

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 2860 of 2007 ()

AGAINST THE ORDER IN CRL.MP 3473/2006 of CHIEF JUDL.MAGISTRATE,
ERNAKULAM DATED 21-03-2007

REVISION PETITIONER(S)/COMPLAINANT::

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)/ACCUSED & STATE::

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. JOSEPH C.,
CHAMAKALAYIL HOUSE, ALANCHERRY, KOLLAM.

R1, BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.2860 of 2007

Dated this the 29th day of September, 2015

ORDER

Revision petitioner is the complainant in Crl.M.P.No.3473/2006 of Chief Judicial Magistrate, Ernakulam for offence u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). There is a delay of 25 days in filing the complaint and he filed Crl.M.P.No.3473/2006 for condoning the delay, which was dismissed by that Court. Being aggrieved by that, he approached this Court with this revision petition.

2. The learned counsel for the revision petitioner contended that the court dismissed the complaint without hearing the revision petitioner. The reason highlighted by

the revision petitioner for condoning the delay was not considered by the Court, which amounts to an illegality committed by the trial Court. Therefore, the illegality is to be rectified by invoking the revisional jurisdiction.

3. I heard the learned Public Prosecutor. Notice issued to the 2nd respondent is dispensed with.

4. The manner in which a complaint for dishonour of cheque has to be filed is explained under S.142 of the N.I. Act. The Section starts with a non-obstante clause which states that the provision mentioned in the Section will be in supersession of the provision of the Code of Criminal Procedure for filing complaints. Section 142 of the N.I. Act 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 © 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."

5. A plain reading of the Section says, 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 Ist 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.

6. 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.

In the circumstances, the order passed by the learned Magistrate in Crl.M.P.No.3473/2006 is set aside. The matter is remitted to the trial Court for fresh consideration as per law, after hearing the revision petitioner/complainant. He is directed to appear in the Chief Judicial Magistrate, Ernakulam on 23.11.2015.

P.D. RAJAN, JUDGE.

acd