

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 23RD MARCH 2005 / 2ND CHAITHRAM 1927

Crl.Rev.Pet.No. 200 of 1996()

CRLA.28/1995 of ADDL.SESIONS COURT, THALASSERY
CRLMP.4069/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR
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REVN. PETITIONER:

K.M.CHANDY, S/O.MANI,
PULINGOME AMSOM, VAYALAYI,
CHUNDA.P.O. KANNUR.

BY ADV. SRI.T.A.RAMADASAN,T.G.RAJENDRAN

RESPONDENTS:

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1. NADUMBALLI VALSAMMA, W/O.JOHN,
VAYALAYI, PULINGOME AMSOM
TALIPARAMBA TALUK, KANNUR.
 2. STATE OF KERALA, REP. BY S.I. OF POLICE,
PERINGOME POLICE STATION.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SRI.P.BALAKRISHNAN
PUBLIC PROSECUTOR SRI.THAVAMONY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23/03/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

Crl. R. P. No.200 OF 1996

Dated this the 23rd day of March, 2005

O R D E R

The petitioner challenges judgment dated 30.9.1995 in Crl.A.No.28 of 1995 on file of the Session's Court, Thalassery. The petitioner filed a private complaint before Judicial First Class Magistrate's Court, Payyannur alleging offences under Sections 447 and 378 IPC against first respondent herein and another. In the said case the petitioner filed Crl.M.P.No.3349 of 1994 and first respondent herein filed Crl.M.P.No. 4069 of 1994, both claiming right over alleged stolen wooden logs. The Magistrate's Court allowed the petition filed by first respondent and directed to hand over the wooden logs to the respondent in Crl.M.P.No.3349 of 1994, ie., to the first respondent herein and her husband. The said order was challenged before the Session's Court in Crl.A.No. 28 of 1995 by petitioner herein. But, the said appeal was dismissed and hence this revision.

2. The facts briefly are as follows: The petitioner herein filed a private complaint which was forwarded to the Police for investigation, based on which, Crime No.205 of 1989 was

registered under Sections 447 and 378 IPC against first respondent and another. The case was pending before the Judicial Magistrate of First Class, Payyannur. The petitioner alleged that first respondent and her husband trespassed into the property belonging to petitioner with intention to commit theft cut and removed a jack tree. During investigation, police seized the wooden logs and produced them before the court. Both parties made claim over the wooden logs and filed petitions. The petitioner filed Crl.M.P.No.3349 of 1994 and the first respondent filed Crl.M.P.No.4069 of 1994. Both were considered together and as per common order dated 26.10.1994 Judicial First Class Magistrate's Court-I, Payyannur dismissed the petition filed by petitioner. It was challenged in Crl.A.No.28 of 1995 and as per judgment dated 13.9.1995. The appeal was also dismissed.

3. Both the courts below found that a competent civil court granted a decree in favour of first respondent herein in respect of the possession of the disputed property and on that basis, the wooden logs were directed to be released to first respondent and her husband. Both the parties would admit that a decree was passed in O.S.No.114 of 1988 by Munsiff's Court, Payyannur in which, the disputed property in this case was the subject matter,

and it was found that first respondent was in possession of the said property. It is from the said property that wooden logs were allegedly cut and removed. Therefore, (in the light of the judgment and decree in O.S.No.114 of 1988 stated above) the order directing release of the wooden logs to first respondent in whose favour the civil court has passed the decree, cannot be said to be illegal, improper or incorrect.

4. However, learned counsel for petitioner submitted that the decree and judgment in O.S.No.114 of 1988 has not become final. A Second Appeal is pending against the said decree and judgment before this Court as A.S.No.714 of 1995. But, there is nothing on record to show that any order is passed by this court in respect of possession of the disputed property, by which finding of the Munsiff's Court on the relevant issue was reversed.

In the above circumstances, as the matter stands now, a civil court having found that first respondent is entitled to be in possession of the disputed property, release of the wooden logs which were allegedly cut and removed from the said property cannot be said to be illegal, improper or incorrect. However, it is made clear that petitioner's right, if any, over the wooden logs or the value will be subject to the final disposal of the civil proceedings.

But there is no ground to interfere with the order passed by the trial court or the appellate court under Section 451 Cr.P.C.

This petition is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.200 OF 1996

O R D E R

23.3.2005