

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

OP(Crl.).No. 8 of 2015 (Q)

CC 331/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - IV, KOZHIKODE

PETITIONER(S):

**RAJEEV N.K., AGED 54 YEARS,
S/O. LATE BALAN, NARAKATH KALATHINGAL, PACHAKKIL,
MALAPARAMBA, CALICUT - 673 009.**

**BY ADVS.SRI.K.D.BABU
SRI.G.SANTHOSH KUMAR**

RESPONDENT(S):

**ARUN R. KUMAR,
CAREER LINE EDUCATIONAL & CHARITABLE TRUST,
B.O. NO. 49/1926 B, 1ST FLOOR, SASTHA BUILDING,
BTS ROAD, EDAPALLY-KOCHI - 682 024.**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(Crl.).No. 8 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE COMPLAINT IN C.C. NO. 331/2014 ON THE FILE OF THE JFCM COURT-1V, KOZHIKODE.

EXT.P2. TRUE COPY OF THE CHEQUE DATED 22-7-2013 FOR RS. 3,00,000/- DRAWN ON THE H.D.F.C. BANK, MAVELIKKARA, ALLEPPEY.

EXT.P3. TRUE COPY OF THE MEMO DATED 3-10-20-13 ISSUED BY THE H.D.F.C. CALICUT BRANCH.

EXT. P4. TRUE COPY OF THE ORDER DATED 11-12-14 IN C.C. NO. 331/2014 ON THE FILE OF THE J.F.C.M. COURT-VI, KOZHIKODE.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. UBAID, J.

O.P.(CrI) No.8 of 2015

Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner herein is the complainant in a prosecution brought under Section 138 of the Negotiable Instruments Act. The learned Judicial First Class Magistrate Court-IV, Kozhikode, before whom the complaint was filed, returned the complaint for presentation before the proper court on the ground that the cheque in question was dishonoured at some other place. The said order is under challenge. Now, the learned counsel for the petitioner submits that the complainant wants to re-present the cheque in the court at Mavelikkara. It appears the petitioner relies on a Single Bench decision of the Bombay High Court that, in the case of an 'at par' cheque prosecution can be initiated, wherever intimation of dishonour is made. This requires consideration, because such a decision will go against the spirit of what the Honourable Supreme Court said. Any way, the petitioner now wants to re-present the complaint before the learned Judicial First Class Magistrate Court, Mavelikkara. But his

concern is that the time granted by the court for re-presentation has already expired. He need not have any such concern, because he brought this proceeding without any delay, and if at all the 30 days time has expired, he can very well make application to condone delay, in view of the observations of the Honourable Supreme Court. If an application to condone delay is filed on representing the complaint, the learned Judicial First Class Magistrate will consider that application, and pass appropriate orders. The learned Magistrate will have to consider the fact that this petition has been pending since 08.01.2015. I do not think that the learned Magistrate will mechanically deal with the application to condone delay.

With these observations, this O.P is closed, permitting the petitioner to re-present the complaint before the Judicial First Class Magistrate Court, Mavelikkara, with an application to condone delay.

Sd/-

P. UBAID, JUDGE

sd