

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

Cr1.MC.No. 5341 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN ST 1998/2014 of J.M.F.C.-V,
KOZHIKODE.

PETITIONER(S) /ACCUSED:

BIJU-BABU @ RANJITH,
MANAGING DIRECTOR, M/S.PRESTIGE POLIMER PRODUCTS,
11/47, THONICHIRA ROAD, NORTH BEYPORE POST,
CALICUT - 673 015.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN
SRI.V.VINAY

RESPONDENT(S) /RESPONDENTS/COMPLAINANT/STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. WOW PRODUCTIONS & ADVERTISING,
REPRESENTED BY ITS PROPRIETOR, MR.G.JAGAN PRABHU,
DOOR NO.304, 3RD FLOOR, SRI.LAKSHMI COMPLEX,
GANDHIPURAM, COIMBATORE - 641 012.

R2 BY ADV.SRI.P.NARAYANAN
R1 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Cr1.MC.No. 5341 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS:

ANNEXURE I. CERTIFIED COPY OF THE COMPLAINT IN S.T.NO.1998/2014, WHICH
IS NOW PENDING ON THE FILE OF THE JUDICIAL MAGISTRATE OF
FIRST CLASS - V, KOZHIKODE.

RESPONDENT(S) ' EXHIBITS: NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C.No.5341 of 2015

Dated this the 7th day of December, 2015

ORDER

This is an application filed by the petitioner/accused in S.T.No.1998/2014 pending on the file of the Judicial First Class Magistrate Court-V, Kozhikode, to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is arrayed as sole accused in S.T.No.1998/2014 pending before the Judicial First Class Magistrate Court-V, Kozhikode, alleging offence under Section 138 of the Negotiable Instruments Act. The prosecution case was that, the complainant is running an advertising agency and the accused who is engaged in manufacture of footwear is one of their customers and to develop the business, the accused

ordered the complainant to advertise through television and newspaper and in that transaction, there was an amount of ₹2,05,058/- was due. According to the complainant accused issued cheque No.024126 dated 05.10.2003 for ₹1,00,000/- and another cheque No.024129 dated 05.11.2013 for a sum of ₹1,05,058/-, both drawn on Federal Bank, Baypore, Branch, Kozhikode, in favour of the complainant. When the cheques were presented for collection through the bank of the complainant, the same were dishonoured for the reasons 'funds insufficient'. Notice was issued to the accused and since he did not pay the amount, Annexure-A1 complaint was filed. Originally it was filed before the Judicial First Class Magistrate Court-II, Coimbatore. Later it was returned to be presented before proper court having jurisdiction that is Judicial First Class Magistrate Court-V, Kozhikode. Accordingly it was represented and renumbered as S.T.No.1998/2014. The petitioner is the Managing

Director of the company called M/s.Prestige Polymer Products. The complainant is a sole proprietorship concern and the petitioner and the company having separate legal entity. In view of the dictum laid down in the decision reported in **Aneeta Hada & Others v. M/s. Godfather Travels [2012 KHC 4244 (SC)]**, without impleading the company, no complaint is maintainable against the director of the company alone. So proceeding with the case is nothing but an abuse of process of court and he filed this writ petition to quash the proceedings. Hence the petition.

3. Heard Sri.S.Rajeev, counsel appearing for the appellant/petitioner and Sri.P.Narayanan, counsel appearing for the 2nd respondent and Sri.Jibu P.Thomas, Public Prosecutor appearing for the first respondent/ State.

4. The counsel for the petitioner submitted that though by virtue of amendment ordinance, the transfer effected on the basis of **Dashrath Rupsingh Rathod v.**

State of Maharashtra [2014 (3) KHC 362(SC)], has been restored to the original position, but at the time when the petition was filed, this court was having jurisdiction to entertain the application and the deemed transfer will not affect the exercise of jurisdiction by this court. So he relied on the decision reported in **Kaushal Paints and Chemicals and Others v. Punjab National Bank Palsaura Chandigarh [2009 (16) SCC 321]** in support of his case.

5. On the other hand, the counsel appearing for the 2nd respondent submitted that the case was originally filed before the Judicial First Class Magistrate Court, Coimbatore, and by virtue of the decisions of the Supreme Court, the case was returned for presentation before proper court and now by virtue of the amendment it will have go back to the original court and as such, this court has no jurisdiction to entertain the application and quash the

proceedings.

6. It is an admitted fact that, there were some transactions between the complainant and the accused who is the petitioner herein, in respect of which two cheques were alleged to have been given, both drawn on Federal Bank Baypore Branch. Admittedly the cheques were presented at Coimbatore, where the complainant is having its business and dishonour was intimated from that bank and on the basis of the law then existing, complainant filed complaint under Section 138 of the Negotiable Instruments Act before the Judicial First Class Magistrate Court-II, Coimbatore, where it was taken on file as C.C.No.603/2014 on 17.07.2014, which is seen from Annexure-I complaint produced along with the petition.

7. While the case was pending, the Apex court in **Dashrath Rupsingh Rathod v. State of Maharashtra [2014 (3) KHC 362(SC)]**, held that, complaint under

Section 138 of the Negotiable Instruments Act can be filed only within the jurisdiction of the drawee bank is situated and not the collecting bank or presenting bank is situated. In that decision the Supreme Court has even directed return of the complaints filed to be presented before the proper court and 30 days time has been given to the complainant to represent the petition, so as to save the limitation as well. In the same decision it has been observed that, in cases where evidence has already been taken, those cases need not be transferred and that can be allowed to continue in the same court in which it was originally filed. It was on the basis of this judgment of the apex court that the Coimbatore court had returned the complaint for presentation before the proper court and the complainant had represented the case before the Judicial First Class Magistrate Court-V, Kozhikode, where it was taken on file as S.T.No.1998/2014. When the accused/petitioner

received notice in that proceedings, on 12.08.2015, the petitioner filed this petition to quash the proceedings and obtained stay of further proceedings in the matter.

8. In the meantime parliament has passed Negotiable Instruments Amendment Ordinance, 2015, (No.6/2015), obtained the assent of the president. Subsequently 2nd ordinance was also promulgated, which was published in the gazette dated 22.09.2015 and earlier ordinance was published in the gazette dated 15th June 2015.

9. By virtue of the amendment to Section 142, the Section was amended as, if the cheque is delivered for collection through an account of the bank where the payee or holder in due course as the case may be maintains the account situated or if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer

maintains the account is situated were vested with power to entertain the complaint under Section 138 of the Act and by virtue of the 2nd ordinance retrospective operation was given from 15.06.2015, when the original ordinance was promulgated by the parliament and assent given by the President. Further by virtue of the amendment, Section 142 (A) was incorporated where by the cases which have been already transferred by virtue of the judgment or direction of the court were deemed to have been transferred under this ordinance to the original courts where the complaints were filed earlier. So by virtue of this amendment, though the cases were transferred from Coimbatore court, there is a deemed transfer by virtue of which the transferee court namely, Judicial First Class Magistrate Court-V, Kozhikode, will have no jurisdiction to entertain the complaint and it has to be retransferred to the original court from where it was returned. The scope of the amendment was considered

by the Division Bench of this court in **Binoy K.Mathew v. Godley Dev John and Another (2015 (4) KHC 243)** has held that, by virtue of the deemed transfer which has got retrospective operation, the courts have no option but to return the complaint to the original courts from where it was returned for presentation in view of the decision of the Supreme Court in Dashrath Rupsingh Rathod's case cited (supra).

10. By virtue of the amendment, it is having retrospective operation, the Judicial First Class Magistrate Court-V, Kozhikode, has no jurisdiction to retain the complaint and it has no option, but to transfer the complaint to the original court from where it was returned. Though the present case was filed on 12.08.2015 by virtue of the ordinance retrospective operation was given with effect from 15.06.2015 and by virtue of this ordinance Judicial First Class Magistrate Court-V, Kozhikode, has no

jurisdiction to entertain or retain the complaint which was received by that court on representation as returned from Judicial First Class Magistrate Court-II, Coimbatore.

11. The dictum laid down in the decision reported in **Kaushal Paints and Chemicals and Others v. Punjab National Bank Palsaura Chandigarh (2009 (16) SCC 321)** is not applicable to the facts of this case. That was a case where 2nd appeal was pending before the High Court at the time when Recovery of Debts due to Bank and Financial Institution Act, 1993, was passed and by virtue of Section 31(1) Proviso, all pending cases were directed to be transferred to the tribunal constituted under that Act. But it will be seen from the decision itself that, that Section was not applicable to any appeal pending before any court. So it was under that circumstance the Supreme Court has held that the passing of the above said Act is not applicable to the appeals pending before the High

Court and there is no necessity to transfer such cases to the tribunal.

12. Once by virtue of the ordinance the jurisdiction of the court has been taken away, then this court invoking the power under Section 482 of the Code of Criminal Procedure Code is not expected to quash the case which in the eye of law is not pending before the court by virtue of the deemed transfer provided under the amendment ordinance to Negotiable Instruments Act of 2015. So under the circumstances, the prayer claimed in the petition in respect of a case which has to be transferred by virtue of deemed transfer in view of the Amendment ordinance cannot be granted and remedy of the petitioner is to approach the concerned Higher Court within whose jurisdiction the case has to be tried by virtue of the ordinance and seek redressal of grievance before that court.

With the above direction and observation the writ

petition is disposed of, leaving open the right of the petitioner to raise all his contentions before the court before which the case is likely to be transferred by virtue of the amendment ordinance, 2015 and it is for such court having jurisdiction to entertain such petitions and to pass appropriate orders in the contentions raised.

Interim order granted as per the order in Crl.M.A.No.7952/2015 is hereby vacated and the petition is dismissed.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge

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