

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

Crl.MC.No. 2779 of 2014 ()

CC 641/2008 of J.M.F.C.,CHAVAKKAD DATED 26-02-2014

PETITIONER(S)/ACCUSED :

**LENIN.A.A., AGED 46 YEARS
S/O.APPUNNI, ARANGATH HOUSE, THRITHALLUR
VADANAPPILLY VILLAGE, VADANAPPILLY DESOM
CHAVAKKAD THALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER**

RESPONDENT(S)/COMPLAINANT & STATE :

**1. ROSHAN,, AGED 41 YEARS
S/O.BHASKARAN, MULLAPPILLY VEETIL, PALLURUTHY DESOM
ERNAKULAM DISTRICT (NOW RESIDING AT ENGANDIYOOR VILLAGE
CHANASSERY VEETIL)
REP. BY POWER OF ATTORNEY HOLDER PRAMOD
S/O.MANANGATH KRISHNANKUTTY, IDASSERY DESOM
THALIKULAM VILLAGE, CHAVAKKAD TALUK. 680 569**

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

**R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R2 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 2779 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE-A1 :** COPY OF THE JUDGMENT DATED 26.02.2014 IN CC
NO.641/2008 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, CHAVAKKAD.
- ANNEXURE-A2 :** CERTIFIED COPY OF THE ORDER DATED 26.03.2014 OF
THE FIRST ADDITIOPNAL SESSIONS JUDGE, THRISSUR
IN CRL.M.P.NO.1317/2014 IN CRIMINAL APPEAL
NO.94/2014.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

MARY JOSEPH, J.

Crl.M.C.No.2779 of 2014

Dated this the 16th day of September, 2015

ORDER

Petitioner herein is the accused in C.C.No.641/2008 of the Judicial First Class Magistrate Court, Chavakkad, a prosecution launched under Section 138 of the Negotiable Instruments Act.

2. The case was tried before that court and the petitioner was convicted and sentenced to undergo simple imprisonment for a period of 6 months and to pay compensation of Rs.10,40,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure and in default to undergo simple imprisonment for 3 months. Against the judgment, he has preferred Crl.Appeal.No.94/2014 before the 1st Additional Sessions Court, Thrissur. Crl.M.P.No.1317/2014 was also filed to suspend the execution of the sentence and enlarge him on bail. The learned Sessions Judge was pleased to allow

the petition. The order passed reads as follows.

“Execution of impugned sentence is suspended on the appellant/accused executing bond for Rs.25,000/- with two sureties each for the like amount to the satisfaction of Judicial First Class Magistrate, Chavakkad within one month from today and on deposit of Rs.1,00,000/-(Rupees One lakh only) before the same court within 2 months from today.”

3. The court below was pleased to suspend the execution and enlarge the petitioner on bail on compliance of two conditions prescribed i.e., to execute a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the Judicial First Class Magistrate Court, Chavakkad within one month and to deposit Rs.1,00,000/- before the court within 2 months.

4. According to Sri.O.V.Maniprasad, learned counsel for the petitioner, the petitioner has already execute a bond for Rs.25,000/- with two solvent sureties and therefore, the 1st part of the direction in the impugned order was complied with and what remains is the compliance of the second part of the order i.e., deposit of

Rs.1,00,000/-. According to the learned counsel, the petitioner is aggrieved by the part of the order, directing him to deposit Rs.1,00,000/- and therefore, he has approached this Court in challenge of the same.

5. It is contended by Sri.O.V.Maniprasad, learned counsel for the petitioner that the cheques on the basis of bouncing of which the prosecution under Section 138 was launched were obtained while settling in mediation of a claim for specific performance of the contract. According to him, therefore, the cheques were issued not in discharge of a legally enforceable debt and the said contention was taken specifically at the trial stage, but, the learned Magistrate failed to take that into consideration and convicted the petitioner and sentenced him erroneously. The matter was taken up in appeal and it is pending consideration of the appellate court. The impugned conditional order was passed by the appellate court in the said circumstances and so far as it directs the deposit of Rs.1,00,000/- as condition precedent to

suspend the execution of the sentence is wrong and unsustainable and is liable to be quashed in the interest of justice.

6. The further argument of the petitioner was that the aforesaid condition imposed by the appellate Court is onerous to the petitioner who is hailing from a poor financial background. According to him there is every possibility for him to succeed in the appeal and considering his poor financial status, the condition under challenge is required to be quashed.

7. Per contra, Sri.G.Sreekumar, learned counsel appearing for the respondent raised a contention that the amount due under the cheque being issued for a huge sum, the order imposing condition under challenge is sustainable and not required to be quashed. According to him, considering the huge amount involved in the prosecution, the learned Sessions Judge in seizin of the appeal is correct and perfectly justified in the matter of imposition of the condition under challenge as a condition

precedent for suspending the extension of the sentence.

8. In view of the divergent contentions raised in the course of the argument before me, it is desirable to have a look at the legal provision in the Code of Criminal Procedure empowering a court of Session exercising the power of appeal to suspend the sentence and grant bail.

9. Section 389 of the Code of Criminal Procedure is the provision concerned and it is reproduced hereunder to have an easy reference:-

“Suspension of sentence pending the appeal;
release of appellant on bail.-

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a

convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) Where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) Where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section(1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

10. The section does not say that the court

exercising the authority to suspend sentence during appellate stage is bound to impose the condition as the one under challenge in the case on hand. Suspension of the sentence has the effect of mere detention in custody without serving the sentence. Therefore, Section 389 contemplates release of the accused on bail also. Bail to a convicted person is not a matter of right. Only when the court is convinced after reading the judgment and hearing the accused that he is justified in enlarging the accused on bail, that it is granted. When bail is granted, the court is bound to get the bond executed by two solvent sureties. Imposition of the condition under challenge is not prohibited by the code. Therefore, it is up to the court in seizin of the matter to impose restrictions while granting bail after suspending the sentence or in other words, the court is under discretion to impose conditions. Therefore, the court which imposed the condition of the nature under challenge cannot be find fault with.

11. The petitioner in the case on hand has

apprised this Court about his financial backwardness and inability to deposit the huge sum in compliance of the condition under challenge. These aspects are not controverted also.

12. Taking into account of the peculiar circumstance of financial stringency of the petitioner, this Court is inclined to set aside the impugned order in Crl.M.P.No.1317/2014 dated 26.03.2014 to the extent it directs the petitioner to deposit Rs.1,00,000/- as a condition precedent for suspension of sentence.

13. This Court while disposing of Crl.M.A.No.4886/2014 in this Criminal Miscellaneous case has ordered that the execution of the bond by the petitioner in compliance of the direction in the impugned order will be deemed sufficient compliance for suspending the sentence for the time being till disposal of this petition. In view of the aforesaid discussion, this court is inclined to set aside the impugned order as it directs the petitioner to deposit Rs.1,00,000 before the court as a

condition precedent for suspending the execution of the sentence.

14. Sri.G.Sreekumar, learned counsel for the respondent has, in the course of his argument, also urged for a direction to the Court of Session concerned for a time bound disposal of the appeal. Being a matter of 2014, I am declined to issue such a direction as it will prejudice the claim of those in the queue ahead of him with a litigation long pending. However, the 1st Additional Sessions Judge, Thrissur is directed to take all earnest efforts to dispose of the appeal pending therein as Crl.Appeal.No.94/2014 at the earliest possible opportunity.

Sd/-
**MARY JOSEPH
JUDGE**

VS