IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

CRL.MC NO. 6266 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 12.04.2024 IN CRA NO.83 OF 2023 OF DISTRICT COURT & SESSIONS COURT,THODUPUZHA

PETITIONER:

SUNNY MATHEW
AGED 58 YEARS
S/O MATHEW,
KOTHAIKUNNU ROAD,
THODUPUZHA P.O,
THODUPUZHA TALUK,
IDUKKI DISTRICT,
NOW RESIDING AT PANNAIMARATHOOR MAIN ROAD,
THELUNKUPALAYAM P.O,
COIMBATORE TAMIL NADU,,
PIN - 641039

BY ADVS.
N.K.MOHANLAL
RAHUL G.

RESPONDENTS:

1 **ROY T.K,**
THANNICKAMYALIL HOUSE,
WEST KODIKULAM P.O,
THODUPUZHA TALUK,
IDUKKI DISTRICT.,
PIN - 685581

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

OTHER PRESENT:

SRI. NOUSHAD K. A. (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

Crl.M.C. No. 6266 of 2024

Dated this the 24th day of July, 2024

ORDER

Petitioner is the accused in S.T.No.60 of 2016 on the files of the Judicial First Class Magistrate's Court-II, Thodupuzha. He was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I.Act'). As per Annexure A1 judgment, he was directed to pay a compensation of Rs.6,46,000/-. In the appeal filed as Crl.A.No.83 of 2023, the learned Sessions Judge had by the impugned order dated 16.10.2023 suspended the sentence and also directed 20% of the compensation amount to be deposited under Section 148 of the N.I. Act. Petitioner is aggrieved by the direction to deposit the aforesaid amount.

2. I have heard Adv.Mohanlal N.K., appearing for the petitioner as well as Sri.Noushad K.A., the learned Public Prosecutor.

3. Considering the nature of the impugned order, I am of the view that notice to the first respondent can be dispensed with.

4. In the decision in **Sreenivasan P. v. Babu Raj [2024 KHC Online 270],** the Division Bench of this Court after considering the decision in ***Jamboo Bhandari v. M.P.State Industrial Development Corporation Ltd. [(2023) 10 SCC 446]*** held that reasons ought to be mentioned for exercising the discretion to impose the condition directing deposit of a percentage of the compensation amount. In **Sreenivasan's case** (supra), the Division Bench of this Court held as follows :-

> *(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.*
>
> *(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.

(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.

5. It is evident, on a reading of Annexure-A4 impugned order that the condition to deposit 20% of the compensation amount was imposed by the Sessions Court without indicating any reason. Hence the impugned order to that extent is liable to be set aside and a fresh consideration be directed.

6. In this context, it is relevant to observe that in Crl.M.C No.10991/2023, this Court had earlier set aside the order directing a deposit of 20% under Section 148 after noticing that no reasons had been given. In the present order issued by the learned Sessions Judge, subsequent to the above mentioned direction the mistake has been repeated. No reasons worth its name have been given by the learned Sessions Judge while

directing a deposit of 20% under Section 148 NI Act. As observed in the decisions mentioned above, reasons are required to be provided while directing deposit.

7. Accordingly, the order dated 16.10.2023 in Crl.M.P.No.2745 of 2023 in Crl.A.No.83 of 2023 on the files of the Sessions Court, Thodupuzha to the extent it directs deposit of 20% of the compensation amount is set aside. The learned Sessions Judge shall reconsider the matter regarding deposit under Section 148 of the N.I. Act afresh, within three weeks from the date of receipt of a copy of this order, in accordance with law.

The Registry of this Court shall intimate this order to the learned Sessions Judge for compliance.

Sd/-

BECHU KURIAN THOMAS
JUDGE

AJM

APPENDIX OF CRL.MC 6266/2024

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF JUDGMENT IN ST 60/2016 OF JFCM COURT-II THODUPUZHA DATED 15/09/23.
Annexure -A2	A TRUE COPY OF MEMORANDUM OF CRL. APPEAL 83/2023 OF HON'BLE SESSIONS COURT, THODUPUZHA ,DATED 11/10/2023
Annexure -A3	A TRUE COPY OF PETITION CRL. MP 2745/23 IN CRL. APPEAL 83/2023 TO SUSPEND THE EXECUTION OF SENTENCE FILED IN SESSIONS COURT, THODUPUZHA, DATED 11/10/2023
Annexure- A4	A TRUE COPY OF ORDER DATED 12/04/2024 IN CRL MP 2745/23 IN CRL APPEAL 83/2023 OF SESSIONS COURT, THODUPUZHA.
Annexure-A 5	A TRUE COPY OF ORDER IN CRL M C 10991/2023 DATED 22/12/2023 OF HON'BLE HIGH COURT OF KERALA.
Annexure-A 6	CERTIFIED COPY OF ORDER IN CRL M P 2745/23 IN CRL APPEAL 83/23 DATED 12/04/24.OF THE SESSIONS COURT, THODUPUZHA.