

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

OP(Crl.).No. 4 of 2015 (Q)

AGAINST CC 6742/2012 of J.M.F.C.,IRINJALAKUDA

PETITIONER/COMPLAINANT:

JOY AGED 56 YEARS
S/O.PAULOSE, NEREPARAMBIL HOUSE, KALLETUMKARA DESOM
KALLETUMKARA P.O, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE
WADAKKANCHERRY POLICE STATION
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

2. THOMAS
S/O.THOMAS, NANGINI HOUSE, CHALAKUDY P.O
CHALAKUDY TALUK, THRISSUR DISTRICT.

R1 BY GOVERNMENT PLEADER SMT.S.HYMA

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Crl.).No. 4 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE RETURNED COMPLAINT IN CMP 13552/2014 BEFORE
THE MAGISTRATE COURT, CHALAKUDY DATED 15.12.2014.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.

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**O.P (Crl) No.4 of 2015**

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Dated this the 21st January, 2015

J U D G M E N T

The petitioner herein is the complainant in a prosecution brought under Section 138 of the Negotiable Instruments Act. The complaint was initially filed before the Judicial First Class Magistrate's Court, Irinjalakuda. In view of the decision of the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod v. State of Maharashtra [2014 (3) KLT 605 (SC)]** regarding territorial jurisdiction in the matter of prosecution under Section 138 of the Negotiable Instruments Act, the learned Magistrate returned the complaint for presentation before the proper court. The petitioner could not re-present the complaint before the proper court within 30 days as prescribed by the Hon'ble Supreme Court. He re-presented the complaint before the Judicial First Class Magistrate Court, Chalakudy after seven days from the date of expiry of the period of 30 days fixed by the Hon'ble Supreme Court. The petitioner's grievance is that the complaint was returned by the

learned Magistrate and even his application to condone delay was not considered by the learned Magistrate. He accordingly seeks a direction from this Court under Article 227 of the Constitution of India to the court below to receive his complaint and to pass appropriate orders. If the petitioner has, in fact, filed an application to condone the delay along with the complaint before the Judicial First Class Magistrate Court, Chalakudy, the said application should necessarily be considered and appropriate judicial orders will have to be passed by the learned Magistrate. In the reported decision, the Hon'ble Supreme Court has made it clear at the end of paragraph 20 that if such complaints (returned complaints) are re-presented within thirty days of its return, such complaints shall be deemed to have been filed within the time prescribed by the law, unless the initial or prior filing was itself time barred. This declaration itself gives an indication that in case the complainant could not re-present the complaint within thirty days, the law governing condonation of delay will apply, and the complainant can very well make an application for condonation of delay. The complainants who could not represent the complaint in time cannot go all the way to

New Delhi to seek condonation of delay. The decision does not create such a situation. Of course, here the complainant could not re-present the complaint within thirty days. He made an application to condone delay, but the same was not considered. Though this Court called for a report on this aspect, such report is not yet received. Now, it is submitted that the application filed by the complainant in court is not seen or that it could not be traced out. If so, the petitioner is given liberty to file application for condonation of delay before the learned Magistrate. He is accordingly permitted hereby to represent the complaint before the learned Magistrate within ten days, along with an application to condone delay.

In the result, this petition is allowed. The petitioner herein is permitted to re-present his complaint before the learned Judicial First Class Magistrate Court, Chalakudy within a period of ten days from this date along with an application to condone delay.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge