

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Cr1.MC.No. 33 of 2014

IN CC 257/1998 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT
II, HOSDRUG

PETITIONER/ACCUSED:

M.KRISHNAN NAIR, AGED 58 YEARS,
S/O. M.MALINGU NAIR, ASHOK NIVAS, MUNNAD P.O,
KASARAGOD DIST.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS/COMPLAINANT AND STATE:

1. A.KUNHIKRISHNAN NAIR, AGED 55 YEARS,
S/O. MUTHU NAIR, KIZHAKKEVEEDU P.O., PANAYAL,
VIA BEKAL, HOSDURG-671315.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.T.K.VIPINDAS

R1 BY ADV. SRI.K.V.SREE VINAYAKAN

R1 BY ADV. SRI.K.M.MUHAMMED HUSSAIN

R2 BY SR. PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 33 of 2014

APPENDIX

PETITIONER'S ANNEXURES

ANNEXURE A1- COPY OF THE JUDGMENT IN CRL.APPEAL NO. 86/2001 ON
THE FILE OF COURT OF SESSIONS, KASARGOD.

ANNEXURE A2- COPY OF THE JUDGMENT IN CRL.R.P.NO. 1780/2004 ON
THE FILE OF THIS HON'BLE HIGH COURT OF KERALA.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.33 of 2014

Dated this the 6th day of January, 2015

O R D E R

The petitioner herein stands convicted and sentenced under Section 138 of the Negotiable Instruments Act. The trial court sentenced him to undergo simple imprisonment for six months. But in appeal, the Court of Session, Kasaragod modified the sentence. Accordingly, the sentence was reduced to imprisonment till rising of the court, and the petitioner was directed to pay a compensation of ₹65,000/- to the complainant. The revision filed by the petitioner before this Court as Crl.R.P No.1780/2004 was also dismissed on 19.12.2012. The grievance projected by the petitioner in this proceeding brought under Section 482 of the Code of Criminal Procedure is that when he tendered the amount of compensation much after the dismissal of the revision, the learned Magistrate declined and rather proceeded for other steps in execution of the default sentence imposed. The petitioner seeks orders from this Court, directing the trial court to accept the amount of compensation from the petitioner.

2. It is not known why the petitioner is not allowed by the trial court to surrender and to make payment of compensation. Even in cases where time to surrender or to make payment of

compensation is given by this Court or the appellate court, and the accused failed to make payment in time, the trial court will have to receive the amount of compensation/ fine because time is granted by the court in appeal or in revision only with the object of avoiding coercive steps during a particular period. Just because the accused failed to make payment of compensation in time, the trial court cannot say that the amount cannot be received after the fixed time, or that the accused cannot surrender and serve out the sentence after the time fixed by the court. On dismissal of the revision by this Court, the petitioner is bound to surrender before the trial court to serve out the sentence, and to make payment of compensation. If he failed, naturally the trial court will initiate coercive steps to execute the sentence. It is not known whether the court below has initiated such steps. Anyway, once the petitioner surrenders before the learned Magistrate and tenders the amount of compensation, the learned Magistrate will have to accept it and permit the petitioner to serve out the sentence till rising of the court.

With these observations this Criminal Miscellaneous Case is closed.

**P.UBAID
JUDGE**

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