

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 30<sup>TH</sup> DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944

CRL.MC NO. 4842 OF 2021

(IN CC.NO.645/2019 ON THE FILES OF JUDICIAL FIRST CLASS

MAGISTRATE COURT-III, MUVATTUPUZHA

**PETITIONER/ACCUSED:**

C.P. PAPPACHAN,  
AGED 67 YEARS,  
S/O. KOCHAPPU, CHAKIATH HOUSE, THUDATHUMKADAVU  
KARA, VARAPUZHA P.O., PIN-683517, PROPRIETOR,  
ALPHONSA MEMORIAL PRESS, VARAPUZHA P.O., ERNAKULAM-  
683517.

BY ADVS.  
YASH THOMAS MANNULLY  
SOMAN P.PAUL

**RESPONDENTS/STATE & COMPLAINANT:**

- 1 STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.
- 2 JOSE K.J.,  
AGED 46 YEARS,  
C/O. FRANCIS, KANNATHUMKUZHI HOUSE,  
PERUMBALLOOR P.O., MARADI, ERNAKULAM DISTRICT-  
686673.

SENIOR PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
26.09.2022, THE COURT ON 30.09.2022 PASSED THE FOLLOWING:

**“C.R”**

***A. BADHARUDEEN, J.***

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*CrI.M.C No.4842 of 2021*  
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*Dated this the 30<sup>th</sup> day of September, 2022*

***O R D E R***

The question involved in this matter is: does the mistake committed by the court/court staff is the sole reason to non suit an aggrieved party before the Court?

2. This CrI.M.C has been filed under Section 482 of the Code of Criminal Procedure to set aside the order condoning delay in filing complaint filed by the complainant, as per Annexure -II on the allegation that the delay was condoned without filing a petition to condone the delay, without sufficient cause and without notice to the accused. Further it is prayed to quash all proceedings under Annexure 1 complaint on the files of Judicial First Class Magistrate Court-III, Muvattupuzha, for the said ground. The petitioner

herein is the sole accused in C.C.No.645 of 2019 pending before the Judicial First Class Magistrate Court-III, Muvattupuzha vide S.T.No.2317/2019.

3. Though notice was issued to the 2<sup>nd</sup> respondent, the complainant in the above case, he did not appear.

4. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the 1<sup>st</sup> respondent.

5. It is argued by the learned counsel for the petitioner that though there is delay of 103 days in filing the complaint alleging commission of offence under Section 138 of the Negotiable Instruments Act, the complaint was filed without delay petition and the court below took cognizance without condoning the delay and Annexure-II order passed in a subsequently inserted petition, as such the same is unsustainable and the same requires interference. He would submit further that the complaint filed by the complainant is numbered as CMP.No.574/2019 and the petitioner

got notice in the said CMP, but he did not appear. It is submitted further that though in Annexure-II order, it has been stated that the delay of 103 days was condoned, no such petition was filed and no court fee also was paid. Hence, the entire cognizance is wrong and the criminal proceedings as such is liable to be quashed. The learned counsel for the petitioner placed a decision of the Apex Court reported in [(2008) 13 SCC 689 (para.26)], ***Subodh S.Salaskar v. Jayprakash M.Shah & anr.***, to contend that if the complaint is barred by limitation, the Magistrate has no jurisdiction to take cognizance under Section 138 of the Negotiable Instruments Act and therefore the direction to issue summons on the petitioner/accused, being illegal, without jurisdiction and is a nullity. Another decision reported in [2007 (6) ALL MR (JOURNAL) 1], ***Sajjan Kumar Jhunjunwala & Ors. v. M/s.Eastern Roadways Pvt. Ltd.*** to contend that an application to condone the delay in filing the complaint shall be considered after

hearing the other side and condoning the delay without issuing notice to the other side is impermissible.

6. The above legal position is not in dispute. However, it is relevant to consider whether the case on hand would fall within the ambit of the ratio of the said decisions. In this matter, CMP.No.574/2019 is the number given to the complaint filed by the complainant under Section 142 of the Negotiable Instruments Act r/w Sections 190 and 200 of Cr.P.C on 17.04.2019. At the same time, the delay condonation petition filed to condone the delay of 103 days in filing the complaint on 17.04.2019 is numbered as CMP.No.575/2019. On perusal of the delay petition numbered as CMP.No.575/2019, on the date of filing, the learned Magistrate issued notice to the respondent with direction to take steps to the complainant. Accordingly, the delay petition stood posted to 14.06.2019. On 14.06.2019, it is recorded that "notice served, accused called, absent". Hence delay of 103 days was

condoned acting on the affidavit in support of the petition. After condoning the delay on 14.06.2019, the Magistrate had taken cognizance of the matter.

7. It is submitted by the learned counsel for the petitioner that in the delay petition, there is no seal and also in the corresponding register showing remittance of court fee, the court fee affixed in the delay petition is not seen endorsed. Therefore, delay petition is a fabricated one. It is argued by the learned counsel for the petitioner that Rules 28 and 29 of the Criminal Rules of Practice have been not complied. In view of this argument, Rules 28 and 29 are extracted as under:

*"28. Date stamping of papers and initialling of FIR by Magistrates:-- (1) All papers presented in Court shall be sealed with the date stamp of the Court immediately they are received.*

*(2) Whenever a First Information Report is received in Court, the Magistrate shall initial it noting the date and time of the receipt thereof.*

*29. Cancellation of stamps:-- (1) The Presiding Officer or the Chief Ministerial Officer of the Court, shall, on receiving any*

*document which is stamped, cancel the same with his initials and date and shall also note on the top of the document the total value of the stamp the document bears.*

*(2) All court-fee stamps whether impressed or in the form of lables in very document received by the Court shall be cancelled by punching out the insignia of the State in the stamps in such a manner as to leave the amount designated on the stamp untouched."*

It is true that as per mandate of Rules 28 and 29, all papers presented in Court shall be sealed with the date stamp of the Court immediately they are received and the Presiding Officer or the Chief Ministerial Officer of the court on receiving any document which is stamped, cancel the same with his initials and date and shall note on the top of the document the total value of the stamp. Cancellation of court fee stamps by punching also is mandatory by the provisions. However, pertinent question arising for consideration is whether the omission to affix seal in the complaint or the delay petition or any other proceedings and the mere omission to show the court fee paid in a petition in the concerned register by itself is a ground to hold that the delay petition

numbered as CMP.No.575/2019 is a subsequently inserted one. In this connection, it has to be observed that in CMP.No.574/2019 as well as in CMP.No.575/2019, the seal of the court is not affixed. However, on the date of filing of the complaint itself, the Magistrate passed the orders, as I have already extracted. That apart, Annexure-XV filed by the petitioner is the copy of register of Criminal Miscellaneous Petitions. In the said register, it has been legibly noted the number given to the complaint filed on 17.04.2019 as CMP.No.574/2019 and CMP.No.575/2019 is the number given to the delay petition filed along with CMP.No.574/2019. Thus it has to be held that even though there is omission to comply with the rules in the matter of affixing the seal, etc., Annexure-XV would make it clear that the complaint and the delay petitions were filed on 17.04.2019 and the learned Magistrate ordered notice in CMP.No.575/2019.

8. Another contention raised by the petitioner is that the



petitioner received notice in CMP.No.574/2019 and he had produced Annexure-XIV certified copy of the acknowledgment card, with endorsement "CMP 574/2019 Hg 14.06.2019" before this Court to prove the said contention. However, he has not produced the content in the above registered envelop and the registered envelop. It is also relevant to note that though he had received notice to appear before the court on 14.06.2019, he did not appear. Thus it appears that the petitioner, who received notice, as evident from Annexure-XIV, did not appear before the court to see the further proceedings. Since he has not produced the contents in the registered envelop as well as the envelop which had been admittedly received, it is not safe to hold that he did not receive copy of CMP.575/2019. This aspect is fortified by his non appearance before the court on 14.06.2019, though admittedly he received notice as per Annexure-XIV.

9. In this matter, it is noticed that the petitioner asserted

filing of Tr.P(Crl.).No.6/2019 in para.10 of the petition while it is stated in para.13 that he had not filed any petitions other than Tr.P. (Crl.).No.6/2021 for the same relief. Thus which is the number of the Tr.P.(Crl.) alleged to be filed is in darkness.

10. When answering to the question as to illegality attached to Annexure-II, it is crystal clear that notice was ordered by the learned Magistrate in CMP.No.575/2019 filed by the complainant on the date of filing and on receipt of notice, the petitioner herein did not appear before the court and consequently acting on the averments in the affidavit, the delay petition was allowed and finally the delay condoned. It was thereafter cognizance was taken. Therefore, the contention raised by the petitioner that no delay petition was filed by the complainant and the delay petition is subsequently manipulated etc. are baseless allegations. It is true that as mandated under Rules 28 and 29 of the Criminal Rules of Practice, seal was not affixed not only in the delay petition but also

in the complaint. Similarly, court fee paid on CMP.No.575/2019 also not shown in the register while showing remittance of court fee in CMP.No.574/2019 in the said register. No doubt, there are omissions in the matter of compliance of Rules 28 and 29 of the Kerala Criminal Rules of Practice. The crucial question is whether non-compliance of the above Rules by the court staff treating the same as a mistake committed by the court, is a reason to non-suit the complainant herein or any party before the court. It is the settled law that fault committed by the court shall not stand in the way of non-suiting the aggrieved party before the court. The maxim "*Actus curiae neminem gravabit*" embodies the said principle. That is to say, the act of Court shall prejudice no one. In such a situation, Court is under an obligation to undo the wrong.

11. On perusal of the materials, there is nothing in this matter to hold that delay petition-CMP.No.575/2019 was not filed on 17.04.2019 and notice also was not given to the petitioner. Non

filing of CMP.No.575/2019 has been raised without any iota of bona fides and the same is found to be an absolute baseless allegation. Regarding notice, in this matter the original complaint was numbered as CMP.No.575/2019 and copy of the acknowledgment card produced by the petitioner, original of which is available in the case bundle, would go to show that the number shown therein is the number given to the complaint. However, production of the content of the registered envelop and the registered envelop as such is necessary to hold that the petitioner received notice and copy of the original complaint – CMP.No.574/2019 instead of CMP.No.575/2019. In this case in the register of CMPs, both the petitions were serially numbered on the date of filing itself and the learned Magistrate passed orders therein on that date itself. Thus it appears that there is nothing on record to hold that the delay petition CMP.No.575/2019 was not filed on 17.04.2019 and notice also was not given to the petitioner

in the said petition. One more aspect to be noted in this context is the non-appearance of the petitioner on getting notice to enquire about the proceedings.

12. Here, as I have already pointed out, the mentioning of CMP.No.574/2019 in Annexure-XIV is the trump-card on which the petitioner would assert that he did not receive notice in the delay petition. However, he did not produce the envelop and the contents he received as per Annexure-XIV to ensure that he did not receive notice in the delay petition. Thus it appears that none of the contentions raised by the petitioner are liable to sustain and therefore, Annexure-II is fully justified.

13. Therefore, this petition lacks any merit and is accordingly dismissed.

14. It is noticed that many complaints and petitions forwarded to this Court do not contain seal, as mandated under Rule 28. Similarly, non-compliance regarding noting the court fee

payable in the petition filed before a criminal court also is a serious matter. Therefore, all the subordinate courts are directed to comply with Rules 28 and 29 of the Criminal Rules of Practice in strict sense without fail.

The Registry shall forward a copy of this order to all criminal courts with a direction to comply the order.

*Sd/-*

**(A. BADHARUDEEN, JUDGE)**

*rtr/*

**APPENDIX OF CRL.MC 4842/2021**

## PETITIONER'S ANNEXURES

Annexure I	CERTIFIED COPY OF COMPLAINT IN CC NO.645/2019 BEFORE JFCM COURT NO. III, MUVATTUPUZHA.
Annexure II	CERTIFIED COPY OF PROCEEDING IN CC NO.645/2019 BEFORE THE JFCM COURT NO. III, MUVATTUPUZHA DATED 14/06/2019.
Annexure III	TRUE COPY OF CMP NO.1203/2021 IN CC NO.645/2019 BEFORE THE JFCM COURT NO. III, MUVATTUPUZHA.
Annexure IV	TRUE COPY OF CMP NO. 1205/2021 IN IN CC NO.645/2019 BEFORE THE JFCM COURT NO. III, MUVATTUPUZHA.
Annexure V	TRUE COPY OF CMP NO. 1427/2021 IN CC NO.645/2019 BEFORE THE JFCM COURT NO. III, MUVATTUPUZHA.
Annexure VI	TRUE COPY OF THE DAILY STATUS OF CC NO.645/2019 BEFORE JFCM COURT III, MUVATTUPUZHA FOR THE DATES 03/08/2021, 12/08/2021, 24/09/2021 AND 11/10/2021.
Annexure VII	TRUE COPY OF THE CHEQUE NUMBERED 038537 OF AXIS BANK, NORTH PARAVUR BRANCH AND CHEQUE NUMBERED 052074 AND 052075 OF FEDERAL BANK VARAPUZHA BRANCH PRODUCED IN CC NO.645/2019 OF JFCM COURT III, MUVATTUPUZHA.
Annexure VIII	TRUE COPY OF DISHONOUR MEMO OF CHEQUE NUMBERED 038537 OF AXIS BANK, NORTH PARAVUR BRANCH PRODUCED IN CC NO.645/2019 OF JFCM COUT NO. III, MUVATTUPUZHA.
Annexure IX	TRUE COPY OF DISHONOR MEMOS OF CHEQUES NUMBERED 052074 AND 052075 OF FEDERAL BANK, VARAPUZHA BRANCH PRODUCED IN CC NO. 645/2019 OF JFCM COURT NO. III, MUVATTUPUZHA.

- Annexure X TRUE COPY OF VOTER INFORMATION OF EPIC NO. IDZI 660935.
- Annexure XI TRUE COPY OF ORDER DATED 30/08/2016 IN CRL. MC NO.5717/2016 OF THIS HON'BLE COURT.
- Annexure XII TRUE COPY OF JUDGMENT DATED 11/07/2017 IN WPC NO.19474/2017 OF THIS HON'BLE COURT.
- Annexure XIII TRUE COPY OF ORDER DATED 13/11/2017 IN CRL MC NO.7894/2017 OF THIS HON'BLE COURT.