



2025:KER:14992

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 21ST DAY OF FEBRUARY 2025 / 2ND PHALGUNA, 1946

OP(CRL.) NO. 352 OF 2024

IN CC NO.467 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST
CLASS - II, MAVELIKKARA

PETITIONER/COMPLAINANT:

RESHMA RAJ, AGED 31 YEARS, D/O RAJAN.K , KRISHNA
VILASAM, CHARUMOOD, KANNANAKUZHY P.O,
THAMARAKULAM VILLAGE, MAVELIKARA TALUK, ALAPPUZHA
DISTRICT, REPRESENTED BY POWER OF ATTORNEY
HOLDER: RAJAN.K, AGED 58 YEARS, S/O LATE
UNNIKRISHNA PANICKER, CHARUMOOD, KANNANAKUZHY
P.O, THAMARAKULAM VILLAGE, MAVELIKARA TALUK,
ALAPPUZHA DISTRICT, PIN - 690505

BY ADVS. RINNY STEPHEN CHAMAPARAMPIL
ASHA ELIZABETH MATHEW
NEENA ELISABATH ANTONY

RESPONDENTS/ACCUSED:

- 1 RAMACHANDRAN NAIR, AGED 70 YEARS
S/O. LATE GOVINDAN NAIR KOTTAKKATTU KIZHAKKATHIL
HOUSE THRIKKANNAMANGAL MURI, KOTTARAKKARA P.O.,
KOTTARAKKARA TALUK, KOLLAM DISTRICT, PIN - 691506
- 2 HARIKUMAR.R, S/O RAMACHANDRAN NAIR, KOTTAKKATTU
KIZHAKKATHIL HOUSE THRIKKANNAMANGAL MURI,
KOTTARAKKARA P.O., KOTTARAKKARA TALUK, KOLLAM
DISTRICT- 691, PIN - 691506
- 3 STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031

SRI.M.P. PRASANTH, PP

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON
21.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

The petitioner is the complainant and the respondents 1 and 2 are the accused in C.C.No.467/2021. The petitioner filed a private complaint against respondents 1 and 2 under Section 142 of the Negotiable Instruments Act (for short, the NI Act) alleging offence punishable under Section 138 of the NI Act before the Judicial First Class Magistrate Court-II, Mavelikara (for short, the trial court). The learned Magistrate took the complaint on file as C.C.No.467/2021 and issued process to respondents 1 and 2 who entered appearance.

2. Thereafter, the petitioner left to UK in connection with her studies. She therefore appointed her father Sri. Rajan as the power of attorney holder to conduct the case. The father of the petitioner filed Ext.P3 application before the trial court along with the power of attorney, to receive the power of attorney and to permit him to prosecute the case. The said application was dismissed as per Ext.P4 order. It is under challenge in this original petition.

3. I have heard Sri. Rinny Stephen Chamaparambil, the learned counsel for the petitioner. There is no appearance for the respondents 1 and 2.

4. The trial court dismissed Ext.P3 application mainly on the ground that there is no averment in the original complaint that the power of attorney holder had knowledge of the transaction in question. The trial court relied on the decision of the Apex Court in



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Narayanan A.C. & Another v. State of Maharashtra & Others

[2013 (3) KHC 885(SC)] and the decision of a Single Bench of this Court in **Shibu L.P. v. Neelakantan & Another** [2022 (4) KLT 592].

Those two decisions are not applicable to the facts of this case, inasmuch as those two decisions dealt with filing of a complaint through a power of attorney. The dictum laid down in those decisions is that when a complaint is filed through a power of attorney holder, there should be averment in the complaint that the power of attorney holder has the knowledge of the transaction. This is a case where the complaint was not filed through the power of attorney holder. The power of attorney holder was introduced only at a later point of time since the original complainant left to UK for studies. Therefore, the absence of pleading in the complaint is immaterial. In these circumstances, I hold that the impugned order is not sustainable. Accordingly it is set aside. Ext.P3 stands allowed.

The original petition is disposed of.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

kp



APPENDIX OF OP(CRL.) 352/2024

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE COMPLAINT FILED BY
THE PETITIONER BEFORE THE JFCM COURT-II,
MAVELIKARA NUMBERED AS CC 467/2021
- Exhibit P2 A TRUE COPY OF THE ADDITIONAL AFFIDAVIT
FILED BY THE 2ND RESPONDENT IN O.P. (HMA)
NO.3/2020 OF THE FAMILY COURT,
MAVELIKARA
- Exhibit P3 A TRUE OF THE PETITION FILED BY THE
PETITIONER BEFORE THE JFCM COURT-II,
MAVELIKARA IN CC NO.467/2021 TO ACCEPT
THE POWER OF ATTORNEY
- Exhibit P4 A TRUE COPY OF THE ORDER DATED
25/03/2024 OF THE JFCM COURT-II,
MAVELIKARA IN CC NO.467/2021