

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 12TH DAY OF MAY 2015/22ND VAISAKHA, 1937

CrI.MC.No. 2807 of 2015

**AGAINST THE ORDER IN CRL.M.P.NO.352/2015 IN CRL.APPEAL NO.22/2015
OF THE SESSIONS COURT, KOLLAM DATED 07.02.2015**

PETITIONER/ACCUSED :-

**G.KRISHNAKUMAR, S/O.GOPALAN,
AGED 59 YEARS, KRISHNAGEETH,
HOUSE NO.150, KOTTAKKAKAM WARD,
CANAL ROAD, KALLUPALAM,
KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S)/COMPLAINANT :-

- 1. DR.RAJKUMAR SAMUEL,
VELIYIL BUNGLOW,
NEAR SN COLLEGE JUNCTION,
KOLLAM, PIN - 691 001.**
- 2. STATE REPRESENTED BY THE STATION HOUSE OFFICER,
KOLLAM WEST POLICE STATION,
KOLLAM THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

R2 BY SRI.THOMAS JOHN AMBOOKAN, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12-05-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS :

ANNEXURE A1 : TRUE COPY OF THE JUDGMENT DT.4-8-2014 IN ST.NO.47/2012 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, KOLLAM.

ANNEXURE A2 : TRUE COPY OF THE ORDER IN CRMP 352/2015 IN CRA 22/15 DT.7-2-15 OF THE SESSIONS COURT, KOLLAM.

ANNEXURE A3 : TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM KIMS HOSPITAL, THIRUVANANTHAPURAM TO THE PETITIONER DT.13-3-2013.

ANNEXURE A4 : TRUE COPY OF THE TREATMENT CERTIFICATE ISSUED FROM MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM DT.7-5-2015.

ANNEXURE A5 : TRUE COPY OF THE APPLICATION IN CRMP 1254/15 IN CRMP 352/15 IN CRA 22/15 OF THE SESSIONS COURT, KOLLAM.

RESPONDENT(S)' EXHIBITS :- NIL

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//TRUE COPY//

P.A. TO JUDGE

ALEXANDER THOMAS, J

Crl.M.C.No.2807 of 2015

Dated this the 12th day of May, 2015

ORDER

This Criminal Miscellaneous case, has been filed seeking the invocation of this Court's inherent power conferred under Section 482 of Code of Criminal Procedure with the following prayer;

For the above reasons and other valid grounds that are to be urged at the time of hearing it is most humbly prayed in the interest of justice that this Honourable Court may be pleased to quash Annexure-A2 Order in Crl.M.P.No:352/2015 in Crl.Appeal No:22/2015 of the Sessions Court, Kollam to the extent it orders directing the Petitioner to remit ₹16,500/- of the Cheque amount and allow this Criminal Miscellaneous Case, release the Petitioner on Bail and grant sufficient time to the Petitioner to execute the Bail Bond in compliance of the directions in Annexure-A2 Order.

2. The petitioner was convicted by Annexure-A1 judgment dated 04.08.2014 in ST No.47/2012 on the file of the Court of Chief Judicial First Class Magistrate-III, Kollam for offence punishable under Section 138 of the Negotiable Instruments Act and undergo the sentence of three months imprisonment and fine of ₹1,65,000/- with default clause.

Aggrieved by the Annexure-A1 judgment, the petitioner instituted Crl.Appeal No.22/2015 before the Session Court, Kollam and had moved Criminal Miscellaneous Petition No.352/2015 for prayer to suspend the execution of the impugned sentence. As per Annexure-A2 order dated 07.02.2015, the Court of Session, Kollam ordered on Crl.M.P.No.352/2015 in Criminal Appeal No.22/2015 that the sentence imposed by the trial court will stand suspended on the following conditions;

1. On depositing ₹16,500/- (Rupees Sixteen Thousand Five Hundred only) being a portion of fine awarded within 30 days from today.

2. On executing a self bond for ₹25,000/- (Rupees Twenty Five Thousand only) with two solvent sureties for the like amount to the satisfaction of the court below.

3. It is pointed out as the petitioner could not comply with the aforementioned condition No.1 to deposit ₹16,500/-, within the stipulated time limit, the Court below issued non-payable warrant against the petitioner and in S.T. No.47/2012 and accordingly the 2nd respondent arrested on 05.05.2015 and produced before the Judicial First Class Magistrate Court-III, Kollam on 05.05.2015, the learned Magistrate remanded the petitioner into judicial

custody, continuing as Convict No.1625 in District Jail, Kollam. It is for modifying the impugned aforementioned condition No.1 imposed in Annexure-A2 appellate order that the petitioner has approached this Court with the Criminal Miscellaneous case.

4. Shri.B.Mohan Lal, learned counsel for the petitioner would urge that in view of the decision of this Court in the case **Mohammed Vs.State of Kerala** reported in **2006(1) KLT 970** and that of the Apex Court in the case **Dilip Vs. Kotak Mahindra Company Limited** reported in **2007(2) KLT 488(SC)**, it is the statutory obligation of the Appellate Court to impose only reasonable conditions while considering the suspension of impugned sentence in criminal matters and accordingly, the learned counsel would urge that since the appellant is not in a financial position to comply with the aforementioned impugned condition of cash deposit, the said order may be vacated by this Court by invoking his inherent powers confirmed under Section 482 of the Code of Criminal Procedure.

5. Heard. After hearing Shri.B.Mohan Lal, learned

counsel for the petitioner and the learned Public Prosecutor appearing for the 2nd respondent, it will be ordered in the interest of justice that the impugned condition No.1 of Annexure-A2 order directed to deposit ₹16,500/- shall be vacated and accordingly it is ordered and clarified that in view of the vacating of the impugned condition No.1 in Annexure-A2 order, the sentence imposed by the trial court shall stand suspended on the petitioner executing bond for ₹25,000/- (Rupees Twenty Five Thousand only) and on furnishing two solvent sureties for the like sum to the satisfaction of the court below concerned.

6. The petitioner will be released on bail without any further delay on a production of the certified copy of this order and on executing bond for ₹25,000/- and on furnishing two solvent sureties for the like sum to the satisfaction of the court below concerned.

Accordingly, the Crl.M.C. stands finally disposed.

Sd/-
**ALEXANDER THOMAS
JUDGE**

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//TRUE COPY//

P.A. TO JUDGE