

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

Crl.MC.No. 4552 of 2015

ST 51/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - II, IDUKKI.

PETITIONER:

**BIJU SEBASTIAN, AGED 39,
S/O. SEBASTIAN, THEKKEKKUTTU HOUSE,
SANTHIGRAM P.O., ERATTAYAR,
KALKOONTHAL VILLAGE, UDUMBANCHOLA TALUK,
IDUKKI DISTRICT.**

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 001.**
- 2. BABY, S/O. MATHEW, PAIKAYIL HOUSE,
MARIYAPURAM KARA, THANKAMANI VILLAGE,
UDUMBANCHOLA TALUK, IDUKKI DISTRICT, PIN - 685 515.**

R1 BY PUBLIC PROSECUTOR SRI.GITHESH.R

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE I: TRUE PHOTOCOPY OF THE ORDER IN CRL.R.P.NO.3023/2010
PASSED BY THIS HONOURABLE COURT DATED 13.10.2010.**

**ANNEXURE II: TRUE PHOTOCOPY OF THE ORDER IN CRL.M.A.NO.3556/2015
IN CRL.R.P.NO.3023/2010 PASSED BY THIS HONOURABLE
COURT DATED 13.7.2015.**

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No.4552 of 2015

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Dated this the 13th day of August, 2015

O R D E R

The prayer in this Crl.M.C. is as follows:

“.....to admit this Criminal Miscellaneous Case and direct Judicial First Class Magistrate Court-II, Idukki to permit the petitioner to deposit the sum of Rs.30,000/- payable under Annexure-1 order which arises from the judgment of conviction in S.T.No.51/2008 on the files of JFCM-II, Idukki, within a time to be stipulated by this Honourable court and to permit him to suffer the sentence of imprisonment till rising of the court on a date to be fixed by this Honourable court, in the interest of justice.”

2. This Court has passed order dated 29/07/2015 in Crl.M.A.No.6946/2015 in this Crl.M.C. which reads as follows:

“The petitioner herein was the accused in S.T.No.51/2010 on the files of Judicial First Class Magistrate Court-II, Idukki, involving offence under Section 138 of the Negotiable Instruments Act. After trial, the petitioner was convicted by the trial court and was ordered to pay a fine of Rs.30,000/- and with a default clause of simple imprisonment. The matter was taken up in appeal by the petitioner in Crl.Appeal.No.153/2001 on the file of 3rd Addl.District and Sessions Court, Adhoc-1, Thodupuzha which turned out to be unsuccessful. Thereupon, the petitioner preferred Crl.R.P.No.3023/2010 before this Court, wherein this Court as per Annexure A1 judgment dated 13.10.2010 confirmed the conviction and granted time till 14.02.2011 to pay the fine amount of Rs.30,000/- or in default to suffer simple imprisonment for 45 days. It is pointed out that the petitioner could not pay the aforesaid fine amount of Rs.30,000/- in respect of conviction as he was financially impecunious. It is pointed out that the petitioner has now mobilised the amount and the learned counsel for the petitioner that the petitioner undertakes that the said fine amount of Rs.30,000/- will be deposited by him before the Judicial First Class Magistrate Court-II, Idukki. It is accordingly prayed that further coercive steps taken in pursuance of the execution of sentence in question may be kept in

abeyance. The petitioner relies on the rulings of this Court in Sreedharan v. Bharathan reported in 2014 KHC 2522 = 2014(1) KLT 236(DB), A.C.Anwar and Others v. State of Kerala and Others reported in 2007 (4) KHC 758 = 2007 (2) KLD 646 etc.

2. Accordingly, in the interest of justice, it is ordered that, in the event of the petitioner depositing an amount of Rs.30,000/-(Rupees Thirty thousand only) as the fine amount and cost of Rs.5,000/-(Rupees Five thousand only),[thus totalling to Rs.35,000/-(Rupees Thirty five thousand only)] before the Judicial First Class Magistrate Court-II, Idukki within a period of two weeks from today, all further coercive steps taken in pursuance of the impugned warrant for the execution of the impugned sentence in this case will remain under suspension provided the petitioner deposits an amount of Rs.30,000/-(fine amount) along with Rs.5,000/-(cost amount) [thus totalling to Rs.35,000/-(Rupees Thirty five thousand only)] before the Jurisdictional Magistrate court concerned within 14 days from today.

3. On the petitioner depositing the aforesaid amount of Rs.35,000/- before the court below, then requisite notice of deposit shall be intimated by the court below to the complainant(2nd respondent herein) and it is made clear that the same amount of Rs.35,000/- shall be released to the second respondent herein."

3. It is submitted by Sri.C.Varghese Kuriakose, learned counsel for the petitioner that in obedience of this Court's direction rendered on 29/07/2015 in this case, the petitioner has duly deposited the full amount of Rs.35,000/- on 06/08/2015 before the Judicial First Class Magistrate Court-II, Idukki and receipt in this regard has also been obtained. It is further ordered that the court below will release the above said amount to the contesting No.2, which should be treated as payment in terms of Annexure-I Order.

4. Accordingly it is ordered that the payment of the

aforestated amount by the petitioner will be treated as payment on his part in compliance with the directions issued in Annexure-1 Order and all further coercive proceedings including distress warrant proceedings if any, on account of the alleged non compliance relatable to Annexure-1 Order, will stand rescinded and recalled.

The CrI.M.C.stands finally disposed of.

Sd/- ALEXANDER THOMAS, JUDGE

MJL