

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Criminal Appeal No.1534 of 2008  
Arising out of  
Petition(s) for Special Leave to Appeal (Crl) No(s).7366/2007

(From the judgement and order dated 21/08/2007 in Crl.M No.1332/2004  
of The HIGH COURT OF KERALA AT ERNAKULAM)

ANTONY & ANR. Petitioner(s)

VERSUS

STATE OF KERALA & ANR. Respondent(s)

[With appln(s) for stay and office report]

Date: 26/09/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Petitioner(s) Mr. Vipin Nair, Adv. for  
M/s. Temple Law Firm, Advs.

For Respondent No.1 Mr. R. Sathish, Adv.

No.2 Mr. Nishe Rajen Shonker, Adv. for  
M/s. T.T.K. Deepak & Co., Advs.

UPON hearing counsel the Court made the following  
ORDER

Leave granted.  
The appeal is allowed in terms of the signed order.

Sd/-

Sd/-

(Subhash Chander)  
Court Master

(Savita Sainani)  
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1534 OF 2008  
[Arising out of S.L.P.(Crl.)No.7366 of 2007]

Antony & Anr. ....Appellants

Versus

State of Kerala & Anr. ....Respondents

ORDER

Leave granted.

Appellant no.1 filed an application in a pending civil suit seeking

temporary injunction restraining the second respondent from trespassing upon the plaint schedule property and from cutting trees standing on the said property. The trial court, vide order dated 08th February 2001, allowed the application by granting temporary injunction directing both the parties to maintain status quo. Relevant part of the order of the trial court is quoted hereinbelow :

".... I feel an injunction restraining both sides from cutting and removing the trees belonging to the defendant. I feel an injunction restraining both sides from cutting and removing trees from the plaint schedule property can be granted to preserve the disputed property. Hence this petition is allowed and a temporary injunction until further orders is passed restraining the petitioner and the respondent from cutting and removing trees standing in the plaint schedule property or committing any acts of waste in the plaint schedule property. Parties are directed to bear their respective costs."

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Appellant no.1 thereafter filed an affidavit on 13th June 2002 alleging that the second respondent was wilfully violating the order of temporary injunction/status quo passed on 08th February 2001 by the trial court, by removing trees.

The second respondent filed a complaint before the Judicial Magistrate First Class, Alathur alleging that appellant no.1 was guilty of committing the offence of removing the trees and thus liable to be convicted under Sections 447, 427, 489, 379 r/w 34, IPC.

The appellants filed an application under Section 482, Cr.P.C. before the High Court for quashing the complaint filed by respondent no.2 on the ground that on a reading of the complaint no case is made out against them. It was also alleged that the complaint filed by respondent no.2 was a counter-blast to the affidavit filed by on behalf of the appellants alleging violation of the order of status quo passed by the trial court.

The High Court, by the impugned order, refused to quash the complaint filed by respondent no.2.

Heard counsel for the parties.

Counsel for the appellants has reiterated the submissions made before the High Court. However, counsel for respondent no.2 tried to refute the same.

We find substance in the submissions made on behalf of the

appellants. On the facts and circumstances of the case, we are  
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of the opinion that the complaint filed by respondent no.2 was a counter-  
blast to the affidavit filed on behalf of the appellants alleging violation of the  
order of status quo. Moreover, the civil dispute filed in the form of civil suit  
is sub judice before the civil court.

In the facts and circumstances of the case and without expressing  
any opinion on the merits of the civil suit, the order of the High Court is set  
aside. Consequently, the complaint filed by respondent no.2 stands set aside.

It is made clear that the said order is being passed without  
prejudice to the rights and contentions of the parties in the civil suit and  
they will get their rights settled through the civil court.

The appeal is allowed accordingly.

Sd/-

.....J.  
[ASHOK BHAN]

Sd/-

.....J.  
[V.S. SIRPURKAR]

New Delhi.  
September 26, 2008.