IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942

Crl.MC.No.4455 OF 2020(F)

Crl.M.P.No.525/2020 IN Crl.A.No. 33/2020 OF SESSIONS COURT, THALASSERY

PETITIONER/PETITIONER/APPELLANT:

SOMA SEKHAR SHETTY, AGED 59 YEARS,
S/o SUNDAR SHETTY, SHETTY FARM,
KINYA VILLAGE, THALAPPADI,
MANGALORE, KARNATAKA STATE.

BY ADVS.SRI.M.R.ARUNKUMAR
SRI.P.SHAMMI NAVAS

RESPONDENTS/RESPONDENTS/RESPONDENTS:

1 **NABEEL P.P., AGED 31 YEARS,**
S/o ABDULLA, DARUL-AMEEN,
KUNHIPALLI, P.O. KOTTALI,
KANNUR-670005.

2 **STATE OF KERALA,**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-682031.

BY PUBLIC PROSECUTOR SRI. D. CHANDRASENAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Annexure A4 order is brought under challenge on the reason that the learned Magistrate did not understand the legal impact and requirement of Section 389 Cr.P.C. and that the amendment and incorporation of Section 148 of N.I. Act has no retrospective effect relying on the decision rendered in **G.J.Raja v. Thejraj Surana [2019 (4) KHC 201 SC].**

2. The impugned order was passed on 31/1/2020 much after the date of commencement of amended provision, Section 148 of N.I. Act (2/8/2018). As such, the question whether it has got retrospective application is not available in the case.

3. After the commencement of Section 148 of the N.I.Act, sentence can be suspended only in accordance with the requirement under that Section and the non-obstante clause excludes the application of Section 389 Cr.P.C. The order was passed perfectly in tune with the requirement under Section 148 of the N.I.Act.

Hence the present application is a misuse of the process of this Court.

Crl.M.C. is dismissed.

Sd/-

P.SOMARAJAN

JUDGE

DMR/-

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1	**COPY OF THE JUDGMENT IN STC NO.138/2018 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KANNUR.**
ANNEXURE A2	**COPY OF THE APPEAL MEMORANDUM IN CRL APPEAL NO.33/2020 FILED BY THE PETITIONER BEFORE THE COURT OF SESSIONS, THALASSERY.**
ANNEXURE A3	**COPY OF PETITION CRL. MP NO.525/2020 IN CRL. APPEAL NO.33/2020 ON THE FILE OF THE COURT OF SESSIONS, THALASSERY.**
ANNEXURE A4	**CERTIFIED COPY OF THE ORDER PASSED BY THE SESSIONS COURT, THALASSERY DATED 31/01/2020 IN CRL. MP NO.525/2020 IN CRL. APPEAL NO.33/2020.**

RESPONDENTS' ANNEXURE: **NIL**

// TRUE COPY //

P.A. TO JUDGE