

Vijayan Vs. Rajan

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Court : Kerala

Decided On : Aug-19-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Vijayan

Respondent : Rajan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE 19TH DAY OF AUGUST 2014 28TH SRAVANA, 1936 CrI.Rev.Pet.No. 1349 of 2014 ()
----- AGAINST

ORDER

NO.A2-7647/13 DATED 2006-2014 OF THE COURT OF THE SUB DIVISIONAL MAGISTRATE, MUVATTUPUZHA REVISION PETITIONER/COUNTER PETITIONER: ----- VIJAYAN S/O.NARAYANAN, ANANICKEL HOUSE KADAVOOR VILLAGE ERNAKULAM. BY ADV. SRI.P.V.CHANDRA MOHAN RESPONDENT(S)/PETITIONER & 2ND RESPONDENT: ----- 1. RAJAN, KIZHAKKEKKARA PUTHENPURA KADAVOOR VILLAGE, ERNAKULAM - 686 671.

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA - 682 031. R2 BY PUBLIC PROSECUTOR SMT. REMA.R

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19.08.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.Rev.Pet.No. 1349 of 2014 APPENDIX ANNEXURE-I: TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER ANNEXURE1(a): TRUE COPY OF THE SKETCH OF THE LOCALITY PREPARED BY THE VILLAGE OFFICER ANNEXURE2 PHOTOGRAPHS OF THE LOCALITY ANNEXURE2(a): ROUGH SKETCH OF THE LOCALITY ANNEXURE - 3: TRUE COPY OF OBJECTION FILED BY THE PETITIONER ANNEXURE - 4: TRUE COPY OF CONDITIONAL

ORDER

DATED 34.2014 /TRUE COPY/ P.S TO JUDGE P.UBAID, J.

~~~~~ Crl.R.P. No.1349 of 2014 ~~~~~ Dated this the 19th August, 2014

ORDER

The final order passed by the Sub Divisional Magistrate, Muvattupuzha on 20.6.2014 in proceedings No.A2-7647-13 on a complaint brought under Section 133 of Cr.P.C is under challenge in this revision. On the said complaint, provisional order was passed by the Sub Divisional Magistrate on 3.4.2014 on the basis of the report of the Village Officer. Later, without conducting any enquiry as prescribed under the law, the Sub Divisional Magistrate passed final orders on 20.6.2014.

2. Notice on admission was given to the 1st respondent. But, the 1st respondent remained absent in the proceedings. On hearing the learned counsel for the revision petitioner and on a perusal of the impugned order, I find that the matter requires reconsideration and proper decision by the Sub Divisional Magistrate as prescribed under the law. The impugned order is not at all a judicial order. It appears that the Sub Divisional Magistrate does Crl.R.P. No.1349 of 2014 2 not know the nature of his powers as Executive Magistrate in a proceeding brought under Section 133 of Cr.P.C. The impugned order will show that he acted simply as an officer of the revenue, and he does not know that he is bound to act judiciously in exercise of his quasi judicial powers as Executive Magistrate. When

a proceeding is brought under Section 133 of Cr.P.C and the provisional order issued thereon is objected by the other side, the Executive Magistrate will have to conduct a proper enquiry as prescribed under the law and record evidence as is done in a summons trial. Even in a case where orders are sought regarding any building or tree in a dangerous condition, the Executive Magistrate will have to conduct enquiry, make a legal adjudication on the dispute, and pass judicious order. The impugned order shows that no such procedure was complied with by the Executive Magistrate. In the result, this revision petition is allowed. The impugned order passed by the Sub Divisional Magistrate, Muvattupuzha is hereby set aside and the matter is remanded to the Executive Magistrate for proper enquiry CrI.R.P. No.1349 of 2014 3 and decision, after hearing both sides. The parties will appear before the Executive Magistrate on 22.9.2014. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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