
(2017) 02 KL CK 0071
In the High Court Of Kerala
Case No : 26 of 2017 (Q)

RADHAMANI AMMA

APPELLANT

Vs

SHANMUGHAN, S/O.RAGHAVAN

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 138](#), [Section 397](#) - Procedure where he appears to show cause - Calling for records to exercise powers of revision

Citation : (2017) 02 KL CK 0071

Hon'ble Judges : Raja Vijayaraghavan V

Bench : SINGLE BENCH

Advocate : K.A.SREEJITH

Final Decision : Disposed

Judgement

1.The petitioner herein is the respondent in M.C.No.267 of 2014 on the file of the Sub Divisional Magistrate (for short the "SDM"), Thrissur. The said petition was originally filed against one Vinod by the respondent herein complaining that a coconut tree, which was standing in the north-east corner of his property, was standing in a dangerous condition.

2.A conditional order was issued which was made absolute as the respondent did not appear before the SDM. As the coconut tree stood in her property, the petitioner approached the Court of Sessions by filing a revision

petition. The impugned order was set aside and the learned Magistrate was directed to consider the matter afresh. It appears that the petitioner herein entered appearance and filed a detailed objection to the petition.

3.The case was posted on numerous occasions and later when the same was taken up on 31.8.2016, finding that there was no one to represent the petitioner herein, the order was made absolute. According to the petitioner, no evidence was taken and the learned SDM has failed to comply with Section 138 of the Code of Criminal Procedure.

4.In the said circumstances, a petition under Section 397 of the Code was filed before the Court of Sessions invoking revisional jurisdiction. The said petition is pending before the Sessions Court. In the meantime, it appears that steps have been taken by the learned SDM to enforce the order passed.

5.The learned counsel prays that a breathing time be granted to the petitioner. It is also submitted that a civil suit was filed before the Munsiff Court, Thrissur as O.S.No.7440 of 2014 and a Commissioner Advocate appointed in the said suit had visited the property and had submitted a report. Referring to Ext.P7 report, it is submitted that the coconut tree has been secured properly. It is also submitted that the civil court is seized of the matter.

6.I have heard the learned Public Prosecutor as well.

7.Having gone through the impugned order and the circumstances under which it was passed, I am of the view that a breathing time is to be granted to the

petitioner, who is a senior citizen. No prejudice is likely to be caused, if the proceedings are kept in abeyance for a short period until the revision petition pending before the Sessions Court is disposed of.

8. Having regard to the facts, the order dated 28.12.2016 of the Sub Divisional Magistrate, Thrissur calling upon the petitioner to cut and remove the coconut tree shall be kept in abeyance for a period of two months. The petitioner shall make all necessary efforts to bring up CrI.R.P.No.43 of 2016 pending on the files of the Sessions Court, Thrissur in the mean time. The learned Sessions Judge is directed to consider and pass appropriate orders on its merits expeditiously.

This petition is disposed of.