

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937**

**CrI.MC.No. 5601 of 2014 ()**

**CC 10/2010 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ADOOR**

**PETITIONER/COMPLAINANT :**

**SHAJAHAN, S/O. HASSAN RAWTHER,  
GULA BAZAR, PANDALAM.**

**BY ADV. SRI.S.MUHAMMED HANEEFF**

**RESPONDENTS/STATE & ACCUSED :**

**1. STATE OF KERALA  
REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM 682 031.**

**2. V.A. JABIR, S/O. AHAMMED  
CHIRAYIL PHONE SHOP, AR.BUILDING,  
PANDIKKADU ROAD MANJERI, MALAPPURAM 676 121**

**R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN  
R2 BY ADV. SRI.ARUN.B.VARGHESE  
BY ADV. SRI.JAYKAR.K.S.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 18-11-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**bp**

## APPENDIX

**PETITIONER(S)' EXHIBITS**

- ANNX.A1: A TRUE COPY OF THE AFFIDAVIT IN LIEU OF CHIEF EXAMINATION IN CC NO.10/2010 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I ADOOR.**
- ANNX.A2: A TRUE COPY OF THE DEPOSITION IN CROSS EXAMINATION OF THE COMPLAINANT IN C.C NO.10/2010 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I ADOOR.**
- ANNX.A3: A TRUE COPY OF THE ORDER DATED 30-8-2014 IN C.C.NO.10/2010 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I ADOOR**

**RESPONDENT(S)' EXHIBITS** : **NIL.**

**//TRUE COPY//**

## P.A.TO JUDGE

**bp**

K.RAMAKRISHNAN, J.

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Crl. M.C. No.5601 OF 2014

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Dated this the 18<sup>th</sup> day of November, 2015

ORDER

This is an application filed by the petitioner/complainant in CC No.10/2010 on the file of the Judicial First Class Magistrate Court-I, Adoor to quash Annexure A3 order under Section 482 of the Code of the Criminal Procedure.

2. It is alleged in the petition that the petitioner filed a private complaint as Annexure-I against the 2<sup>nd</sup> respondent under Section 138 of the Negotiable Instruments Act alleging that 2<sup>nd</sup> respondent had issued a cheque in discharge of the liability which when presented was dishonoured and inspite of notice issued, he had not paid the amount. After taking cognizance, summons was issued to the 2<sup>nd</sup> respondent. He appeared and the particulars of offences were read over and explained to him and he pleaded not guilty. Thereafter the case was posted for evidence. The complainant filed affidavit in lieu of chief examination and Exts.P1 to P6 were marked and he was cross examined evidenced by Annexure A2 copy of deposition of witness. Thereafter the complainant's evidence was closed on 26.3.2014 and the case was posted to examination of the accused under Section 313 of the Code to

3.4.2014 and again it was adjourned to 16.4.2014. Since the accused did not appear, the learned Magistrate issued non-bailable warrant to the accused and posted the case to 3.5.2014, 13.6.2013 and 30.8.2014 for procuring the presence of the accused for conducting his examination under 313 of the Code. On 30.8.2014 relying on the decision of the Supreme Court in **Dasharath Roop Singh Rathod v State of Maharashtra and Another** [2014 (3) KLT 605], the learned Magistrate returned the complaint, on the ground that court has no territorial jurisdiction to entertain the complaint, to present before the proper court by Annexure A3 order. This order is being challenged by the petitioner by filing this petition.

3. Heard the counsel for the petitioner Shri. S. Muhammed Haneef and Arun B. Varghese for 2<sup>nd</sup> respondent and Smt. Seena Ramakrishnan learned Public Prosecutor appearing for the 1<sup>st</sup> respondent.

4. Both the counsel submitted that in view of the amendment to the Negotiable Instruments Act, vesting

jurisdiction on the court on the basis of the bank in which the cheque was presented, they have having no objection in setting aside the order and sent back the matter to the court below.

5. It is an admitted fact that petitioner filed a complaint under Section 138 of the Negotiable Instruments Act against the 2<sup>nd</sup> respondent and evidence of the complainant was over and it was posted for examination of the accused under Section 313 of the Code and it was under that stage the court below had passed Annexure A3 order. Even going through the dictum laid down in the decision reported in **Dashrath Rupsingh Rathod v State of Maharashtra and Another** [2014 (3) KHC 362] in paragraph 20 of the judgment the Supreme Court has held that cases where evidences already been taken, the court can proceed with the case. Only in cases where the evidence is not started only those cases need be returned for presentation before the proper court. After the judgment, Section 138 of the Negotiable instruments Act has been amended by virtue of Amendment Ordinance 2015 (No.6

of 2015) which was published in Gazette dated 15.6.2015 and right has been given to the complainant to file complaint within whose jurisdiction the cheque was presented for collection also. Further by virtue of the amendment, it is also mentioned that if the case has already been transferred, then transferee court is directed to return the complaint to be presented in the court in which it was originally filed, if the case was filed before the court within whose jurisdiction the presenting bank was situated. The scope of the Amendment Ordinance has been considered by the Division Bench of this court in the decision reported in **Binoy K. Mathew v Godley Dev John** [2015 (3) KLT 784] and it has been held that it will have retrospective operation by virtue of the operation of the law and even if the complaints returned and presented before the court, within whose jurisdiction the drawee bank is situated as per the directions of the Supreme Court, it will have to be returned and presented before the earlier court if the presenting bank is situated within the jurisdiction of the earlier court. Even as per the dictum laid down in the **Dashrath Rupsingh Rathod's**

**Case,** the order passed by the court below is unsustainable as evidence has already been started in this case and that was not a case fit for return for presentation before the proper court as per the directions given in that decision. So the court below has not properly understood the dictum laid down in the decision and wrongly applied the decision and passed impugned Annexure A3 order which is unsustainable in law and the same is liable to be set aside. So the petition is allowed. Annexure A3 order passed by the Magistrate returning the complainant for presentation before proper court wrongly applying the decision for **Dashrath Rupsingh Rathod's Case** is set aside and the matter is remitted to the court below for fresh disposal in accordance with law. The court below is directed to take back the complaint on file, if it is represented by the complainant. The parties are directed to appear before the court below on 7.12.2015 and before that day, the complainant is directed to produce the entire records which has been returned to him by the court below pursuant to Annexure A3 order and if the complainant is represented, then

the court below is directed to take the complaint on file and proceed with the case from the stage at which it was returned and dispose of the case in accordance with law.

Court below is also directed to expedite the trial of the case taking into consideration of the directions given by the Apex court in this regard in respect of disposal of cases filed under Section 138 of the Act.

With the above directions and observations, the petition is allowed and disposed of.

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

Sd/-  
K.RAMAKRISHNAN, JUDGE

SKV