

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 29TH DAY OF SEPTEMBER 2022 / 7TH ASWINA, 1944

CRL.REV.PET NO. 719 OF 2021

AGAINST THE ORDER DATED 08.11.2021 IN CRL.R.P.NO.16/2020 OF

ADDITIONAL DISTRICT AND SESSIONS COURT-VI, ERNAKULAM

REVISION PETITIONER/RESPONDENT/ACCUSED :

NISHAD MATHEW
AGED 39 YEARS
S/O.K.T.MATHEW (SOORYA APPACHAN) ,
HOTEL SEA GATE, PATHADIPALAM,
KALAMASSERY P.O. ,
SOUTH KALAMASSERY, ERNAKULAM.
BY ADV SOJAN MICHEAL

RESPONDENT/STATE/REVISION PETITIONER/COMPLAINANT :

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, COCHIN - 31.
- 2 MARY JUDIT,
AGED 50 YEARS,
W/O.RAPHEL PETER,
NEDUMPARAMBIL HOUSE, TAIKODAM P.O. ,
VYTTILA, ERNAKULAM,
PRESENTLY RESIDING AT NEDUMPARAMBIL (H) ,
JUBILEE ROAD, NAZRETH, ALUVA,
PIN - 683 101.
BY ADVS.
K.S.SUMEESH
C.K.ANWAR
BY SRI.T.R.RENJITH, SR.PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 29.09.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

"C.R."

ORDER

In this revision petition filed under Sections 397 and 401 of Cr.P.C., the revision petitioner, who is the accused in C.C.No.154 of 2016 on the file of the Judicial First Class Magistrate Court (N.I.Act cases), Ernakulam dated 03.12.2019 is put under challenge. The respondents herein are the State of Kerala as well as the original complainant.

2. Heard the learned counsel for the revision petitioner as well as the respondents.

3. I would like to refer the parties in this case as complainant and accused for easy reference.

4. It is argued by the learned counsel for the accused/revision petitioner that the Judicial First Class Magistrate Court (N.I.Act cases), Ernakulam (hereinafter will be referred as N.I. Court, Ernakulam for convenience)

has no territorial jurisdiction to try the case and when the said contention was raised before the N.I. Court, Ernakulam, the learned Magistrate transferred the case to Judicial First Class Magistrate Court, Kalamassery (hereinafter will be referred as JFMC, Kalamassery for convenience) on the finding that N.I. Court, Ernakulam had no jurisdiction to entertain the complaint. The said finding is perfectly in order and the Additional Sessions Judge, as per order in Crl.R.P.No.16 of 2020 dated 08.11.2021 interfered in the transfer and thereby, directed the N.I. Court, Ernakulam itself to hear and decide the above case. The said order is illegal, is the submission of the learned counsel for the accused/revision petitioner.

5. The learned counsel for the complainant would submit that the accused is attempting to trial the proceedings with a view to delay in pronouncement of judgment in this matter.

6. While considering the rival submissions, it is relevant to refer the history of the case. The complainant is

a lady, who lodged prosecution under Section 142 of the Negotiable Instruments Act, on the allegation that the accused herein committed offence under Section 138 of the N.I. Act before the Judicial First Class Magistrate Court-II, Aluva in the year 2015. Thereafter, the case was transferred to N.I. Court, Ernakulam and re-numbered as C.C.No.154 of 2015.

7. The accused appeared before the N.I. Court, Ernakulam and conceded the jurisdiction and accordingly, N.I. Court, Ernakulam completed trial.

8. It is at this juncture, the learned counsel for the accused raised contention before the NI Court, Ernakulam that the said Court has no territorial jurisdiction to entertain the complaint. The N.I. Court, Ernakulam accepted the contention raised by the accused on the finding that the cheque was presented for collection through the account maintained by the complainant at Union Bank of India, Kalamassery branch and therefore, under Section 142(2) of the Negotiable Instruments Act, the jurisdiction is with the

Judicial First Class Magistrate Court, Kalamassery.

9. In this matter, the trial was completed on 25.06.2019 and thereafter, the learned Magistrate transferred the case on the ground of lack of jurisdiction on 03.12.2019.

10. The complainant assailed the said transfer by filing revision before the Sessions Court, Ernakulam. The learned Sessions Judge, as per order in Crl.R.P.No.16 of 2020 dated 08.11.2021 appraised the contentions insofar as the transfer is concerned adverting to Section 462 of Cr.P.C. and also relying on three decisions viz., [2012(1) Crimes 443], **Arun Ramachandran Nair v. State of Kerala and Another**, [1987(2) SCC 74], **State of Karnataka v.Kuppuswamy Gounder** and [2017(3) SCC 528], **Abhijit Pawar v. Hemant Madhukar Nimbalkar and another.**

11. In this context, it is apposite to refer Section 462 of Cr.P.C. dealing with proceedings in wrong place. The same provides as under:

“No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

12. Reading the decisions referred by the learned Additional Sessions Judge, it is crystal clear that, when there is no inherent lack of jurisdiction, lack of territorial jurisdiction or ground of irregularity of procedure an order or a sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved, which would mean failure of justice. It is also the settled position that the objection regarding question of territorial jurisdiction must be raised, at the earliest at any rate, before adducing evidence/examination of witnesses in the Court. In the case on hand, the accused conceded the jurisdiction of the N.I.Court, Ernakulam and accordingly, trial was completed and the accused raised question of territorial

jurisdiction at the fagant. Since the law is settled that, if the Court has otherwise jurisdiction or the Court does not lack inherent jurisdiction, the Court has the power to dispose of the matter wherein, the evidence already recorded, since the question of jurisdiction was not raised before start of trial.

13. In this view of the matter, C.C.No.154 of 2016 of the N.I. Court, Ernakulam shall be disposed of by the said Court and the transfer ordered by the said court to JFCM, Kalamassery is not necessary.

14. In view of the matter, the learned Sessions Judge set aside the order of transfer, with direction to the of the N.I. Court, Ernakulam to hear and dispose of the matter within a period of three months. I find no illegality in the order and therefore, the order impugned herein is liable to be confirmed.

In view of the facts discussed, there is no merit in this petition. Accordingly, this revision petition is dismissed, directing the Judicial First Class Magistrate

Court (NI Act), Ernakulam to deliver judgment, after hearing both sides, within a period of one month from the date of receipt or production of a copy of this order.

Sd/-

**A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.REV.PET 719/2021

PETITIONER ANNEXURES

- Annexure I** TRUE COPY OF THE COMPLAINT DATED 21/02/2015 IN ST.NO.616/2015 ON THE FILE OF JFCM-II, ALUVA.
- Annexure II** TRUE COPY OF THE ORDER DATED 03/12/2019 IN CC NO.154/2015 OF THE JUDICIAL 1ST CLASS MAGISTRATE COURT (N.I.ACT CASES), ERNAKULAM.
- Annexure III** TRUE COPY OF THE MEMORANDUM OF REVISION FILED BY THE 2ND RESPONDENT DATED 19/02/2020.
- Annexure IV** TRUE COPY OF THE ARGUMENT NOTE DATED 25/10/2021.
- Annexure V** CERTIFIED COPY OF THE ORDER DATED 08/11/2021 IN CRL.R.P.NO.16/2020 OF THE ADDL. DISTRICT AND SESSIONS JUDGE-VI, ERNAKULAM.