

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

Crl.MC.No. 457 of 2013 ()

IN CRRP 100/2012 of D.C. & SESSIONS COURT, ERNAKULAM

IN CMP 375/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT,KOLENCHERY

PETITIONER(S):

**P.T.MONS AGED 50 YEARS
S/O. MATHAI, PARAPURATHU HOUSE, CHETHIKKODE.P.O.
ERNAKULAM.**

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENT(S):

**1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**2. M.M. RAJU, AGED 53 YEARS
S/O. MATHAI, MOOLAMKUZHIYIL HOUSE, CHETHIKKODE.P.O.
ERNAKULAM.**

**R2 BY ADV. SRI.C.P.UDAYABHANU
R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE. P**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONERS ANNEXURES:

A1: A TRUE COPY OF THE CMP NO.375/2012 FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT KOLENCHERY DATED 14.2.2012

A2: A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN C.M.P NO.375/2012 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY, DATED 23.5.2012

A3: A TRUE COPY OF THE ORDER IN CMP NO.375/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERY DATED 8.6.2012

A4: A TRUE COPY OF THE ORDER OF THE SESSIONS COURT ERNAKULAM IN CRL.R.P NO.100/2012 DATED 10.12.2012

RESPONDENTS ANNEXURES:

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.457 of 2013

Dated this the 5th 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 before the Judicial First Class Magistrate, Kolenchery, by the second respondent herein. As the complaint was delayed by 22 days, the second respondent filed C.M.P 375/2012 for condonation of the delay. The petitioner herein entered appearance, and resisted the application to condone delay. On being satisfied of the reason stated for delay in the affidavit the learned Magistrate condoned the said delay as per the order dated 8.6.2012 in C.M.P 375/2012. Aggrieved by the said order, the petitioner approached the court of Session, Ernakulam with Crl. R.P 100/2012. Finding no merit in the case advanced by the petitioner, the learned Sessions Judge dismissed the Crl.R.P 100/2012 on 10/12/2012. The said order is under challenge in this proceeding brought under Section 482 Cr.P.C.

2. The learned counsel for the petitioner relies on **Kishco Ltd (M/s.) v. K.A Vincent @ Wilson Alex and Another 2012 (3)**

KHC 495. The said decision cannot be mechanically applied to all cases. What exactly is the reason for delay, or whether such reason is acceptable, or whether the delay stands explained, are all factors varying from case to case. A straight jacket formula regarding the circumstances in which delay can be condoned, or the grounds that can be accepted for condonation of delay, cannot be made by precedents. In this case the delay is really very short, and it is of only 22 days. The amount involved in the case is Rs.13,00,000/- (Rupees Thirteen lakhs). In such a circumstance, the request to condone delay cannot be mechanically approached. If such an approach is made and the short delay is not condoned, the accused will stand benefited, probably unlawfully. Discretion in the matter of delay cannot be exercised in favour of such persons and in such circumstances. In this case I find that there is sufficient and satisfactory explanation for the delay, and that decision in the matter of delay was properly, legally and rightly taken by the courts below. I find no reason or ground to interfere.

In the result, this Crl.M.C is dismissed.

P.UBAID,
JUDGE