

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 08TH DAY OF AUGUST 2019 / 17TH SRAVANA, 1941

OP(Crl.).No.348 OF 2019

AGAISNT THE ORDER DATED 25.07.2019 IN CRL.M.P.NO.4808/2019 IN  
CRL.APPEAL NO.145 OF 2019 OF THE SESIONS COURT, ALAPPUZHA

S.T.NO.3712 OF 2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE  
COURT-I, ALAPPUZHA

PETITIONER:

T.K.SAJEEVAN  
AGED 61 YEARS  
S/O.KRISHNAN, PROPRIETOR, SPAN TRAVELS, HIMA COMPLEX,  
KOCHI-18, RESIDING AT DEEVARPURAM, K.B.NIVAS,  
PACHALAM P.O., KOCHI.

BY ADVS.

SRI.DINESH R.SHENOY

SRI.EBIN MATHEW

SRI.ROHIT PREMANANDAN SHENOY

RESPONDENTS:

- 1 FRANCIS T.CHACKO  
AGED 58 YEARS  
S/O.LATE T.J.CHACKO, RESIDING AT VILLA NO.2,  
SOWPARNIKA GARDENS, BEHIND MISSION SCHOOL,  
TRIPUNITHURA, ERNAKULAM, PIN-682301.
- 2 STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY, REP. BY PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN-  
682031.

R2 BY SRI.E.C.BINEESH, PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 08.08.2019,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**JUDGMENT**

The petition on hand is filed by the appellant in Crl.Appeal No.145 of 2019, pending on the files of Court of Sessions, Alappuzha (for short 'the court below'). He has moved an application as C.M.P.No.4808 of 2019 in Crl.Appeal No.145 of 2019, for getting the sentence imposed by Judicial First Class Magistrate Court-I, Alappuzha as against him in S.T.No.3712 of 2012, suspended. Court of Sessions, Alappuzha has passed an order on 25.07.2019 in the aforesaid petition, suspending execution of sentence imposed by judgment passed by Judicial First Class Magistrate Court-I, Alappuzha on terms of execution of a bond by the petitioner for a sum of Rs.40,000/- by himself and with two solvent sureties each for the likesum to the satisfaction of the trial court and on deposit of Rs.4,83,900/- towards the fine amount imposed by the trial court before executing the bond. The court has also granted 30 days' time from 25.07.2019 for executing the bond.

2. The grievance of the learned counsel for the petitioner was that the court below has directed the petitioner to deposit a huge sum and in view of his financial stringency, it is improper. It is also contended by the learned counsel that Ext.P1 the copy of the impugned order produced alongwith the petition is a non-speaking and cryptic order and therefore, is illegal, arbitrary and passed without application of mind. It was further urged by the learned counsel that Section 148 incorporated into the Negotiable Instruments Act, 1881 (for short 'N.I. Act') by way of Amendment in the year 2018 is directory in nature and since the 1<sup>st</sup> respondent/complainant had already obtained an order of attachment of a valuable property in a civil case against the petitioner, the court ought not to have directed deposit of a further sum by invoking the power under Section 148 N.I. Act. It is also contended by the learned counsel that the court below ought to have taken notice of the fact that after a full pledged trial, the Civil court has dismissed the plaint filed by the 1<sup>st</sup> respondent/complainant before it and therefore no amount is

due to him from the petitioner. Lastly and finally it is contended that the petitioner has no means to pay the huge amount ordered to be paid as per Ext.P1 as he is in a financially stringent condition due to manipulations of the 1<sup>st</sup> respondent, who is a money lender. With the contentions raised as above, it is canvassed by the learned counsel that Ext.P1 order deserves to be set aside.

3. Deposit of Rs.4,83,900/- was directed by Court of Sessions, Alappuzha, invoking the power under Section 148 N I Act. The provision as stated by the learned counsel was brought into the N I Act by way of Amendment in the year, 2018. The amount directed to be deposited is Rs.4,83,900/- which is excess than 25% of Rs.16,13,000/-, imposed by Judicial First Class Magistrate Court-I, Alappuzha, as fine, by the judgment passed by it on 27.06.2019.

4. It is envisaged under Section 148 N I Act that 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 20% of the fine/compensation awarded by the trial court. The minimum

prescribed under the provision is 20% of fine/compensation amount awarded by the trial court. In the case on hand, the amount directed to be deposited is 25% of the fine amount. Section 148 empowers the appellate court to impose a minimum of 20% and the maximum amount liable to be imposed on the appellant, can go to any extent or in other words it can go upto the fine/compensation amount, imposed by the judgment appealed against, in the absence of a cap laid on the upper limit.

5. The learned counsel has contended that since the word 'may' is there in Section 148 N.I. Act, the deposit contemplated is only a discretionary relief. But in view of the object of the Legislature while incorporating Section 148 into N.I. Act, the word 'may' will have to be read as 'shall'. The imposition of payment contemplated under Section 148 N.I. Act cannot be restricted to some prosecutions and evaded in other prosecutions. Since the amount directed to be deposited being compensation, undoubtedly, it is liable to be ordered to be deposited irrespective of the nature of the prosecution. Therefore, the word 'may' can only be taken to

have the colour and meaning of 'shall' and there is no scope for exercise of discretion. It is something to be imposed irrespective of the nature of prosecutions preferred under Section 142 N.I. Act. The contention of the learned counsel on that basis is repelled for the reason.

6. The 3<sup>rd</sup> ground projected by the learned counsel was that the petitioner being in a stringent financial condition is unable to make the deposit of the huge sum as imposed and therefore, the amount is required to be reduced in the interest of justice. The jurisdiction sought is supervisory jurisdiction. However, as an indulgence, this Court is inclined to reduce the amount to 20% of the fine amount, the minimum deposit contemplated under Section 148 N.I. Act. 20% of fine amount being Rs.3,22,600/- (16,13,000 x 20/100), the petitioner is directed to deposit the same.

In the result, O.P.(Cr1.) stands allowed in part. Petitioner shall deposit Rs.3,22,600/- (Rupees three lakhs twenty two thousand and six hundred only) (20% of Rs.16,13,000), within the time fixed by the appellate court in

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Ext.P1 order. The petitioner shall see that the amount is deposited within the time frame without failure and further extension of time will not be granted.

sd/-

**MARY JOSEPH**

**JUDGE**

NAB

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1                      TRUE PHOTOCOPY OF ORDER DATED 25.7.2019 IN  
CRL.MP 4808/2019 IN CRL.APPEAL 145/2019,  
SESSIONS COURT, ALAPPUZHA.
- EXHIBIT P2                      TRUE PHOTOCOPY OF THE JUDGMENT DATED  
10.12.2015 IN OS NO.561/2012, PRINCIPAL SUB  
COURT, ERNAKULAM.
- EXHIBIT P3                      TRUE PHOTOCOPY OF THE JUDGMENT DATED  
27.6.2019 IN S.T.NO.3712/2012, JFCM-I,  
ALAPPUZHA.

RESPONDENTS EXHIBITS:    NIL

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