

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

CrI.MC.No. 1707 of 2015 ()

**-----
(CMP.NO. 14208/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
IRINJALAKUDA DATED 20-02-2015)
-----**

PETITIONER/COMPLAINANT:

**-----
MATHEW JOHN, AGED 55 YEARS, S/O.C.J.MATHEW,
CHALLACKAL VALIYAKALAYIL, POOVANPARA,
KOTTAYAM, KOZHANCHERY TALUK, PATHANAMTHITTA DISTRICT,
REP. BY HIS POWER OF ATTORNEY HOLDER KUNJAMMA THOMAS,
AGED 49, W/O.VALIYAKALAYIL MATHEW, POOVANPARA,
KOTTAYAM, KOZHANCHERY TALUK,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/THE STATE OF KERALA AND ACCUSED:

-
- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM-682 031.**
 - 2. SALEEM HASSAINAR,
VANNERIVALAPIL HOUSE, HOUSE NO.418, WARD NO.12,
THRIKOOR PANCHAYATH, MAVINCHUVADU, KALLUR,
THRISSUR DISTRICT. PIN-680 001.**

**R1 BY PUBLIC PROSECUTOR SMT. P.MAYA
R2 BY ADV. SRI.C.A.CHACKO**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

Crl.MC.No. 1707 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEX I- A TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY THE
 PETITIONER IN THE NAME OF POWER HOLDER DATED 12.11.2013.**

**ANNEX II- A TRUE COPY OF THE COMPLAINT IN S.T.NO.3639 OF 2013 DATED
 11.11.2013.**

**ANNEX III- A TRUE COPY OF THE ORDER PASSED IN C M P NO.14208 OF 2014
 DATED 20.2.2015 BY THE LEARNED MAGISTRATE IRINJALAKUDA.**

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

B. KEMAL PASHA, J.

.....
Crl.M.C. No.1707 of 2015
.....

Dated this the 2nd day of September, 2015

ORDER

~~~~~

A complaint was initially filed under Section 142 of the NI Act alleging an offence under Section 138 of the NI Act. Subsequently, based on the amendment as well as the decision of the Apex Court, the matter was returned for presentation before the proper court. A delay of 24 days has been caused in representing the matter before the concerned court. For condoning the said delay, CMP No.14208/2014 was filed when the complaint was represented before the Judicial First Class Magistrate's Court, Irinjalakuda. Through Annexure-III order, the learned Magistrate has chosen to dismiss the said CMP and to return the complaint.

2. Heard learned counsel for the petitioner, learned counsel for the 2<sup>nd</sup> respondent and learned Public

Prosecutor for the 1<sup>st</sup> respondent.

3. Even for filing a complaint under Section 142 of the NI Act alleging an offence under Section 138 of the NI Act, there is provision for condoning the delay on sufficient grounds. Here, in this particular case, the complaint was filed in time before a court based on the then existing provisions of the NI Act. Subsequently, the statute was amended. For enabling persons to get the matters presented before proper court, the Apex Court has fixed a time limit of 30 days for presentation of such complaints on return. In such case, it cannot be said that if any delay is caused, that should not be condoned. When there is a provision for condoning the delay for initiating the proceedings, the same benefit should be extended in case of delay in representation of the complaint before the proper court. Considering the facts and circumstances of the case, this Court is of the view that the court below ought to have condoned the delay of 24 days caused in representing the

complaint.

In the result, this CrI.M.C. is allowed and Annexure-III order is set aside. CMP No.14208/2014 of the court below stands allowed. The delay stands condoned. The petitioner shall present the complaint before the Judicial First Class Magistrate's Court, Irinjalakuda within 10 days from today.

Sd/-  
**(B.KEMAL PASHA, JUDGE)**

aks/02/09

*// True Copy //*

*PA to Judge*