



2023/KER/76819

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

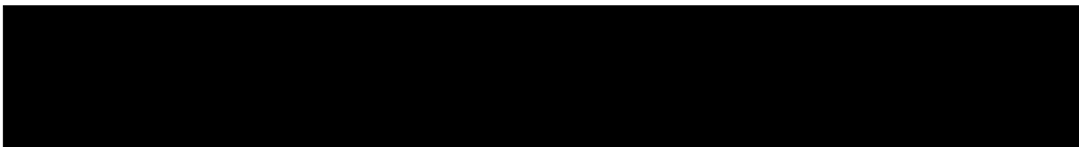
FRIDAY, THE 1<sup>ST</sup> DAY OF DECEMBER 2023 / 10TH AGRAHAYANA, 1945

CRL.MC NO. 8844 OF 2023

AGAINST THE ORDER/JUDGMENT CMP 44/2023 OF ADDITIONAL DISTRICT  
COURT, PALA

PETITIONER(S) /PETITIONER/ACCUSED/APPELLANT IN CRL.APPEAL:

BAIJU



BY ADVS.

M.SHAJU PURUSHOTHAMAN

K.S.RAJESH

RESPONDENT(S) /DE-FACTO COMPLAINANT:

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

2 MOHIT JOSE



SRI.RENJITH.T.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
01.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**CR****P.V.KUNHIKRISHNAN, J.**  
-----**Crl.M.C.No.8844 of 2023**  
-----**Dated this the 01<sup>st</sup> day of December, 2023****ORDER**

The petitioner was convicted and sentenced by the Judicial First Class Magistrate Court – II, Pala in S.T.No.31/2018, which was a prosecution under Section 138 of the Negotiable Instruments Act, 1881. He was sentenced to undergo simple imprisonment till the rising of the court and to pay a compensation of Rs.3,27,000/- (Rupees Three Lakhs Twenty Seven Thousand only) to the complainant and in default to undergo simple imprisonment for one month. It is also ordered that, if the compensation amount is realised, the same shall be given to the complainant in the case.

2. Aggrieved by the conviction and sentence, the petitioner filed an appeal before the Sessions court,



Kottayam. The Sessions court suspended the sentence as per order dated 24.06.2023 in CMP No.44/2023 in Crl.Appeal No.109/2023 with a condition that the petitioner will deposit 20% of the compensation amount before the trial court within 60 days from the date of order. Aggrieved by the same, this Crl.M.C is filed.

3. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor. Even though notice was served on the 2<sup>nd</sup> respondent, there is no appearance for the 2<sup>nd</sup> respondent.

4. The short point raised by the petitioner is that, in the light of the decision of the Apex Court in **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd.** [2023 (6) KHC 80], a speaking order is necessary if the court decides to impose a condition to deposit the amount as per Section 148 of the Negotiable Instruments Act. According to the petitioner, Annexure 3 order is not a



speaking order.

5. This Court considered the contentions of the petitioner. In **Jamboo Bhandari's** case (supra) the Apex Court considered the powers of the appellate court under Section 148 of the Negotiable Instruments Act. It will be better to extract the relevant portion of the above judgment:

“6. What is held by this Court is that a purposive interpretation should be made of S.148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in S.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.

7. Therefore, when Appellate Court considers the prayer under S.389 of the CrPC of an accused who has been convicted for offence under S.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.

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.

9. We disagree with the above submission. When an accused applies under S.389 of the CrPC 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."

6. In the light of the above principle laid by the Apex Court, it is the duty of the Appellate court to give reason for imposing the condition to deposit 20% of compensation for suspending the sentence. There cannot be any blanket order to deposit 20% of the



compensation for suspending the sentence in all cases.

Section 148 of the Negotiable Instruments Act reads

like this:

**“Section 148: Power of Appellate Court to order payment pending appeal against conviction.--**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the Trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the



appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”

7. In the above Section, it is clearly stated that the appellate court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court. There are two limbs in Section 148(1) of the Negotiable Instruments Act. First, the appellate court has to decide, whether to order the appellant to deposit the fine or compensation awarded by the trial court. The second limb is that, once it is decided to order deposit of fine or compensation, a minimum of twenty percent of the fine or compensation is to be ordered to deposited. Therefore, the duty of the appellate court is firstly to decide whether such a deposit is to be



ordered. As observed by the Apex court in **Jamboobhandari's** case (supra), when an accused applies under S.389 of the CrPC 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 within the exception or not. The appellate court while suspending a sentence cannot pass a blanket order in all cases to deposit 20% of the fine or compensation without assigning any reason. Moreover, once the court has decided to order deposit as per Section 148(1) of the Negotiable Instruments Act, the amount of deposit ordered by the Court can be varied from the minimum 20% of the fine or compensation to a higher percent of the fine or compensation. That also shows that a speaking order is necessary. Even if the court is imposing 20% of the fine or compensation as a condition for suspending the





sentence, in the light of the principle laid down by the Apex Court in **Jamboo Bhandari's** case (supra), a reason is necessary.

8. In this case, Annexure 3 is the suspension order. It will be better to extract the same:

“Heard. Perused the documents. Sentence is suspended on condition that the appellant/petitioner will deposit 20% of the compensation amount before the trial court within 60 days from this date. For compliance report 25.08.2023”

From the above order, it is clear that the Sessions court has not applied its mind before imposing 20% of the compensation amount. In the light of the dictum laid down by the Apex Court in **Jamboo Bhandari's** case (supra), the above order is unsustainable. Moreover, there is no order requiring the appellant to execute a bond for suspending the sentence. This court called for the remarks of the appellate court for not directing the appellant to execute bond. The remark



said that, the appellant was already on bail and there was no prayer in the petition filed under Section 389 Cr.P.C seeking bail. Section 389 Cr.P.C is for suspending the sentence pending appeal or the release of appellant on bail. For both purposes, the appellate court has to order execution of bond by the appellant and the sureties as the case may be. Even if the appellant was on bail under section 389(3) Cr.P.C, the appellate court should direct the appellant to execute a fresh bond in accordance with law. Therefore, Annexure 3 order imposing 20% of the compensation amount on the petitioner can be set aside and there can be a direction to reconsider the matter. If the sentence is going to be suspended, it must be followed by the execution of bond in accordance with law.

Therefore, this Criminal Miscellaneous Case is allowed in the following manner:

- i) The direction to deposit 20% of the



compensation amount before the trial court as per order dated 24.06.2023 in CMP No.44/2023 in Crl.Appeal No.109/2023 on the file of the Additional District & Sessions Judge, Pala is set aside.

ii) The Additional District & Sessions Judge, Pala is directed to reconsider CMP No.44/2023 in Crl.Appeal No.109/2023, after giving an opportunity of hearing to the petitioner and the 2<sup>nd</sup> respondent.

iii) Till fresh orders are passed as directed above, no coercive steps shall be taken against the petitioner.

*Sd/-*

**P.V.KUNHIKRISHNAN  
JUDGE**



**APPENDIX OF CRL.MC 8844/2023**

PETITIONER ANNEXURES

- ANNEXURE 1            THE TRUE COPY OF THE CRL.APPEAL.  
109/2023 WHICH IS FILED BEFORE THE  
ADDITIONAL SESSIONS COURT, PALA  
DT.16.06.2023
- ANNEXURE 2            THE TRUE COPY OF THE PETITION IN C.MP  
NO.44/2023 IN CRL.APPEAL. 109/2023  
WHICH IS FILED BEFORE THE ADDITIONAL  
SESSIONS COURT, PALA DT.16.06.2023
- ANNEXURE 3            THE TRUE COPY OF THE ORDER PASSED BY  
THE APPELLATE COURT, DT .24.06.2023
- ANNEXURE 4            THE TRUE COPY OF THE O.P. TICKET WITH  
DISCHARGE SUMMARY DT.17.01.2023

RESPONDENTS EXHIBITS            : NIL

//TRUE COPY// PA TO JUDGE