

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

Crl.MC.No. 1018 of 2015 ()

**IN CMP 418/2015 of CHIEF JUDICIAL MAGISTRATE COURT,THRISSUR
IN CC 358/2014 of ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (E&O),
ERNAKULAM**

PETITIONER(S)/COMPLAINANT:

**M/S. NACHSH TRADING COMPANY AGED 51 YEARS
G 289, 1ST FLOOR, KALLARACKAL ENCLAVE
MAIN AVENUE, PANAMPILLY NAGAR, KOCHI - 36
REPRESENTED BY ITS MANAGING PARTNER SUFFERULLAH E
S/O. ILLIYASU KUNJU, RESIDING AT IB
ABAD CLOUD NINE APARTMENTS VIDYANAGAR, ERNAKULAM
KOCHI - 682 020**

BY ADV. SRI.R.SUDHIR

RESPONDENT(S)/ACCUSED AND STATE:

- 1. GOPALAKRISHNAN K
270, KUNNATH HOUSE, NEAR L.P SCHOOL
CHAZHOOR
THRISSUR - 680 001 (WITHIN THE LIMITS OF ANTHIKAD POLICE STATION
TRICHUR)**
- 2. STATE OF KERALA
REPRESENTED BY THE 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 19-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 1018 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**A1 - A TRUE COPY OF THE ORDER DT. 20.12.14 OF THE ADDITIONAL CHIEF JUDICIAL
MAGISTRATE COURT (E.O), ERNAKULAM IN CC NO. 358/14**

A2 - CERTIFIED COPY OF THE PROCEEDINGS IN CMP NO. 418/2015 DT. 20.1.15.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 1018 of 2015

Dated this the 19th day of February, 2015.

O R D E R

The petitioner herein is the complainant in a prosecution brought under Section 138 of the Negotiable Instruments Act. It was brought originally before the Additional Chief Judicial Magistrate, Court, (E.O), Ernakulam. The learned Magistrate returned the complaint on 20.12.2014 on the ground of territorial jurisdiction in view of the position recently settled by the Hon'ble Supreme Court in **Dashrath Rupsing Rathod Vs. State of Maharashtra** and another. The complaint was accordingly taken back by the petitioner, and he represented it before the Chief Judicial Magistrate Court, Thrissur on 20.1.2015. The learned Chief Judicial Magistrate, Thrissur returned the complaint again on the ground that there is delay. The complaint was in fact represented on the 31st day. The question is whether the period of one month granted by the court will expire on 19.1.2015 or 20.1.2015. The learned counsel relies on the Judgment of the Hon'ble Supreme Court

in **the State of Himachal Pradesh Vs. Himachal Techno Engineers [2010 (3) KLT 575 (SC)]**. Here the complaint was returned in December 2014, and was represented in January 2015. Both these months are English months having 31 days. In paragraph 9 of the judgment in the reported case the Hon'ble Supreme Court has clarified that a month does not refer to a period of 30 days always, but refers to the actual period of a calender month. Applying this decision of the Hon'ble supreme Court it can be found here that the complaint here was represented by the petitioner on the day of expiry of the period of one month. Both the months having 31 days, the period of one month will have to be reckoned as period of 31 days, applying the decision of the Hon'ble Supreme Court. Accordingly, I find that the complaint was in fact represented by the petitioner on the last day of the period of one month.

In the result, this petition is allowed. The impugned order passed by the Chief Judicial Magistrate Court, Thrissur on 20.1.2015 (Annexure 2) returning the petitioner's complaint will stand set aside. Now it is submitted that the petitioner has filed an application to condone the delay. The application filed

by the petitioner can very well be considered by the court below. Even otherwise I find that the complaint was in fact represented on the expiry of the period of one month.

P.UBAID,
JUDGE

sab