

(2011) 04 KL CK 0005
In the High Court Of Kerala
Case No : Tr. P. (Criminal) No. 25 of 2011

Raju Joseph (C.T.O.)

APPELLANT

Vs

Shine. M.S. and State of Kerala

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 04 KL CK 0005

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : P. Santhalingam, for the Appellant; Sunil Nair Palakkat, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Petitioner is accused in C.C. No. 4 of 2011 of the Court of learned Judicial First Class Magistrate-II, Vaikom for offence punishable u/s 138 of the Negotiable Instruments Act. Prayer in this petition is to order transfer of the said case the Court of learned Judicial First Class Magistrate-I, Aluva on the ground that the former Court has no territorial jurisdiction to entertain the complaint and take cognizance of the offence. Learned Senior Advocate appearing for Petitioner contended that no part of the cause of action has arisen within the local limits of learned JFCM-II, Vaikom and hence learned Magistrate could not have taken the complaint on file or taken cognizance of the offence against the Petitioner. Learned Senior Counsel has placed reliance on Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another, .

2. Learned Counsel for the first Respondent submitted that the complaint was originally filed before learned Judicial First Class Magistrate's Court-I, Vaikom, it was taken on file as C.C. No. 431 of 2010 and later, made over to the Court of learned Judicial Magistrate-II, Vaikom for trial and disposal where the case was renumbered as C.C. No. 4 of 2011. According to the learned Counsel, Petitioner

appeared before learned JFCM-II, Vaikom and was released on bail but, later, he did not appear in court. Thereupon bail bond was cancelled and non-bailable warrant was issued to the Petitioner. Now the case is posted for trial on 29.4.2011. According to the learned Counsel, learned Judicial First Class Magistrate-I, Vaikom, before whom the complaint was originally filed, had jurisdiction to entertain the complaint and take cognizance of the offence.

3. A Single Judge of this Court in *Jiji K. Babu v. Gandhi Raman* 2010 (3) KLT 511 has held that the power u/s 201 of the Code of Criminal Procedure (for short, "the Code") can be exercised even at post cognizance stage. If Petitioner has a contention that learned Judicial First Class Magistrate-I, Vaikom, before whom the complaint was originally filed or, the learned Magistrate who took cognizance of the offence had no authority to do so on account of want of territorial jurisdiction, appropriate procedure is to raise that contention before learned Judicial First Class Magistrate-II, Vaikom (where the case is now pending). In case learned Magistrate finds that the Court which entertained the complaint and took cognizance had no territorial jurisdiction to do so, it is within the power of the said Court to return the complaint for presentation in the Court having jurisdiction as provided u/s 201 of the Code. A Division Bench of this Court in *Thressiamma Vs. State of Kerala*, has held that any objection regarding territorial jurisdiction has to be raised at the earliest stage and at any rate before commencement of a trial (trial would commence when particulars of the offence is read over to the accused and he pleads not guilty).

4. It is not clear from the submissions of the learned Counsel on both sides whether particulars of offence has been read over to the Petitioner or not. Hence, I am not going into that question in this proceeding. I make it clear that it is open to the Petitioner to raise the question of lack of territorial jurisdiction as he pleads before the learned Magistrate as directed by the Division Bench in the decision referred supra. If any such objection is raised at the appropriate stage as directed by the Division Bench, learned Magistrate shall decide on that objection as provided under law. Petitioner cannot approach this Court with a petition for transfer of the case to some other Court, which alone, according to the Petitioner, has territorial jurisdiction to entertain the complaint and take cognizance of the offence.

This Transfer Petition is closed with the above observation.