

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

OP(Crl.).No. 336 of 2015 (Q)

S.T.NO.55/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOTTAYAM

PETITIONER(S)/ACCUSED :

**MRS.AMALA JOSE,
A.G.M. NURSING SCHOOL, SNDP BUILDING,
MUNDAKAYAM.**

**BY ADVS.SRI.V.B.PREMACHANDRAN
SRI.K.N.GOVINDANKUTTY MENON
SRI.S.MADHAVAN NAIR
SRI.S.MOHANDAS**

RESPONDENT(S)/COMPLAINANT & STATE :

**1. SREE GOKULAM CHIT AND FINANCE COMPANY (P) LTD.,
CHENNAI,
HAVING ITS DIVISIONAL OFFICE AT PARAKKATTU BUILDING,
1ST FLOOR, CENTRAL JUNCTION, KOTTAYAM -686 001,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER K.N.REJEESH.**

**2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

**R1 BY ADVS. SRI.K.S.BABU
SMT.N.SUDHA
SRI.BABU SHANKAR
SRI.K.V.WINSTON
SRI.VIPIN VISWAN**

R2 BY GOVERNMENT PLEADER SMT.SAREENA GEORGE

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXT.P1: TRUE COPY OF THE JUDGMENT IN ST NO.55/2013 OF JUDICIAL
FIRST CLASS MAGISTRATE COURT-V, KOTTAYAM
DATED 17.05.2013.**

**EXT.P2: TRUE COPY OF THE RECEIPT ISSUED BY 1ST RESPONDENT
DATED 28.05.2014.**

**EXT.P2(A): TRUE COPY OF THE RECEIPT ISSUED BY 1ST RESPONDENT
DATED 11.11.2014.**

**EXT.P2(B): TRUE COPY OF THE RECEIPT ISSUED BY 1ST RESPONDENT
DATED 31.01.2015.**

**EXT.P2(C): TRUE COPY OF THE RECEIPT ISSUED BY 1ST RESPONDENT
DATED 29.05.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(Crl) No.336 of 2015
.....

Dated this the 9th day of December, 2015

J U D G M E N T

Ext.P1 order, by which the court below has found the petitioner guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, imposed a sentence of imprisonment till the rising of the court, and to pay a compensation of ₹3,68,000 within a period of 11 months, and in default of payment of compensation, to undergo simple imprisonment for a further period of six months, is under challenge.

2. According to the petitioner, the learned Magistrate has failed to comply with the mandatory provisions contained under Section 265B(4) Cr.P.C. as the court has failed to examine the petitioner *in camera* in the absence of

the complainant.

3. On going through Ext.P1 order, it does not say as to whether the petitioner was examined by the court below *in camera*, in the absence of the complainant in the case. It is a mandatory procedure contemplated under law that in case of plea bargaining the accused shall be examined by the court below *in camera*, in the absence of the complainant or the defacto complainant. The said provision is incorporated for the absolute satisfaction of the court that in case of plea bargaining there was no compulsion or insistence from the part of the complainant or the defacto complainant as the case may be, on the accused to force a settlement. It is in order to avoid the possibility of any such compulsion or pressure tactics from the part of the complainant or the defacto complainant as the case may be, the said provision has been incorporated.

4. In ***Girraj Prasad Meena v. State of Rajasthan and others***[2013 (4) KLT SN 80] it was held by the Apex

Court that all the procedures contemplated in Chapter XXIA of the Cr.P.C. are mandatory in nature and the court has to scrupulously follow all such mandatory provisions contemplated under law for invoking the jurisdiction of the court to entertain a plea bargaining. In such case, when such a mandatory procedure has been contemplated by law, the court below ought to have mentioned specifically the same in the order that such a mandatory procedure was followed. The petitioner herein has been clamouring from the beginning that the court below has failed to observe such a mandatory procedure. Matters being so, Ext.P1 order is bad in law on that aspect alone.

5. This Court has occasion to note down another gross illegality committed by the learned Magistrate in imposing the sentence also. The court below has chosen to impose a sentence of imprisonment till the rising of the court, and to pay a compensation of ₹3,68,000 within a period of 11 months, and in default of payment of

compensation, to undergo simple imprisonment for a further period of six months, on the petitioner. It seems that the court below has imposed the compensation to be paid to the complainant under Section 357(3) Cr.P.C.

6. An offence under Section 138 of the N.I. Act is not covered by Section 265E clauses (a) to (c). This is not an offence wherein minimum sentence has been prescribed. In such case, in the case of plea bargaining, the court below ought to have complied with the provisions of Section 265E (d) Cr.P.C, and the court below ought to have imposed one fourth of the sentence that could be imposed. The offence under Section 138 of the N.I. Act is punishable with imprisonment for a term which may extend to 2 years, or with fine, which may extend to twice the amount of cheque. Even in the case of fine, the court below could have imposed only half the cheque amount. In the matter of sentence, the court below ought to have considered the substantive sentence of imprisonment as well as the fine

which could be imposed. In that case the court below ought to have imposed substantive sentence of imprisonment for six months also.

7. Matters being so, there is gross illegality in the procedure followed by the court below, and gross illegality has been crept in Ext.P1 order. Therefore, Ext.P1 order is liable to be quashed.

In the result, this Writ Petition is allowed and Ext.P1 order stands quashed. The court below is directed to proceed with matter for taking evidence in the case. Being a matter of 2013, the court below shall dispose of the matter, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge