

State Vs. Sivasankaran Thampi

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Court : Kerala

Decided On : Jul-15-1958

Reported in : AIR1959Ker55; 1959CriLJ196

Judge : K. Sankaran and; P.T. Raman Nayar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145 and 146(2)

Appeal No. : Criminal Ref. No. 23 of 1957

Appellant : State

Respondent : Sivasankaran Thampi

Advocate for Def. : S. Nilakanda Iyer, Adv.

Advocate for Pet/Ap. : M.U. Issac, Public Prosecutor

Disposition : Order set aside

Judgement :

ORDER

1. The Revision Petitioner is a lessee under the Village Officer who is the Receiver of the properties in a proceeding under Section 145 Criminal P. C. The term of the lease was one year which expired on 16-2-1957. The Receiver as well as one of the parties to the proceedings under Section 145 complained to the Magistrate that the Revision Petitioner had overcropped the cocoanuts in the properties

during the currency of his lease and had thus caused damage.

The Magistrate himself made a personal inspection of the properties and caused the bunches of cocoanuts in some of the trees, to be examined. He came to the conclusion that the petitioner had cropped cocoanuts in excess of those which could be cropped reasonably, and estimated the damage at an amount equal to the rent for one month. He held the petitioner to be liable to pay this amount. This order is sought to be revised in these proceedings.

2. The only ground on which I consider, that the matter can be reported to the High Court for necessary action is, that the Magistrate had no-jurisdiction to make any such enquiry or to pass such an order. There is no specific provision of law empowering the Magistrate to resort to such summary proceedings. Counsel for the Petitioner contended that the matter must be decided in a suit which may be instituted by the Receiver against the Petitioner.

On the other hand the learned Public Prosecutor maintained, that by reason of the provision in Section 146, Sub-section (2), Cri. P. C., the Magistrate has the same powers as under the Civil Procedure Code, The learned Public Prosecutor was able to place reliance only on Order 40 Rule 4 C. P. C. But this dealt with the enforcement of the duties of the Receiver and has nothing to do with the claim which the Receiver may have against his lessee, I therefore recommend, that the order of the Magistrate may be set aside and the Receiver may be directed to a fresh suit. I am not convinced, that the order of the Magistrate can be revised on any other ground. The case will therefore be reported to the High Court, The records will be transmitted forthwith.

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