

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Crl.MC.No. 448 of 2015 ()

IN CC 397/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT(MOBILE),KOTTAYAM

PETITIONER(S)/ACCUSED:

**PASHRAF AGED 42 YEARS
S/O.ABU, PADARATHODI HOUSE, P.O.PAZHAMALLUR
KOOTTILANGADI (VIA), AMUP SCHOOL, UMMATHOOR
MALAPPURAM-676 506.**

**BY ADVS.SRI.C.K.SREEJITH
SMT.MARY RANZOM LOUIZ
SRI.P.J.SONY
SRI.K.V.RADHAKRISHNAN (MADURAI)**

RESPONDENT(S)/COMPLAINANT & STATE:

**1. MARY JOSEPH
PARAPPANATTU PADAVIL, VELIYANNOOR.P.O., AREKKARA
KOTTAYAM DISTRICT-686 634.**

**2. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.682 031.**

R BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 448 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1- THE TRUE COPY OF THE COMPLAINT FILED BY 1ST RESPONDENT
BEFORE THE JUDICIAL 1ST CLASS MAGISTRATE COURT, KOTTAYAM DT 19.12.2001**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 448 of 2015

Dated this the 22nd day of January, 2015.

O R D E R

The petitioner herein is the accused in a prosecution brought under Section 138 of the Negotiable Instruments Act. The learned Judicial First Class Magistrate Court (Mobile), Kottayam took cognizance in 2004, and proceeded for trial. When the accused failed to appear in court consistently, the learned Magistrate transferred the case, with permission of the Chief Judicial Magistrate, after complying with the necessary procedure, to the register of long pending cases. It is now pending as L.P.C. No.37/2007. The petitioner now seeks orders quashing the said prosecution on the ground that the said court has no territorial jurisdiction to try the case in view of the position recently settled by the Hon'ble Supreme Court as regards territorial jurisdiction. In the alternative, he also seeks a direction to the trial court to return the complaint for presentation before the proper court. A prosecution under Section 138 of the Negotiable Instruments Act cannot at all be quashed on the ground that the court has no territorial jurisdiction. The petitioner will have to surrender before the learned Magistrate, and make application to return the complaint for presentation before the proper

court, if that court has no jurisdiction. The other direction also cannot be now granted, because the learned Magistrate will have to act on request, and if it is found that the court has no jurisdiction in view of the recent decision of the Hon'ble Supreme Court, the learned Magistrate will have to return the complaint for presentation before the proper court. It appears that the petitioner's grievance is that there is warrant of arrest against him, and if he appears before the learned Magistrate he will be remanded to judicial custody. This court cannot help him, because he has been absconding for 7 years. He will have to surrender before the learned Magistrate and make application for bail. I do not think that the learned Magistrate will mechanically remand him to custody, when the offence is bailable. Of course in the present situation, with the object of ensuring his presence in court the learned Magistrate will have to impose some conditions. However, the petitioner will have to surrender, and explain his absence before the learned Magistrate. The learned counsel also makes a request for exemption from personal appearance. This request also will have to be considered by the learned Magistrate. Such a relief cannot be granted at this stage by this court in this proceeding.

In the result, this Crl.M.C is closed, with observation that the petitioner will have to surrender before the learned Magistrate, and make application for bail. The learned Magistrate is hereby directed

that in case such application is filed on surrender, the same shall be judiciously considered and appropriate decision shall be taken on the date of surrender itself.

P.UBAID,
JUDGE

sab