IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946

OP(CRL.) NO. 509 OF 2024

AGAINST THE ORDER DATED 10.11.2023 IN CRMP NO.3234 OF 2023 IN CRL A NO.224/2023 OF THE SESSIONS COURT, KOTTAYAM IN S.T.NO.256/2021 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOTTAYAM

PETITIONER/PETITIONER/APPELLANT/ACCUSED:

MINIMOL C.R.,
AGED 56 YEARS,
W/O. N.V. RAMACHANDRAN NAIR,
KARTHIKA NIVAS, PUTHUPPALLY P.O.,
KOTTAYAM, PIN – 686011

BY ADVS.
SRI.R.REJI
SRI.M.V.THAMBAN
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE
SMT.JEENA A.V.
SMT.THOMAS THOMAS

RESPONDENTS/RESPONDENT/RESPONDENT/STATE AND COMPLAINANT:

1 **K.T. ANIL KUMAR,**
S/O. THAMPIKUNJU PANICKER,
KALAYIL PARAMBIL HOUSE,
PUTHUPPALLY P.O., KOTTAYAM,
PIN – 686011

2 **STATE OF KERALA,**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
PIN – 682031

BY ADV.
SRI.C.N.PRABHAKARAN, SR PP

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 25.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

O.P.(Crl) No. 509 of 2024

Dated this the 25th day of July, 2024

JUDGMENT

The petitioner is accused in S.T.No.256/2021 on the file of the Judicial First Class Magistrate Court-II, Kottayam. The petitioner has been convicted under Section 138 of the Negotiable Instruments Act. The petitioner is sentenced to undergo imprisonment till the rising of the Court and pay a fine of Rs.1,25,000/- and in default of fine, to undergo simple imprisonment for three months.

2. The petitioner challenged the judgment of conviction and sentence before the Sessions Court, Kottayam in Crl.A.No.224/2023. Along with the appeal, the petitioner filed an application under Section 389 Cr.P.C. seeking suspension of sentence. The Sessions Court in the application under Section 389 Cr.P.C. suspended the sentence on the condition that the petitioner shall execute a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two

solvent sureties each for the like sum to the satisfaction of the Trial Court and depositing 20% of the fine amount before the Trial Court within the statutory period.

3. Notice has been served to the party respondent, but she did not turn up.

4. I have heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The learned counsel for the petitioner contended that the Sessions Court has not assigned any reason for directing the petitioner to deposit 20% of the amount of fine imposed by the Trial Court. The learned counsel further submitted that the Sessions Court has passed a blanket order without considering whether the case falls in the exception or not.

6. The learned counsel relied on **Jamboo Bhandari v. M.P.State Industrial Development Corporation Ltd. [2023 (6) KHC 80 (SC)]** and **Sreenivasan P. v Babu Raj [2024 (2) KHC 621 (DB)]** to substantiate his contentions. In **Jamboo Bhandari**, while considering the scope of Section 148 of the

Negotiable Instruments Act, the Apex Court observed thus:-

> "6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.
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> 7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.
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> 8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.
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> 9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not."

7. A Division Bench of this Court in **Sreenivasan v. Babu Raj** held thus:-

> "8. In our view, a reading of Section 148 of the N.I.Act as an exception to the general principles of suspension of

> sentence by an Appellate Court as contained in Section 389 of the Cr.P.C., and in the backdrop of the decisions of the Supreme Court in **Surinder Singh Deswal and Jamboo Bhandari** (Supra) would result in the following interpretation as regards the nature and manner of exercise of discretion by the Appellate Court under Section 148 of the N.I. Act:
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> (a) Under Section 148 of the N.I Act, the Appellate Court has a discretion to either order the appellant to deposit a portion of the fine or compensation awarded by the Trial Court or to waive such deposit. In either event, since it would be exercising a statutory discretion, the Appellate Court would be legally obliged to furnish reasons for its decision so as to unambiguously indicate that its discretion was exercised keeping in mind the object of the statutory provision.
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> (b) If the Appellate Court, pursuant to the exercise of its discretion, finds that the appellant is required to deposit a portion of the fine or compensation awarded by the Trial Court pending disposal of the appeal, then the amount directed to be deposited cannot be less than an amount equivalent to 20% of the fine or compensation awarded by the Trial Court.
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> (c) If the Appellate Court chooses to direct the appellant to deposit any sum which is more than 20% of the fine or compensation awarded by the Trial Court, then it would be obliged to give further reasons for directing the deposit of such amounts as are in excess of the minimum of 20% of the fine or compensation awarded by the Trial Court."

8. In the impugned order, the Sessions Judge did not assign sufficient reason while ordering a deposit of 20% of the amount of fine imposed by the Trial Court. The Sessions Court has also not considered whether the case of the petitioner falls in the exception or not. Therefore, the order impugned to the extent it directed the petitioner to deposit 20% of the amount of fine imposed by the Trial Court stands

set aside. The Sessions Court is directed to consider the application afresh, after affording opportunity of being heard to both sides, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
K.BABU
JUDGE

VPK

APPENDIX OF OP(CRL.) 509/2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE COMMON JUDGMENT DATED 10.10.2023 IN S.T. NO. 256/2021 AND S.T NO. 257/2021 OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT -II, KOTTAYAM**
Exhibit P2	**TRUE COPY OF THE EXTRACT OF THE APPEAL MEMORANDUM AS CRL APPEAL NO. 224/2023**
Exhibit P3	**TRUE COPY OF CRL. M P NO. 3234/2023 IN CRL. APPEAL NO. 224/2023**
Exhibit P4	**TRUE COPY OF THE ORDER DATED 10.11.2023 IN CRL.M.P NO. 3234/2023 IN CRL. APPEAL NO. 224/2023 ON THE FILES OF THE HON'BLE SESSIONS COURT, KOTTAYAM**