

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Crl.Rev.Pet.No. 186 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CMP 10335/2013 of J.F.C.M., VADAKARA

REVISION PETITIONER(S)/CRL.REVISION PETITIONER/COMPLAINANT:-

ABDULLA, AGED 45 YEARS,
S/O.MOOSA, MEETHALE MARUNNOLI HOUSE,
MUTHUVADATHOOR P.O., PURAMERI, VATAKARA,
KOZHIKODE DISTRICT, KERALA.

BY ADV. SMT.K.LASITHA

RESPONDENT(S)/ACCUSED:-

1. HAMEED ALI,
S/O.KUNHABDULLA, ODUKKONTAVIDA (H), KODIYOORA P.O.
KALLACHI, VATAKARA TALUK, KOZHIKODE DISTRICT
KERALA.

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

R1 BY ADV. SRI.B.KRISHNAN

ADV. SRI.R.PARTHASARATHY

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

Crl.Rev.Pet.No. 186 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS:

**ANNEXURE-1: CERTIFIED COPY OF THE ORDER DATED 03.03.2014 IN CMP.10335/2013
ON THE FILE OF THE JFCM, VATAKARA.**

**ANNEXURE-2: MEDICAL CERTIFICATE ISSUED BY THE CHIEF MEDICAL OFFICER,
GOV. AYURVEDA HOSPITAL, VATAKARA.**

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

C.T.RAVIKUMAR, J.

Crl.R.P. No.186 of 2015

Dated this the 19th day of March, 2015

ORDER

This revision petition is filed against the order dated 3.03.2014 passed by the Court of Judicial First Class Magistrate, Vadakara in CMP No.10335/2013. The said CMP was filed by the revision petitioner herein under Section 142 (b) of the Negotiable Instruments Act to condone the delay in filing the complaint under Section 138 of the said Act against the first respondent herein. Evidently, the learned Magistrate after hearing both sides framed only the following point for consideration “whether there had sufficient cause for making the complaint by the petitioner within the prescribed statutory period.” For the purpose of proper disposal of the revision petition it is apposite to refer to the proviso to Section 142 (b) only as there is no dispute with regard to the normal period within which a complaint has to be filed.

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

(a).

(b).

“[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.]”

2. A bare perusal of the said provision would reveal that a complaint has to be filed within one month from the date on which the cause of action under Section 4C of the proviso to Section 138 of the NI Act and the proviso thereunder enables the court to take cognizance even thereafter provided the complainant satisfies the court that he had sufficient cause for not making a complaint within such period. In this case the petitioner has assigned the reason that the delay had occurred due to the misplacing of the cheque in question. The question whether the said reason assigned for the delay

could be treated as a sufficient cause, was considered by the learned Magistrate in the light of the decision reported in **Kishco Ltd. v. Vincent, 2012 (3) KLT SN 112**. In the said decision this Court held that the onus to show that complainant had sufficient cause for not filing the complaint within the period of one month from the date on which the cause of action arose under clause 'C' of the proviso to Section 138 lies on the complainant. When the statute prescribes a period within which a complaint has to be filed the complainant had to file the complaint within the statutory prescribed period and he would be entitled to claim the benefit of the said proviso only if he could satisfy the court about the existence of sufficient cause for not filing the complaint within the statutorily prescribed period. A mere statement that the cheque was misplaced cannot be treated as a sufficient cause. In this context the learned counsel for the first respondent submitted that the contention now taken up by the revision petitioner in this revision petition for explaining the delay and for its condonation is that the

cheque in question was entrusted with his wife and it was in her custody and thereafter she misplaced it. His contention is that he was doing extensive travelling in connection with his business. The cheque in question is dated 20.12.2012, and evidently it was presented thereafter for encashment and needless to say it was only subsequently dishonoured. In such circumstances, I am of the view that the dismissal of the application for condoning the delay will not adversely affect the interest of the petitioner as he could still take recourse to civil remedy. In this context it is to be noted that, in the decision in **Damodar S. Prabhu v. Sayed Babalal**, reported in **AIR 2010 SC 1907** and **Kaushalya Devi Massand v. Roop Krishna**, reported in **AIR 2011 SC 2566**, the apex court held that the offence under Section 138 of the NI Act is basically of civil nature. Criminal nature has given to it by incorporating the same under the NI Act. In such circumstances even though there is provision for condoning the delay the question of condonation would arise only if a sufficient cause is

shown. When the filing of a complaint might ultimately visit the accused with penal consequences the complaint has to be filed strictly adhering to the provisions under the N.I. Act. When sufficient cause is not shown for condoning the delay permitting to prosecute a person showing lenient attitude would be against the interest of justice, especially in a case where the right of the complainant to redress his grievance could still be pursued resorting to civil remedy. In the facts and circumstances of this case, I do not find any reason to interfere with the order passed by the learned Magistrate and I am of the view that it suffers from no legality, or infirmity warranting interference in exercise of the revisional jurisdiction. In the said circumstances, this revision petition is liable to fail and accordingly it is dismissed.

Sd/-

C.T.RAVIKUMAR, JUDGE

//TRUE COPY//

PA TO JUDGE

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