

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

OP(Crl.).No. 268 of 2014 (Q)

PETITIONER(S):

**SREE GOKULAM CHIT & FINANCE CO.PVT.LTD NO 66, AGED 39 YEARS
ARCOT ROAD, CHENNAI 600024
REPRESENTED BY ITS ASSISTANT LEGAL OFFICER
SAVITHA K.V W/O THYAGARAJ**

**BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA
SRI.K.S.GOPI
SRI.BABU SHANKAR AND WINSTON**

RESPONDENT(S):

**SIDDIHQUE M.K.,, AGED 30 YEARS
S/O HASSAINAR, MOOCHUKOTTATHIL HOUSE
PARAPPANANGADI P.O, MALAPPURAM DISTRICT**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 14-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(Crl.).No. 268 of 2014 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE COMPLAINT IN CC NO 1045/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOZHIKODE

EXHIBIT P1(A) TRUE PHOTOSTAT COPY OF THE ENDORSEMENT ON EXHIBIT P1

EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE CHEQUE ISSUED BY THE 1ST RESPONDENT TO THE COMPLAINANT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

O.P(Crl.) No. 268 of 2014

Dated this the 14th day of 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. His complaint initially filed before the Judicial First Class Magistrate Court - I, Kozhikode was returned by the learned Magistrate on the ground of territorial jurisdiction in view of the recent decision of the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra 2014(3)KLT 605(SC)**. He accordingly represented the complaint before the learned Judicial First Class Magistrate, Parappanangadi. His grievance is that the learned Judicial first Class Magistrate, Parappanangadi refused to receive the complaint saying that, his court has also no jurisdiction. In view of such a complaint, report was called for from the learned Judicial First Class Magistrate, Parappanangadi. He has reported that he has received many such complaints, and decision regarding jurisdiction is yet to be taken in those cases represented by different complainants. He has also reported that in some cases the counsel made request to return such complaints without any orders,

and accordingly such represented complaints happened to be returned without specific orders. The present complaint must be one of those complaints return without orders, as requested by the learned counsel. Of course, the report as such is not satisfactory or acceptable. Once a complaint is presented or represented the court will have to receive the complaint, act on it, and pass appropriate judicial orders. The action of the learned Magistrate in returning complaints without orders as requested by the counsel cannot be approved. However, the petitioner will have to be allowed to represent the complaint before the learned Magistrate. If the question of jurisdiction is involved, and if the learned Magistrate finds that his court has also no jurisdiction to entertain the complaint, he will have to pass a judicial order. The learned Magistrate will have to carefully examine the decision of the Hon'ble Supreme Court, and find out what court will have territorial jurisdiction to entertain complaints under Section 138 of the Negotiable Instruments Act. The learned Magistrate will also have to examine which is the bank wherein the accused has an account. This aspect assumes important in view of the provision contained in Section 138 of the Negotiable Instruments Act. The spirit of Section 138 of the Negotiable Instruments Act must be understood, that a prosecution can be brought when a cheque drawn on an account maintained in a particular bank is bounced due to insufficiency of

funds. Thus the bank wherein the account is maintained, and which dishonoured the cheque, will assume importance in deciding the question of jurisdiction. However, on a careful examination of the position of law settled by the Hon'ble Supreme Court the learned Magistrate will have to take a judicial decision regarding territorial jurisdiction. Though the learned Magistrate has not specifically reported that the complaint of the petitioner herein was returned as requested by the learned counsel, I understand from his report that the represented complaint was returned without orders by the learned Magistrate.

In the result, this petition is allowed. The petitioner herein is permitted to represent his complaint before the learned Judicial First Class Magistrate, Parappanangadi within 15 days from this date. On the complaint being represented accordingly, the learned Magistrate will pass appropriate judicial orders, if he finds that his court also will not have territorial jurisdiction in view of the decision of the Hon'ble Supreme Court.

P.UBAID,
JUDGE