

Sasi Vs. State of Kerala

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Court : Kerala

Decided On : Oct-25-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : Sasi

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE 25TH DAY OF OCTOBER 2013 3RD KARTHIKA, 1935 CrI.Rev.Pet.No. 1920 of 2013
----- REVISION PETITIONER(S)/RESPONDENT:
----- SASI, AGED 57 YEARS S/O.MADHAVAN, THUMBAYIL HOUSE, WEST OF SNDP JUNCTION AYAVANA KARA, ENANALLOOR VILLAGE. BY ADV. SRI.BIJU .C. ABRAHAM RESPONDENTS/STATE & COMPLAINANT(S): ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

2. NIBU S/O.NARAYANAN, MANDANATH HOUSE, ENANALLOOR VILLAGE AYAVANA P.O., PIN-686 676. R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25-10-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: stu CrI.Rev.Pet.No. 1920 of 2013 APPENDIX PETITIONER'S

ANNEXURES:

1. CERTIFIED COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT.

2. CERTIFIED COPY OF THE

ORDER

K DIS-1430/13/A12 DATED 22/06/2013.

3. CERTIFIED COPY OF THE REPORT OF THE VILLAGE OFFICER. 3(a).
CERTIFIED COPY OF THE REPORT OF THE AGRICULTURAL OFFICER.
RESPONDENT'S ANNEXURES : NIL //True copy// P.A to Judge. Stu K.HARILAL,
J.

===== CrI.R.P.No.1920 of 2013 ===== Dated
this the 25th day of October, 2013

ORDER

The revision petitioner is the counter-petitioner in a proceedings under Sec.133 of the Code of Criminal Procedure initiated by the Sub Divisional Magistrate, Muvattupuzha. The above proceedings were initiated on a complaint filed by the 2nd respondent herein, alleging a right of way to his property through the revision petitioner's property. On receipt of the complaint, after obtaining report from the Village Officer and the concerned Agricultural Officer, the Sub Divisional Magistrate passed the impugned order without complying the procedure contemplated under Sec.133 of the Cr.P.C. Hence, the impugned order is under challenge on various grounds. Though notice had been served on the 2nd respondent, none represents the 2nd respondent in this revision petition.

2. Going by the impugned order, it could be seen that CrI.R.P.No.1920 of 2013 2 per se the said order is illegal and unsustainable under law. The learned Magistrate has not complied the procedure contemplated under Sec. 133 of the Cr.P.C. The impugned order does not state whether it was passed under 133 or under 138 of the Cr.P.C. Chapter X of the Cr.P.C contemplates a specific procedure to determine unlawful assemblies and public nuisance to the general

public. But, the learned Sub Divisional Magistrate has not complied the specific procedure contemplated under Part B of Chapter X. As far as unlawful obstruction to the right of way is concerned, the first question to be considered under Sec.133 of the Cr.P.C is whether a public right of way is obstructed or not. But, going by the reports it could be seen that neither the Village Officer nor the Agricultural Officer determined the nature of way. If it is private right of way, the Sub Divisional Magistrate has no jurisdiction or power in this matter.

3. Going by the complaint itself, the complainant himself claimed an easement right of way also through the CrI.R.P.No.1920 of 2013 3 property of the revision petitioner. Needless to say, right of easement is a private right only and for that remedy lies in the competent civil court only. Thus, the impugned order under challenge is totally vitiated by procedural irregularity, committed in ignorance of law and procedure contemplated u/s.133 of the Cr.P.C. Consequently, I am inclined to set aside the impugned order under challenge and I do so. The Sub Divisional Magistrate is directed to restore the complaint on the files and pass order afresh after conducting enquiry in accordance with the procedure specifically prescribed under Part B of Chapter X of the Cr.P.C. The parties shall appear before the Sub Divisional Magistrate on 25/11/2013. This revision petition is disposed of accordingly. K.HARILAL, JUDGE. Stu //True copy// P.A to Judge.

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