

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

Crl.MC.No. 4830 of 2015 ()

**CRL.A.NO. 513/2010 OF SESSIONS COURT, THRISSUR
CC.NO. 2175/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, THRISSUR**

PETITIONER :

**N.P.SUBRAMANIAN, AGED 63 YEARS,
S/O.PURUSHOTHAMAN, NELLIPARAMBIL(H),
P.O.VADAMA, MALA, THRISSUR.**

BY ADV. SRI.P.JINISH PAUL

RESPONDENT(S):

- 1. ICICI BANK LTD.,
THRISSUR BRANCH, REP. BY ITS MANAGER.**
- 2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADVS. SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
R2 BY PUBLIC PROSECUTOR SRI.GITHESH.R**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

sts

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX 1- TRUE COPY OF JUDGMENT IN CRL.A.513/2010 DATED 13.03.12 ON THE FILES OF THE COURT OF THE SESSIONS JUDGE, THRISSUR.**
- ANNEX 2- THE TRUE COPY OF THE DISCHARGE SUMMARY ISSUED FROM WESTFORT HI-TECH HOSPITAL.**
- ANNEX 3- THE TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT BANK EVIDENCING THE SETTLEMENT DATED 30.05.14.**
- ANNEX 4- THE TRUE COPY OF THE SHOW CAUSE NOTICE DATED 30.03.15 ISSUED BY DEPUTY TAHASILDAR (R.R).**

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Dated this the 3rd day of August, 2015.

ORDER

The petitioner is the accused in C.C.No.2175/2007 on the file of the Judicial First Class Magistrate Court-II, Thrissur and was convicted for the offence under Sec.138 of the Negotiable Instruments Act, whereby he was ordered to undergo sentence of simple imprisonment for 3 months and also directed to pay compensation of Rs.14 Lakhs to the complainant-1st respondent herein and in default of payment, to undergo simple imprisonment for 3 months. The petitioner preferred an appeal as Crl.A.No.513/2010 before the Sessions Court, Thrissur in which the said appellate Court as per Anx-1 judgment dated 13.3.2012 in Crl.A.No.513/2010 confirmed the conviction and substantive sentence was modified and reduced as simple imprisonment till rising of the court and the petitioner was also directed to pay compensation of Rs.14 Lakhs with default sentence of simple imprisonment for 3 months, etc. It is pointed out by the learned

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counsel for petitioner that the petitioner had paid the compensation amount of Rs.14 Lakhs to the 1st respondent-complainant directly as evidenced by Anx-A3. This position was fully admitted as correct by the learned counsel for the 1st respondent. On the basis of these aspects that the petitioner has filed the instant Crl.M.C seeking the following prayers:

“I. To direct the Judicial First Class Magistrate Court-II, Thrissur to permit the Petitioner to undergo the substantive sentence of imprisonment till rising of Court, notwithstanding the pendency of warrant against the Petitioner and without imposing any default sentence.

II. To direct the Judicial First Class Magistrate Court-II, Thrissur to drop the revenue recovery proceedings initiated as per order in C.C.No.2175/07 in view of the payment of compensation.”

2. Sri.jinish Paul, learned counsel for the petitioner submits that the 1st respondent-complainant (ICICI Bank) has already received compensation amount of Rs.14 Lakhs ordered as per Anx-A1 judgment from the petitioner and that they have no objection in granting permission to the petitioner so as to undergo substantive imprisonment ordered in Anx-A1, till rising of the Court. It is pointed out by the learned counsel for the petitioner that since the payment of such compensation has not been

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recorded by the court below, the impugned revenue recovery has also been set in motion against the petitioner. It is by now settled law that default sentence shall lapse at the time when the payment of fine/compensation is made either before or after the default sentence starts running as laid down by this Court in the case Girish v. Muthoot Capital Service (P) Ltd. reported in 2007 (1) KLT 16 and by a Division bench of this Court in Sreedharan v. Bharathan reported in 2014 (1) KLT 236. Accordingly, it is ordered in the interest of justice that the aforestated admitted compensation amount of Rs.14 Lakhs to the 1st respondent shall be fully given effect to for the purpose of conviction and the consequential orders passed in Anx-A1 judgment of the Sessions Court, Thrissur, arising out of the conviction in C.C.No.2175/2007 on the file of the Judicial First Class Magistrate Court-II, Thrissur. It is also accordingly ordered that all coercive revenue recovery proceedings and such other proceedings pending against the petitioner as reflected in Anx-4 revenue recovery notice will stand quashed and accordingly declared to be unenforceable. Consequently, it is also ordered that

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the Judicial First Class Magistrate Court-II, Thrissur, shall permit the petitioner to undergo substantive sentence of imprisonment till rising of the court as ordered in Anx-A1 judgment without subjecting him to any further coercive proceedings. This shall be done by the petitioner within two weeks from the date of receipt of a certified copy of this order.

With these observations and directions, this CrI.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-