

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 28TH DAY OF MARCH 2023 / 7TH CHAITHRA, 1945

CRL.REV.PET NO. 267 OF 2023

CRIME NO.610/2021 OF KANJAR POLICE STATION, IDUKKI
AGAINST THE ORDER DATED 27.09.2022 IN CMP 3089/2021 OF CHIEF
JUDICIAL MAGISTRATE, THODUPUZHA

REVISION PETITIONER/COMPLAINANT :-

ABIN P. BENNY, AGED 30 YEARS
S/O. BENNY, AGED 30 YEARS, PLATHOTTATHIL HOUSE,
MOOLAMATTAM EAST P.O., ARAKKULAM VILLAGE, THODUPUZHA
TALUK, IDUKKI DISTRICT, PIN - 685589

BY ADVS.
GEORGE MATHEW
ELSA DENNY PINDIS
M.D.SASIKUMARAN
SUNIL KUMAR A.G
MATHEW K.T.
GEORGE K.V.
STEPHY K REGI
ADARSH KURIAN

RESPONDENTS/STATE & ACCUSED :-

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
- 2 KALESH M.S, S/O. SUBARAHMANYA,
AGED 53 YEARS, PALAPARAMBIL HOUSE, PACHALAM,
PALAPARAMBIL ROAD, ERNAKULAM, KOCHI, PIN - 682012

BY SRI.M.C.ASHI, PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 28.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 28th day of March, 2023

The revision petitioner is the complainant in C.M.P.No.3089 of 2021 and C.M.P.No.3088 of 2021 of the Chief Judicial Magistrate Court, Thodupuzha. The complaint has filed against the second respondent, alleging commission of offence under Section 138 r/w 142 of the Negotiable Instruments Act.

2. The learned Magistrate ordered notice to the accused in the address shown in the complaint. As the notice was returned unserved, the petitioner was directed to take steps in the correct address. The impugned order dismissing the CMP No.3089 of 2021 was passed finding fault with complainant for having failed to take necessary steps, despite repeated directions from the court.

3. The learned counsel for the petitioner submitted that the notice issued somehow caused to

be returned by the accused. As a matter of fact, the accused is residing in the very same address has approached the Sessions Court in Crl.M.C.No.895 of 2021 and has filed Bail Application No.8248 of 2021 before this Court, showing the same address. In such circumstances, it was impossible for the petitioner to take out notice to different address. This fact was brought to the notice of the learned Magistrate, the court insisted to take out notice in the correct address and later dismissed the complaint for failure to abide by the direction.

4. In the instant review petition, notice has been taken out to the first respondent, initially through speed post and thereafter through special messenger could not be served. The petitioner was therefore permitted to serve notice on the counsel appearing for the second respondent in Bail Application No.8248 of 2021 before this Court. Accordingly, the petitioner served notice on the

counsel. Inspite of such service, there is no appearance for the second respondent. Hence, there appears to be merit in the allegation that the second respondent is deliberately evading the notices issued from courts. As such, the petitioner cannot be held to be at fault for not furnishing the correct address of the respondent.

In the result, the Revision Petition is allowed. C.M.P No.3089 of 2021 in C.M.P.No.3088 of 2021 are restored to the files of the Chief Judicial Magistrate Court, Thodupuzha. The learned Chief Judicial Magistrate shall permit the petitioner to once again take out notice to the accused in the address shown in the complaint through post and if required, resort to other modes of service also.

Sd/-
V.G.ARUN
JUDGE

SMA