

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

Cr1.MC.No. 626 of 2015

AGAINST JUDGMENT IN CRL.A NO. 157/2010 OF SESSIONS JUDGE, KALPETTA
DATED 19-07-2011

PETITIONER/ACCUSED:

MUHAMMED SAMEER A.A,
S/O.ABU, ANNAKKAMPALAN HOUSE, THOVERIMALA POST,
NENMENI VILLAGE, SULTHAN BATHERY TALUK,
SULTHAN BATHERY, WAYANAD.

BY ADV. SRI.M.R.SASITH

RESPONDENTS/STATE :

1. THE STATE OF KERALA
REPRESENTED THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
2. M/S.SREE GOKULAM CHITS AND FINANCE COMPANY (P)LTD.
KIZHAKKEBHAGATH COMPLEX,
SULTHAN BATHERY - 675 001 REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE SHRI.K.N.SUNIL,
S/O.NARAYANAN, KANDAMCHIRYILK(H), MYLAMBADI,
PURAKKADI AMSOM, SULTHAN BATHERY-673592.

R2 BY ADV. SRI.V.VINAR
BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 626 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: COPY OF THE JUDGMENT IN CRL.A NO.157/2010 OF THE COURT OF SESSION JUDGE, WAYANAD.

ANNEXURE A2: COPY OF THE JUDGMENT IN CRL.R.P NO.200/2013

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.626 of 2015

Dated this the 3rd day of February, 2015

O R D E R

The petitioner herein stands convicted and sentenced under Section 138 of the Negotiable Instruments Act. The conviction was confirmed in appeal, and also in revision before this Court. However, the sentence was modified by this Court. Accordingly, the substantive sentence was reduced to imprisonment till rising of the court, and the petitioner was further sentenced to pay a fine of ₹1,47,000/-. ₹1,45,000/- was ordered to be paid as compensation to the complainant from the fine amount under Section 357(1) (b) of Cr.P.C. The petitioner was also given some time to make payment of the fine amount. Instead of remitting the amount of fine in court, the petitioner wrongly made payment of compensation directly to the complainant. Now he apprehends that he will be arrested in execution of the warrant of arrest issued from the trial court in enforcement of the sentence modified in revision by this Court. The complainant in the proceeding is now before the court,

represented by a counsel. The learned counsel for the complainant submits that the complainant has received the amount of compensation due from the petitioner. In view of the payment directly made to the complainant, the petitioner now seeks orders under Section 482 of the Code of Criminal Procedure directing the court below to record payment of compensation appropriately.

2. In an identical situation this Court directed the trial court to record payment of compensation, in **Beena v. Balakrishnan Nair and another** (2010(2) KHC 851) and **Sivankutty v. John Thomas and another** (2012(3) KHC 676). Of course this decision cannot be taken as a precedent. In the special circumstances of those case, this Court directed the trial court to record payment in the proceedings. Anyway, here also the petitioner bonafide believed that the payment could be made directly to the complainant and accordingly he made payment of compensation to the complainant. Still the balance amount of ₹2,000/- will have to be paid by him as fine due to the State. In view of the decisions of this Court in **Beena v. Balakrishnan Nair** and **Sivankutty v. John Thomas**, the petitioner can be permitted to surrender before the trial court to serve out the sentence, make payment of the fine amount and

make application to record payment of compensation in the registers. He will have to surrender before the learned Magistrate within seven days and make application. Along with the application to record payment, the petitioner will have to file affidavit proving payment of compensation. If proper application is made, it can be accepted by the trial court and payment of compensation can be recorded in the proceeding as directed by this Court in **Beena v. Balakrishnan Nair** and **Sivankutty v. John Thomas**.

In the result, this Criminal Miscellaneous Case is closed with direction to the court below, that in case the petitioner surrenders within a period of seven days from this date to serve out the sentence, to remit the amount of fine due from him, and to make application for recording payment of compensation along with proper affidavit, it shall be entertained, and if payment is proved, it shall be recorded.

**P.UBAID
JUDGE**

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