

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Crl.Rev.Pet.No. 2146 of 2009 ()

AGAINST THE ORDER IN C.M.P.517/09 IN CC NO.534/2006 of JUDL.
MAGISTRATE OF FIRST CLASS, KOTHAMANGALAM

PETITIONER/COMPLAINANT:

ELDHO N.I, PROPRIETOR, M/S. PHOTOMAX
COLOUR LAB, KOTHAMANGALAM, NEELANAKAL HOUSE
KARUKADAM. PO, -KOTHAMANGALAM.

BY ADVS. SRI. R. BINDU (SASTHAMANGALAM)
SRI. PRASANTH M. P

RESPONDENTS/ACCUSED & STATE:

1. MR. JAYESH GOR, CHAIRMAN, M/S. AGILE PHOTO
TECHNIKA (1) PVT. LTD, 108, ANDHERI INDUSTRIAL ESTATE
OFF VEERA DESAI ROAD, ANDHERI WEST, MUMBAI.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI. THAMBI JACOB
R1 BY ADV. SRI. JOE KALLIATH
R2 GOVERNMENT PLEADER: SMT BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01.09.2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1 : TRUE COPY OF the COMPLAINT FILED BY the PETITIONER.

ANNEXURE II : TRUE COPY OF TE PETITION, C.M.P.NO.517/2009 FILED BY THE RESPONDENT

ANNEXURE III: TRUE COPY OF THE OBJECTION FILED BY the PETITIONER AGAINST ANNEXURE II

RESPONDENTS' ANNEXURES:NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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Crl.R.P.No.2146 of 2009

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Dated this the 1st day of September, 2015

ORDER

This revision arises from the order in C.M.P.No.517 of 2009 in C.C.No.534 of 2006 of the Judicial First Class Magistrate Court, Kothamangalam in a proceeding under Section 138 of the Negotiable Instruments Act.

2. The accused and the de facto complainant had entered into a transaction with respect to the purchase of a machinery for a colour lab run by him. Since the accused could not deliver the machinery, the amount paid by the de facto complainant was returned in the form of cheques. The above cheques were presented for collection through the Federal Bank, Kothamangalam and was returned dishonoured on the ground, "exceeds arrangement". After issuing a statutory notice, the complaint was lodged. After the appearance of the accused, objections were raised regarding the jurisdiction and the competency of the Magistrate to try the offence involved. The court below by the impugned order relying on the decision reported in **Herman Electronics Pvt. Ltd. Vs. National Panasonic Pvt. Ltd. (2009(2) KLT 113 SC)** held that mere issue

of notice within its jurisdiction will not confer jurisdiction on a criminal Court. The court below ultimately held that the complaint was not maintainable within the jurisdiction of that Court and ordered return of complaint for presentation before the proper Court. This is under challenge in this revision.

3. Heard both sides and examined the records.

4. The learned counsel for the accused raised a preliminary objection that the order of returning the complaint was not stayed by this Court, nor the complaint presented before the Court having jurisdiction, the impugned order has worked itself out. Even though no stay has been granted, returning of the complaint was impugned in this revision. Hence the contention of the learned counsel for the respondent is not legally sustainable.

5. The complaint discloses that the cheque was presented for collection at a bank in Kothamangalam and was returned dishonoured by that bank. Learned counsel for the revision petitioner invited my attention to the Negotiable Instruments (Amendment) Ordinance 2015(No.6 of 2015). By Section 3 of the Amending Act, Section 142 of the Negotiable Instruments Act was amended inserting sub section (2). The newly inserted sub section (2) sub clause (a) provides that if the cheque is delivered for collection through an account, the branch of the bank where the

payee or holder in due course, as the case may be, maintains the account, is situated, the case shall be tried by the Court within whose jurisdiction the branch of the bank is situated. Evidently, by this Amending Act, it has been clarified that the Court within whose jurisdiction the cheque is presented for collection and is thereafter, returned, will have jurisdiction to try a proceeding alleging offence punishable under Section 138 of the Negotiable Instruments Act.

6. The purport of the above amending ordinance appears to be to confer jurisdiction specifically on Courts which are mentioned in Section 142(2). In the light of the above amending ordinance, the impugned order is not legally sustainable and is liable to be set aside.

In the result, the impugned order is set aside and the matter is remanded to the court below with a direction to the court below to take the complaint back to file and to proceed with it in accordance with law. Both sides shall appear before the court below on 03.10.2015.

Sd/-

SUNIL THOMAS
Judge

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