

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.RAMAKRISHNAN

**WEDNESDAY THE 11TH DAY OF MARCH 2015/20TH PHALGUNA
1936**

Crl.MC.No. 230 of 2013 ()

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AGAINST THE JUDGMENT IN CC 1136/2010 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, CHERTHALA
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PETITIONER(S)/ACCUSED:

**RAJANI
W/O. SALIN, CHETTUPARAMBIL HOUSE, KARIKKADU P.O.
CHERTHALA, ALAPPUZHA-PIN 688527.**

**BY ADVS.SRI.C.V.MANUVILSAN
SMT.V.RENUKA**

RESPONDENT(S)/COMPLAINANT AND STATE:

**1. SREE GOKULAM CHIT & FINANCE CO.(P) LTD.,
SREE GOKULAM TOWERS, NO. 66, ARCOT ROAD
CHENNAI-24, HAVING IT BRANCH AT CHERTHALA AT
GANDHI BAZAAR SHOPPING COMPLEX, CANAL ROAD, CHERTHALA
REPRESENTED BY ITS ASSISTANT BUSINESS MANAGER & POWER
OF ATTORNEY HOLDER MR. K.MOHANA
S/O. KUMARAN, AGED 40 YEARS, KANNUKULANGARA, S.N.PURAM
P.O.
CHERTHALA, ALAPPUZHA-688582.**

**2. STATE OF KERALA
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY ADV.SRI.RAJESH VIJAYAN, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
11.03.2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

**ANNEXURE.A1:-CERTIFIED COPY OF THE ORDER SHEET IN CC NO 1136/2010
ON THE FILE OF LEARNED JFCM, CHERTHALA**

RESPONDENTS' EXHIBITS

NIL

R.AV

//TRUE COPY//

PATO JUDGE

K.RAMAKRISHNAN, J

CRL.M.C.NO.230 OF 2013

Dated this the 11th day of March, 2015

O R D E R

The petitioner who is the accused in CC.No.1136/2010 on the file of the Judicial First Class Magistrate Court-I, Cherthala, has filed this petition to quash Annexure-1 order, cancelling bail and issuing non bailable warrant under section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner has been arrayed as an accused in CC.No.1136/2010 of Judicial First Class magistrate Court-I, Cherthala, which was taken on file on the basis of a private complaint filed by the first respondent, alleging offence under section 138 of the Negotiable Instruments Act. On 07.12.2012, the petitioner was represented through counsel, and the learned Magistrate demanded the counsel to direct the petitioner to pay at least a substantial portion of the amount as instalments. Since the petitioner was not amenable and this was informed to the court and on the next hearing date though the petitioner was represented through counsel, the learned Magistrate cancelled the bail and issued non bailable warrant and also initiated proceedings against the sureties. According to the petitioner

the order passed by the court below is illegal and requires interference of this court under section 482 of the Code of Criminal Procedure. Hence this petition was filed.

3. Though, notice was served on the first respondent, they did not appear.

4. Heard the counsel for the petitioner and the learned Public prosecutor.

5. The counsel for the petitioner submitted that it is not the case of deliberate non appearance of the petitioner before the court below and in fact she was represented by counsel and application was filed and the learned Magistrate had dismissed the application and cancelled the bail and initiated proceedings against the accused. Further, non appearance of the petitioner will not effect the proceedings as such as her counsel was prepared to proceed with the case even in the absence of the petitioner. So, under the circumstances, the order passed by the court below cancelling the bail and issuing nonailable warrant is illegal. The learned counsel relied on the decision reported in **Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others [2007(12) SCC 1]** in support of his case.

6. The public prosecutor supported the order of the court below.

7. It is an admitted fact that the case was taken on file on the basis of a private complaint filed by the first respondent against the petitioner alleging offence under section 138 of the Negotiable Instruments Act. According to the first respondent, the petitioner issued a cheque for Rs.4,08,512/- being the amount due under the chitty transaction, which when presented was dishonoured for the reason funds insufficient and in spite of notice issued, she had not paid the amount and thereby she had committed the aforesaid offence. The case of petitioner was that she never entered into any agreement with the first respondent and never issued a cheque to them as alleged. Considering the allegations made in the petition, this court has called for the report from the concerned Magistrate and the learned Magistrate sent a report which reads as follows:-

"CC.1136/10 on the file of this court is the case u/s 138 of N.I.Act. The cheque amount of the case is Rs.4,08,512/-. The case is taken on file on 14.09.2010. The accused granted bail on 01.06.2011 and particulars of offence were read over on the same day itself. On 31.08.2011 chief affidavit filed. On 05.09.2011 complainant is examined in chief and Ext.P1 to P7 marked. Cross examination adjourned on application of the counsel for accused. There after the case is posted to 31.10.11, 02.01.2012 and 11.06.2012, but the accused was absent. Cost of Rs.150/- is ordered on 11.06.2012. On 19.07.2012 accused is absent, no representation, cost not paid. Hence NBW to accused ordered. On 23.07.2012 case advanced and NBW recalled. On 26.11.2012 counsel for accused submitted that his party is ready to pay cheque amount. Substantial amount will be pay within 3 months. Hence posted for payment to 07.12.2012. Not further time will be

granted. But on 07.09.2012 accused absent but represented. No payment. Hence posted 22.12.2012 for evidence as last chance. On 22.12.2012 counsel for accused represented and again prayed for evidence. Hence bail bond cancelled. NBW to accused and notice to sureties are ordered and posted to 11.01.2013. On 11.01.2013 complainant was present and accused absent represented. The case adjourned "await return of warrant and notice to sureties and for producing stay order if any". The case is now posted to 06.03.2013".

8. It is seen from the report that even on earlier occasion also, she did not appear though the complainant was examined in chief and documents were marked and it was posted for cross examination and later again on 19.07.2012 she was absent and there was no representation and cost not paid and non bailable warrant issued but later the non bailable warrant was recalled and on the basis of the submission made by the counsel for the petitioner that he will make substantial payment, the case was adjourned.

9. It is true that on the subsequent date, the accused was absent and she was represented by counsel. It is seen from the report that she was not prepared for cross examination but she wanted only an adjournment. So, under the circumstances, it cannot be said that court below was not justified in cancelling the bail as the court was satisfied that the accused was not prepared to cooperate with the trial of the case and that was what had happened in this case. The dictum

reported in **Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others [2007(12) SCC 1]** is not applicable to the facts of this case. But, however, this court feels that the petition can be disposed of giving a direction to the court below, if the petitioner surrenders before the court below, considering the fact that it is a bailable offence and the petitioner is a lady directing the court below to recall the warrant and grant bail and directing the Magistrate to dispose the case within a particular time will be sufficient and that will meet the ends of justice. So, the petition is disposed of as follows:-

If the petitioner surrenders before the court below on 31.03.2015 and moves for recalling the warrant and release her on bail, then court below is directed to grant bail to the petitioner, as it is a bailable offence, with new sureties on executing a bond for the sum fixed by that court. The petitioner shall cooperate with the trial of the case and considering the fact that the case is of the year 2010, the court below is directed to expedite the trial of the case as expeditiously as possible at any rate within three months from the date of receipt of this order.

With the above direction and observation, the criminal miscellaneous case is disposed of. Office is directed to

communicate this order to the court below by fax immediately.

K.RAMAKRISHNAN, JUDGE

R.AV