

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Cri.MC.No. 6339 of 2013 ()

**AGAINST THE JUDGMENT IN Co.Pet 10/2010 of HIGH COURT OF KERALA
DATED 31-05-2010**

AGAINST THE JUDGMENT IN CRL.A.NO.389/2013 OF SESSIONS COURT, PALAKKAD

PETITIONER(S)/2ND APPELLANT/2ND ACCUSED:

**P.V.SUDHAKARAN,
S/O.VELAYUDHAN, MANAGING DIRECTOR,
SREE LAKSHMI KURIES & LOANS (P) LTD.,
POOLAKKAL PARAMBU HOUSE, AYILUR, NEMMARA P.O.,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.K.GOPALAKRISHNA KURUP (SR.)
SRI.S.MANU**

RESPONDENT(S)/RESPONDENT/COMPLAINANT AND STATE:

- 1. FOUSIYA.M., AGED 39 YEARS,
W/O.MOIDEENKUTTY, EACHAYIL VEEDU,
AMBALAPPARA P.O., OTTAPALAM TALUK - 679 101**
- 2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 3. SREE LAKSHMI KURIES & LOANS (P) LTD.,
SREE LAKSHMI TOWER, EAST FORT ROAD, FORT MAIDAN,
PALAKKAD REP. BY OFFICIAL LIQUIDATOR,
HIGH COURT OF KERALA**

**R3 BY ADV. SRI.K.MONI
R2 BY PUBLIC PROSECUTOR SRI.JIBU. P. THOMAS.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 6339 of 2013 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-I: TRUE COPY OF THE ORDER DATED 31.5.2010 IN C.P. NO.10/2010.

**ANNEXURE-II: TRUE COPY OF THE PETITION IN CRIMINAL MISCELLANEOUS PETITION
NO.3485/2013 IN CRL.APPEAL NO.389/2013 OF THE SESSIONS COURT,
PALAKKAD**

**ANNEXURE-III: TRUE COPY OF THE ORDER IN CRIMINAL MISCELLANEOUS PETITION
NO.3485/2013 IN CRL.APPEAL NO.389/2013 OF THE SESSIONS COURT,
PALAKKAD DATED 5.12.2013.**

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

RAJA VIJAYARAGHAVAN V, J.

Crl.M.C.No.6339 of 2013

Dated this the 10th day of July, 2015

ORDER

1. This petition is filed under S. 482 of the Code of Criminal Procedure, being aggrieved by the condition imposed in Annexure-III order dated 5.12.2013 in Crl.M.P. No 3485/13 in Crl.A. No 389/13 of the Court of the learned Sessions Judge , Palakkad. The said appeal was filed by him challenging the conviction and sentence imposed by the Judicial Magistrate of First Class-I, Ottappalam, in a prosecution initiated by the 1st respondent under S. 138 of the Negotiable Instruments Act .

2. According to the petitioner, he is the Managing Director of M/s.Sree Lakshmi Kuries & Loans (P)Ltd., a company registered under the Indian Companies Act. In the course of Kuri Business conducted by the company,

several cheques were executed by him in his capacity as the Managing Director of the said company. Proceedings were initiated against him and the company when the cheques were dishonored .

3. The learned magistrate, as per judgment in S.T.No.2761/2009, found the petitioner guilty and he was sentenced to undergo simple imprisonment for three months and to pay a compensation of Rs.1,00,000/- under section 357(3) of Code of Criminal Procedure and in default of payment of compensation, was directed to undergo simple imprisonment for a further period of 2 months. Against the said judgment, conviction and sentence, the petitioner moved the Sessions Court, Palakkad by preferring Crl.Appeal. No.389/2013 and sought for suspension of sentence. The learned Sessions Judge, as per Annexure-III order, suspended the execution of sentence on deposit of a sum of Rs.30,000/- and on executing a bond for Rs.25,000/- with two solvent

sureties for the like sum.

4. According to the petitioner, he had happened to sign and execute the cheque in his capacity as the Managing Director of the company which stands wound up as per Annexure-I order of this Court dated 31.05.2010 in C.P.No.10/2010 Annexure-I order reveals that the company has been directed to be wound up under the provisions of the Companies Act, 1956. This Court has also directed the Official Liquidator to take charge of the property of the company forthwith. The amounts can only be withdrawn by the official liquidator on behalf of the company in view of Annexure -I order .

5. In these circumstances , it was submitted that the imposition of such an onerous condition for suspension of sentence will result in hardship. The counsel for the petitioner has also produced copy of order dated 27.3.2014 in Crl.M.C.No. 6245 of 2013 of this Court in an

identical fact situation involving the petitioner wherein this court has passed orders setting aside the condition regarding deposit of amount towards the condition for bail and suspension of sentence. I do not see any reason to take a different view in the facts and circumstances of the instant case .

6. In the result, this Crl.M.C is allowed. The order of the Court of Sessions, Palakkad, in Crl.M.P.No.3485/2013 in Crl.Appeal No.389/2013 in so far as the petitioner is directed to deposit Rs 30,000/- as a condition precedent for suspension of sentence and grant of bail shall stand quashed.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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P.A to Judge