

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.MC.No. 4628 of 2015

**ORDER DATED 29-01-2015 IN CMP 1007/2015 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KODUNGALLUR**
.....

PETITIONER(S)/COMPLAINANT:

**SREE GOKULAM CHIT AND FINANCE CO (P) LTD.,
HEAD OFFICE 66, ARCOT ROAD, CHENNAI-24,
REP. BY LEGAL CLERK, LOARANCE B.L., S/O. LONAPPAN,
BHRAMAKULAM HOUSE, DIVISIONAL OFFICE,
SREE GOKULAM CHIT AND FINANCE CO (P) LTD., M.G.ROAD,
THRISSUR.**

**BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH**

RESPONDENT(S)/ACCUSED:

**RESHMA, AGED 35 YEARS,
W/O. RAJEEV KUMAR K.V., KOZHIPARAMBIL HOUSE, 1ST FLOOR,
THERAMBIL APARTMENT, LENIN NAGAR, POONKUNNAM P.O.,
THRISSUR DISTRICT.**

BY ADV. SRI.C.P.UDAYABHANU

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.MC.No. 4628 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A- THE TRUE COPY OF THE COMPLAINT IN S.T. 7198/2010 RETURNED BY
THE JFCM COURT, NO. III, THRISSUR.**

**ANNEXURE B- THE TRUE COPY OF THE ORDER IN S.T. 7198/2010 PASSED BY THE
JFCM COURT NO.III, THRISSUR DTD. 27-9-2014.**

**ANNEXURE C- THE CERTIFIED COPY OF THE ORDER IN C.M.P. 1007/2015 PASSED BY
THE JFCM COURT, KODUNGALLUR DTD. 29-1-2015.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msv/

B.KEMAL PASHA, J.

=====

Crl.M.C. No. 4628 of 2015

=====

Dated this the 3rd day of September, 2015

O R D E R

Based on the decision of the Apex Court in **Dashrath Rupsingh Rathod v. State of Maharashtra** [2014 (3) KLT 605 (SC)], a complaint filed by the petitioner under Section 142 of the N.I.Act, alleging an offence under Section 138 of the N.I.Act, was returned. For presenting it before the Judicial First Class Magistrate's Court, Kodungallur, there was a delay of 92 days. An application as CMP No.1007/2015 was filed for getting the delay condoned. Through Annexure C order, the court below has dismissed the said CMP.

2. Heard the learned counsel for the petitioner.

3. Even for filing a fresh complaint under Section 142 of the N.I.Act alleging an offence under Section 138 of the N.I.Act, there is statutory provision for condoning the delay, provided, sufficient cause is shown. Here, it was for no fault of the complainant, the complaint was returned. When

there occurred some sort of delay in re-presenting the complaint before the proper court, the court ought to have considered the question of delay liberally. When there is provision for condoning the delay even for filing a fresh complaint, it cannot be said that the courts are not powerless to condone the delay in re-presenting a complaint which was returned. Annexure C order passed by the court below has resulted in substantial miscarriage of justice and therefore, the same is liable to be set aside.

In the result, this Crl.M.C is allowed and Annexure C order passed by the court below is set aside. The delay stands condoned. The petitioner shall present the complaint again before the court below within 'ten' days from today. On such presentation, the court below shall take the matter on the file and deal with the complaint in accordance with law.

Sd/-
B.KEMAL PASHA, JUDGE

stu

//True copy//

P.A to Judge