



2023/KER/49774

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945

WP(CRL.) NO. 1196 OF 2022

CC 290/2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, CHENGANNUR

PETITIONERS/ACCUSED 1 & 3:

- 1 ALFA ONE GLOBAL BUILDERS PVT. LTD.
BUILDING NO.TV-33/363S, IV FLOOR GRAND PLAZA, FORT ROAD KANNUR, PIN -
670001, KERALA

REPRESENTED BY ITS MANAGING DIRECTOR, MR. LUTHUFUDEEN PUTHIYAKUTTY
MAPPILAGATH
- 2 LUTHUFUDEEN PUTHIYAKUTTY MAPPILAGATH
S/O MAHAMOOD PARAPURATH, ZAINABA MANZIL, P.O. MUNDIYAD, KANNUR DIST,
PIN - 670597

BY ADVS.
ATUL SOHAN

R.REJI
SREEJA SOHAN K.
K.V.SOHAN

RESPONDENTS/COMPLAINANTS & RESPONDENTS 2 & 4:

- 1 NIRMALA PADMANABHAN, AGED 55 YEARS
W/O.RAGHUNATHU T PILLAI,"DEEPAM HOUSE", COLONY ROAD, MOORIKKOVVAL,
THAYINERI, PAYYANUR VILLAGE, PAYYANUR P.O., KANNUR DIST. PIN 670307
NOW RESIDING AT "POURNAMI", THRIPERUMTHURA P.O. CHENNITHALA,
MAVELIKARA, ALAPPUZHA DIST, PIN - 690105
- 2 M/S. THANA SQUARE
THANA SQUARE MALL, 5TH FLOOR, THANA, KANNUR DIST., PIN - 670012
REPRESENTED BY ITS MANAGING PARTNER MR. KANIYARKKAL SOOPPIKANTAVIDA
ABDUL SATHAR
- 3 MR.KANIYARKKAL SOOPPIKANTAVIDA ABDUL SATHAR
S/O IBRAHIM HAJI, BUSINESS BY PROFESSION, RESIDING AT "SHAJJAS"
CHOVVA P.O., KANNUR DIST., PIN - 670006

R1 BY ADVS.

SRI.PRAMOD M.

SRI.SAGITH KUMAR V.(K/2137/2019)

R2 BY ADVS.

SRI.ARUN BOSE.D
SRI.K.VISWAN(K/416/1993)
SRI.AKHIL S.VISHNU(K/699/2015)

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 08.08.2023, THE
COURT ON 21.8.2023, DELIVERED THE FOLLOWING:

**CR****JUDGMENT**

Dated this the 21st day of August, 2023

This writ petition is at the instance of accused Nos.1 and 3 in C.C.No.290/2022 on the files of the Judicial First Class Magistrate Court - 1, Chengannur.

2. The respondents herein are the complainant as well as accused Nos.2 and 4, in the above case.

3. The writ petitioners seek the following reliefs:

i. Quashing all proceedings in C.C 290 /2022 on the file of Judicial First-Class Magistrate Court, Chengannur which lacks jurisdiction to entertain Exhibit-P3, Complaint.

ii. Declare that the jurisdiction to entertain the Complaint under Sec. 138 of the Negotiable Instruments Act, 1881 is a Special Jurisdiction conferred by Sec. 142 of the NI Act, Notwithstanding anything contained in Criminal Procedure Code, must be strictly construed and only the Court Specified in Sec. 142(2) alone shall have the jurisdiction to entertain the complaint.



iii. Declare that the dispute between the Complainant, Writ petitioners and Respondents 2 & 3 are Civil Disputes arising out of Exhibit-P2, agreement for Specific Performance of Construction of Commercial Building in immovable property and the delay in performing the act agreed will only entail the civil consequences.

iv. Declare that the liability under the Cheque and NI Act proceedings taken over by the contracting parties, Respondents 2 & 3 the proceedings against the petitioners who are erstwhile partners is not maintainable.

v. That by virtue of the agreement between the Complainant and Accused, mediation and Arbitration are provided in the agreement and criminal prosecution is not contemplated with respect to any dispute arising and incidental to the rights arising under the agreement.

4. Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

5. I have perused the relevant records and provisions of law in this connection.

6. The learned counsel for the petitioners argued at length, to convince this Court that Judicial First Class Magistrate Court - 1, Chengannur, lacks jurisdiction to



entertain Ext.P3 complaint, as per which, the complainant launched prosecution, alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the NI Act' hereinafter), by the accused. In support of this contention, the learned counsel for the petitioners submitted that, as per Ext.P3, copy of the complaint, the address of the complainant is shown as 'Deepam House, Thayineri, Payyannur Village, Kannur District.' At the same time, in Ext.P3, it has been stated that 'Now residing at "Pournami", Thriperumthura P.O.,Mavelikkara, Alappuzha.' It is submitted by the learned counsel for the petitioners that, the cheque amount involved in the complaint is Rs.1,41,48,939/- (Rupees One Crore Forty One Lakh Forty Eight Thousand Nine Hundred and Thirty Nine only) and the said cheque was issued, pursuant to an agreement entered into between the petitioners and partners of the firm 'M/s Thana Square' and the complainant. Ext.P2 is the copy of the said agreement. In the said agreement, the address of the complainant is shown as 'Mrs.Nirmala Padmanabhan,



W/o.Mr.Padmanabhan, permanently residing at '601, Saishubham BLD.Plot No.7, Sec.8B.C.B.D, Belapur, Navi Mumbai, Maharashtra State, India.' It is also submitted that the cheque was delivered at Kannur by the petitioners, drawn on South Indian Bank Ltd., Kannur.

7. The sum and substance of the argument tendered by the learned counsel for the petitioners is that, since the cheque was delivered for collection through an account maintained by the drawer of the cheque at Kannur, the complainant at present residing within the jurisdiction of Chengannur Court, could not launch prosecution before the Judicial First Class Magistrate Court-1, Chengannur, merely on the ground that the cheque was presented for collection through State Bank of India, Chennithala branch, Alappuzha District, within the jurisdiction of Judicial First Class Magistrate Court-1, Chengannur. It is argued further that, either Section 142(2)(a) or (b) of the NI Act, does not confer jurisdiction to the Judicial First Class Magistrate Court-1, Chengannur.



8. According to the learned counsel for the petitioners, *'if the cheque is delivered for collection through an account'* contemplated under Section 142(2)(a) of the NI Act, is intended to confer jurisdiction to a court where the payee or holder in due course presents the cheque for collection and the cheque shall be one issued through an account maintained by the payee or holder in due course and the definition of the word *'delivered'* is to be understood from the word *'delivery'* as defined under Section 46 of the NI Act. It is submitted that, as per Section 46 of the NI Act, *'delivery'* means, *'the making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive'*. It is also argued that, in the instant case, the cheque was not issued through an account maintained by the payee in State Bank of India, Chennithala, though the cheque is a crossed cheque to be encashed only through an account. As such, Section 142(2)(a) of the NI Act does not confer jurisdiction to the Judicial First Class Magistrate Court - 1, Chengannur, merely because the



cheque was presented through an account maintained in a Bank, within the jurisdiction of the said court. Therefore, the complaint is liable to be quashed for want of inherent lack of jurisdiction, is the submission of the learned counsel for the petitioners.

9. Whereas, the learned counsel for the 1st respondent/original complainant placed a decision of the Apex Court in Tr.P(Crl.) No.273/2020, **M/s Himalaya Self Farming Group & Anr. v M/s Goyal Feed Suppliers**, to beat the contention of the learned counsel for the petitioners and submitted that, as per Section 142(2)(a) of the NI Act, the court within whose jurisdiction the branch of the bank where the payee maintains the account is situated, will have jurisdiction to try the offence, if the cheque is delivered for collection through an account maintained by the complainant. In the said decision, the Apex Court held as under:

The fact that the respondent has its Head Office at Siliguri and that there is no reason why it chose to file a complaint in Agra except to harass the petitioners, cannot also be a ground for seeking transfer. Under Section



142(2)(a) of the Negotiable Instruments Act, the court within whose jurisdiction the branch of the bank where the payee maintains the account is situated, will have jurisdiction to try the offence, if the cheque is delivered for collection through an account.

It is also argued by the learned counsel for the 1st respondent that, in the present case, the cheque was presented by the complainant through her account in State Bank of India, Chennithala branch and accordingly, the complaint was lodged before the Judicial First Class Magistrate Court - 1, Chengannur. Therefore, the complaint is perfectly maintainable before the Judicial First Class Magistrate Court - 1, Chengannur, as provided under Section 142(2)(a) of the NI Act.

10. The learned counsel appearing for the other respondents, who are joining hands with the petitioners, also supported the contentions raised by the learned counsel for the petitioners.

11. Now, the question to be considered herein is; *when the payee or holder in due course presents a cheque*



through an account maintained by the payee or holder in due course in a bank within the jurisdiction of a court, whether the court, where the cheque was presented for collection, has jurisdiction to entertain the complaint, alleging commission of offence under Section 138 of the NI Act?

12. In this regard, it is relevant to extract Section 142(2)(a) and (b) of the NI Act and the explanation provided to Section 142(2)(a).

Section 142(2): *The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction, -*

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the



drawee bank where the drawer maintains the account, is situated.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

13. In this connection, it is relevant to refer the circumstances, which led to amendment of Section 142 and introduction of Section 142-A of the NI Act, with effect from 15.06.2015.

14. As per the decision in **Dashrath Rupsingh Rathod v. State of Maharashtra and Anr.** reported in **[AIR 2014 SUPREME COURT 3519]**, the Apex Court, while overruling the ratio of the decision in **K.Bhaskaran v. Sankaran Vaidhyan Balan** reported in **[AIR 1999 SC 3762]**, held as under:



The proviso to S.138 features three factors which are additionally required for prosecution to be successful. In this aspect S.142 correctly employs the term 'cause of action' as compliance with the three factors contained in the proviso are essential for the cognizance of the offence, even though they are not part of the action constituting the crime. The concatenation of all these concomitants, constituents or ingredients of S.138 is essential for the successful initiation or launch of the prosecution. However, so far as the offence itself the proviso has no role to play. Accordingly a reading of S.138 in conjunction with S.177, Cr.P.C. leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed. Therefore the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank, is located. The law should not be warped for commercial exigencies. As it is 3.138 has introduced a deeming fiction of culpability, even though, S.420 IPC is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be imparted to S.138 which will render it as a device of harassment i.e. by sending notices from a place which has no casual connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account.

15. Indubitably, Section 142 of the NI Act was amended and Section 142-A was introduced with effect from 15.06.2015, to clarify the jurisdictional issue and to



address the crisis of transfer of cases as per the ratio in **Dashrath Rupsingh's** case (supra).

16. To be on the core issue, reading Section 142(2) (a) and the explanation to clause (a), it is emphatically clear that, *for the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.*

17. A conjoint reading of Section 142(2)(a) along with explanation thereof, makes the position emphatically clear that, when a cheque is delivered or issued to a person with liberty to present the cheque for collection at any branch of the bank where the payee or holder in due course, then, the cheque shall be deemed to have been delivered or issued to the branch of the bank, in which, the payee or holder in due course, as the case may be, maintains the account, and within the jurisdiction of the court, where such cheque was presented for collection,



will have jurisdiction to entertain complaint alleging commission of offence punishable under Section 138 of the NI Act. In view of the above finding, the word 'delivered' used in Section 142(2)(a) of the NI Act has no significance and significance must be given to the text '*for collection through an account*'. That is to say, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the payee or holder in due course, and the said place is decisive to determine the question of jurisdiction. Therefore, challenge raised by the learned counsel for the petitioners referring definition of the word 'delivered' contemplated under Section 46 of the NI Act could not succeed.

18. Regarding relief Nos.3 to 5, nothing argued by the learned counsel for the petitioners to substantiate the same. It appears that those reliefs cannot be granted, since the penal consequence on dishonour of the cheque should have to be suffered by the person who issued the cheque and the same cannot be delegated to another person, in any manner.



19. In fact, as per Section 143(2) of the NI Act, *the trial of a case under this Section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.* As per Section 143(3) of the NI Act, *every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.* Despite the statutory mandate, trial of the cases being stalled for years and the same, no doubt, would defeat the legislative intention.

20. Before parting, it is pertinent to observe that when question of jurisdiction to be decided, the said challenge should be raised before the same court and the said court has jurisdiction to decide the question of jurisdiction and the question of jurisdiction never be a subject matter of challenge in a writ petition. However, since this Court admitted this writ petition earlier, the



legal question is answered, in the interest of justice and to avoid multiplicity of proceedings.

21. Resultantly, this petition is found to be meritless and is accordingly dismissed.

There shall be a direction to the trial court to expedite the trial and dispose of the case, at any rate, within a period of 3 months from the date of receipt of a copy of this judgment.

Registry is directed to forward a copy of this judgment to the trial court for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

Bb

APPENDIX OF WP(CRL.) 1196/2022

PETITIONERS' EXHIBITS

- Exhibit-P1 TRUE COPY OF THE PARTNERSHIP DEED
DATED: 05-05-2011 ENTERED INTO BETWEEN
THE PETITIONER NO:2 REPRESENTING
PETITIONER NO:1, ALFA ONE GLOBAL
BUILDERS PVT. LTD AND RESPONDENT NO:3
AND REMAINING PARTNERS OF THE FIRM M/S
THANA SQUARE
- Exhibit-P2 TRUE COPY OF THE AGREEMENT DATED: 25-
11-2013 ENTERED INTO BETWEEN RESPONDENT
NO:2 AND RESPONDENT NO:1
- Exhibit-P3 TRUE COPY OF THE COMPLAINT NUMBERED AS
CC 290/2022 ALLEGING OFFENCE U/S 138 OF
NI ACT
- Exhibit-P3.1 TRUE COPY OF THE RETURNED CHEQUE DATED
15-12-2021 DRAWN ON SOUTH INDIAN BANK
KANNUR BRANCH
- Exhibit-P3.2 TRUE COPY OF THE CHEQUE RETURN MEMO
REPORT DATED 16-12-2021 ISSUED BY STATE
BANK OF INDIA CHENNITHALA BRANCH
- Exhibit-P3.3 TRUE COPY OF THE LAWYER NOTICE
DATED:12-01-2022 ISSUED BY K VIJAYA
KUMAR, ADVOCATE PAYYANUR ON BEHALF OF
RESPONDENT NO:1
- Exhibit-P3.4 TRUE COPY OF THE REPLY NOTICE DATED:
24-01-2022 ISSUED ON BEHALF OF THE
PETITIONER BY ADV. K VISWAN, KANNUR
- Exhibit-P4 TRUE COPY OF THE DEED OF RETIREMENT
DATED :20-07-2022
- Exhibit-P5 TRUE COPY OF THE AGREEMENT DATED: 21-
07-2022 ENTERED INTO BETWEEN
PETITIONERS AND RESPONDENT NO:2
REPRESENTED BY RESPONDENT NO:3

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE