IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

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

CRL.MC NO. 6318 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 04.05.2024 IN CRA NO.83 OF 2024 OF DISTRICT COURT & SESSIONS COURT,THALASSERY

PETITIONER:

GIREESH. K.N
AGED 37 YEARS
S/O NARASAPPA,
RESIDING AT HARI KESARI NILAYA,
2ND CROSS, GOKULA EXTENSION,
THUMKOOR MAIN, THUMKOOR,
KARNATAKA, PIN - 572104
BY ADV K.RAJESH SUKUMARAN

RESPONDENTS:

1 **SANOOP LAKSHMANAN**
AGED 30 YEARS
S/O LAKSHMANAN,
CHALIKANDY HOUSE,
VALAVILPEEDIKA, P.O.
MAMBA, KANNUR,
PIN - 670611

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

OTHER PRESENT:

SMT. SREEJA V (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

Crl.M.C. No. 6318 of 2024

Dated this the 25h day of July, 2024

ORDER

Petitioner is the accused in STC.No.1407 of 2017 on the files of the Judicial First Class Magistrate's Court-I, Kannur. He was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I.Act'). As per the judgment in STC.No.1407 of 2017, he was directed to pay a fine of Rs.6,00,000/-. In the appeal filed as Crl.A.No.83 of 2024, the learned Sessions Judge had by the impugned order dated 04.05.2024 suspended the sentence and also directed 20% of the fine 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.Rajesh Sukumaran K., appearing for the petitioner as well as Smt.Sreeja V., 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 fine 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. Accordingly, the order dated 04.05.2024 in Crl.M.P.No.2754 of 2024 in Crl.A.No.83 of 2024 on the files of the Sessions Court, Thalassery to the extent it directs deposit of 20% of the fine 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 6318/2024

PETITIONER ANNEXURES

Annexure A 1	THE TRUE COPY OF THE APPEAL MEMORANDUM IN CRLA 83/2024 FILED BY THE PETITIONER HEREIN BEFORE THE SESSIONS COURT, THALASERRY
Annexure A 2	THE TRUE COPY OF THE CRLMP 2754/2024 IN CRLA 83/2024 ON THE FILE OF THE SESSIONS COURT, THALASERRY
Annexure A 3	THE TRUE COPY OF THE PETITION IN CRLMP 2752/2024 IN CRLA 83/2024 ON THE FILE OF THE SESIONS COURT, THALASERRY
Annexure A 4	THE CERTIFIED COPY OF THE ORDER DATED 04.05.2024 IN CRLMP 2754/2024 IN CRLA 83/2024 ON THE FILE OF THE SESSIONS COURT, THALASERRY
Annexure A 5	THE TRUE COPY OF THE PETITION IN CRLMP 5165/2024 IN CRLMP 2754/2024 IN CRLA 83/2024 ON THE FILE OF THE SESSIONS COURT, THALASERRY
Annexure A 6	THE TRUE COPY OF THE ORDER DATED 20.07.2024 IN CRLMP 5165/2024 IN CRLMP 2754/2024 IN CRLA 83/2024 ON THE FILE OF THE SESSIONS COURT, THALASERRY
Annexure A 7	THE TRUE COPY OF THE DECISION OF THE HONBLE SUPREME COURT REPORTED IN 2023(6) KHC 80 IN THE CASE OF JAMBOO BHANDARI VS M.P STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD.
Annexure A 8	THE TRUE COPY OF THE DECISION OF THE HONBLE HIGH COURT OF KERALA REPORTED IN 2024 (2) KHC 621 IN THE CASE OF SREENIVASAN.P VS BABU RAJ.