subjected to insulting behaviour at the hands of the presiding officers of the Court it would shake all confidence in the administration of justice and would thus pollute the stream of justice."

we hold that the 3rd respondent is guilty of contempt of his own court.

31. It is equally clear that he has been guilty of contempt of this Court. He knew that the petitioner had claimed the logs before him claiming it as his own. He knew that even the interim order entrusting the logs to the Range Officer, a public servant, was challenged by the petitioner. He knew of the pendency of the Criminal Revision Petition No. 176 of 1969 and of Crl. M. P. No. 309 of 1969 in this Court whereby the petitioner was continuing to press his claims for the logs even seeking interim custody. He must have been fully aware of the import of those proceedings. All records of the case had been called up by this Court and sent to this Court on the 12th of June, 1969. He had no papers before him when the final report dated 20th September, 1969 was filed by the 4th respondent on 24th of September 1969. He gave no notice to the petitioner regarding the suggestion made by the 4th respondent that the timber may be released to the first respondent. Yet he passed an order for "return" of the timber logs to the first respondent. As if this was not enough he wrote to the Range Officer to return the logs forthwith. The direct consequences of these acts by the Munsiff Magistrate was that any order that this Court might make in Crl. R. P. No. 176 of 1969 and Crl. M. P. No. 309 of 1969 in favour of the petitioner would be defeated. The order was passed on a date to which the case had not been posted. It is doubtful whether the order was passed in open court. The Magistrate has relied on material shown to him by some person. The Magistrate does not say who that person is. It must be the first or second respondent. He has exhibited an anxiety to see that the first respondent got the timber by resorting to an extraordinary procedure of writing a letter to the Range Officer. Kuttiadi that the timber should be released "urgently". The inference is inescapable that he was favouring respondents 1 and 2 by desecrating the

sanctity of judicial office and judicial procedure. The speed with which he acted and the anxiety he showed to see that his order was implemented forthwith coupled with all the circumstances of the case clearly establish an intention on his part that any orders that might be passed by this Court in Criminal R. P. No. 176 of 1969 and/or Cri. M. P. No. 309 of 1969 in favour of the petitioner should be defeated. The second charge against the 3rd respondent Munsiff-Magistrate is also established. We hold him guilty of contempt of this Court.

32. We therefore convict the 3rd respondent and sentence him to a fine of Rs. 250/-. This fine will be paid within two months from today. In default, he will be committed to a civil prison for a month.

33. From what we have already stated, it is clear that the 4th respondent has been guilty of helping respondents 1 and 2, at least respondent 2, in abusing the process of the Munsiff-Magistrate's Court. Perambra. He also appears to us to be privy to the contempt of this Court committed by the 3rd respondent. Munsiff-Magistrate by defeating the orders that may be passed by this Court in the Criminal Revision Petition and the Criminal M. P. in favour of the petitioner. But for the same reasons that we have stated as regards respondents 1 and 2 we do not consider that any action against the 4th respondent for contempt is necessary.