

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.Rev.Pet.No. 2756 of 2007 ()

**AGAINST THE ORDER IN CRL.MP 3072/2006 of CHIEF JUDL. MAGISTRATE,
ERNAKULAM**

REVISION PETITIONER(S)/COMPLAINANT/PETITIONER:

**M/S.MUTHOOT LEASING AND FINANCE LTD.,
MUTHOOT CHAMBERS, BANERJI ROAD, ERNAKULAM
REP: BY ITS POWER OF ATTORNEY HOLDER:
WILSON GEORGE.**

BY ADV. SRI.SABU S. KALLARAMOOLA

RESPONDENT(S)/PETITIONER/ACCUSED:

- 1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**
- 2. SHIBU.S., SADIK NIVAS, POTHAPALLY SOUTH,
KUMARAPURAM P.O., HARIPAD.**

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-10-2015, ALONG WITH CRL.R.P.2857/2007, CRL.R.P.2862/2007, CRL.R.P.2982/2007, CRL.R.P.2990/2007 & CRL.R.P.2892/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.D. RAJAN, J.

**Crl.R.P.2756, 2857, 2862, 2982,
2990 & 2992 of 2007**

Dated this the 9th of October, 2015

ORDER

These Criminal Revision Petitions are filed by the complainant in C.M.P.3072/06 (C.M.P.3073/06), C.M.P.422/07, C.M.P.421/07, C.M.P.423/07, C.M.P.3803/06 and C.M.P.3809/06 of the Chief Judicial Magistrate, Ernakulam. The complainant is engaged in the business of leasing and hire purchase financing throughout India. For realizing a legally enforceable debt from the accused he filed the above CMPs in the trial court.

2. In Crl.R.P.2982/07 the accused had issued a cheque for Rs.84,856/- drawn on Federal Bank, Pathanamthitta. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. He issued a notice in writing to the accused and demanded the due amount. There was no repayment. In the circumstance, he filed a complaint in the Chief Judicial Magistrate, Ernakulam. But there was a delay of 25 days

in filing that petition. Hence, he filed C.M.P.423/07. On 11.4.07, the complainant and counsel absent. The petition was dismissed by the learned Chief Judicial Magistrate.

3. In Crl.R.P.2990/07 the accused had issued a cheque for Rs.23,000/- drawn on Kalloorvilla Service Co-operative Bank, Kollam, When it was presented for encashment, it was dishonoured for the reason of funds insufficient. He issued a notice in writing to the accused and demanded the due amount. There was no repayment. In the circumstance, he filed a complaint in the Chief Judicial Magistrate, Ernakulam. But there was a delay of 15 days in filing that petition. In the circumstance he filed C.M.P.3803/06. On 4.4.07, the complainant and counsel absent. The petition was dismissed by the learned Chief Judicial Magistrate.

4. In Crl.R.P.2992/07 the accused had issued a cheque for Rs.89,000/- drawn on Canara Bank, Mullackal branch, Alapuzha. When it was presented for encashment, it was dishonoured for the reason of funds

insufficient. He issued a notice in writing to the accused and demanded the due amount. There was no repayment. In the circumstance, he filed a complaint in the Chief Judicial Magistrate, Ernakulam. But there was a delay of 43 days in filing that petition. In the circumstance he filed C.M.P.3809/06 On 04.4.07, the complainant and counsel absent. The petition was dismissed by the learned Chief Judicial Magistrate.

5. In Crl.R.P.2857/07 the accused had issued a cheque for Rs.1,67,000/- drawn on Thekkumbhagum Service Co-operative Bank Ltd.No.1731 Chavara South, Kollam. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. He issued a notice in writing to the accused and demanded the due amount. There was no repayment. In the circumstances, he filed a complaint in the Chief Judicial Magistrate, Ernakulam. But there was a delay of 3 days in filing that petition. In the circumstance, he filed C.M.P.422/07. On 11.4.07, the complainant and counsel absent. The petition was dismissed by the learned Chief

Judicial Magistrate.

6. In Crl.R.P.2862/07 the accused had issued a cheque for Rs.27,500/- drawn on Canara Bank, Thamarakulam, Kollam. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. He issued a notice in writing to the accused and demanded the due amount. There was no repayment. In the circumstance, he filed a complaint in the Chief Judicial Magistrate, Ernakulam. But there was a delay of 23 days in filing that petition. In the circumstances he filed C.M.P.421/07 On 11.4.07, the complainant and counsel absent. The petition was dismissed by the learned Chief Judicial Magistrate.

7. In Crl.R.P.2756/07 the accused had issued a cheque for Rs.17,000/- drawn on South Indian Bank, Karuvatta branch. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. He issued a notice in writing to the accused and demanded the due amount. There was no repayment. In the circumstance, he filed a complaint in

the Chief Judicial Magistrate, Ernakulam. But there was a delay of 21 days in filing that petition. In the circumstance, he filed C.M.P.3072/06 and it was dismissed by the learned Chief Judicial Magistrate after examining the complainant.

8. The learned counsel appearing for the revision petitioner contended that his case bundles were misplaced at the time of renovation of the office and the clerk who was dealing with the files was also laid up due to illness and thus he could not trace out the file in time and represent the matter before court, when the case was called. He is ready to adduce evidence in the trial court to prove the alleged facts.

9. I have gone through the order passed by the learned Chief Judicial Magistrate. Without stating any specific reason the delay petition was dismissed by the learned Magistrate.

10. The object of conferring revisional power to the High Court is to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While

exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave miscarriage of justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

11. Section 142 of the N.I. Act reads as relevant in this context. It reads as follows;

142. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: (Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.)

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) 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; or

(b) 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.

According to Section 142 of the Negotiable Instruments Act, if a payee of the cheque or the holder in due course of the cheque files a complaint in writing for taking cognizance of an offence punishable under Section 138 of the N.I. Act, such a written complaint can be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 of the N.I. Act. The proviso to S.142 stipulates that the cognizance of a complaint can be taken by a Court after the prescribed period of 30 days, if the complainant satisfies the Court that he had sufficient cause which resulted in delay of making a complaint within the period. A metropolitan Magistrate or judicial Magistrate of the 1st Class having territorial jurisdiction can try a complaint.

Normally, the Court having jurisdiction shall take cognizance of the offence on a complaint within one month from the date on which cause of action arises under Clause (c) of the proviso to Section 138 of the N.I. Act. The use of 'shall' in clause (a) ensure a mandatory direction to ensure the legal ingredients provided under S.142, which have to be fulfilled before cognizance of the complaint.

12. The N.I. Act is a special enactment and Chapter XVII (containing Section 138 to 142) was inserted by Act 66 of 1988, with effect from 1.4.1989. The proviso to Clause (b) of S.142 of the N.I. Act was inserted vide the Amendment Act 2002 (55 of 2002) conferring power to empower the courts to condone the delay in filing of complaint in appropriate cases. In such cases, the complainant has to satisfy the court that he could not approach the court with his complaint within the stipulated time of 30 days. Prior to amendment, there were conflicting views with regard to this issue and the said issue is resolved by adding a proviso by amendment

to S.142 (b). If the complainant is able to satisfy the court that there was sufficient cause which prevented him from filing the complaint within the stipulated period, the court after the expiry of 30 days, can proceed with the case after condoning the delay. It is true that the object of introducing Section 142(b) was to put a bar on limitation on prosecutions and to prevent the parties from filing a complaint after a long time. But the learned Magistrate did not give any opportunity in the above cases except in Crl.R.P.2756/07. Therefore, an opportunity has to be given to the complainant before dismissing the application. The above provision shows that, the Magistrate has to comply his judicial discretion for rendering proper justice to the aggrieved party. Without such application of mind, he dismissed the application, which caused grave injustice.

13. In order to correct such grave failure of justice arising from erroneous orders have to be rectified by invoking revisional jurisdiction. The fact that, on the particular date, the complainant fails to appear itself is not

a ground to dismiss that application without specifying the reason. He has to enquire the explained reason while dismissing the application. It is clear that, lower court has taken a wrong view, which needs interference, otherwise it will result in grave injustice. In Crl.R.P.2756/07, even after examination of PW1, a wrong appreciation was made, that also needs interference. The order in C.M.P.3072/06 is set aside and the learned Magistrate is directed to reconsider that aspect and issue fresh orders. The orders in C.M.P.422/07, C.M.P.421/07, C.M.P.423/07, C.M.P.3803/06 and C.M.P.3809/06 are also set aside and the matter is remitted to the lower court for fresh consideration. The revision petitioner is directed to appear in the Chief Judicial Magistrate Court, Ernakulam on 23rd November 2015.

These revision petitions are allowed.

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//TRUE COPY//

PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE