

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

TUESDAY, THE 28<sup>TH</sup> DAY OF DECEMBER 2021 / 7TH POUSHA, 1943

CRL.MC NO. 6699 OF 2021

AGAINST THE ORDER DATED 27.10.2021 IN CMP NO.315/2021 IN CC  
NO.340/2014 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST  
CLASS -III, ERNAKULAM

PETITIONER/CONVICT:

RAJESWARY, AGED 55 YEARS, W/O. DEEPAN,  
C-27 FACT TOWNSHIP, UDYOGAMANDAL P.O., ELOOR,  
COCHIN-683 501, ERNAKULAM.

BY ADVS.

V.JOHN SEBASTIAN RALPH

K.J.JOSEPH (ERNAKULAM)

VISHNU CHANDRAN

RALPH RETI JOHN

APPU BABU

SHIFNA MUHAMMED SHUKKUR

RESPONDENT/COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR ,  
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-31.

2 USHA POULOSE, W/O. POULOSE, IKKARASSERY,  
MANDIRAM ROAD, AYYAPPANKAVU, COCHIN-682018,  
ERNAKULAM.

R1 BY PUBLIC PROSECUTOR SMT.S.REKHA

R2 BY ADV C.ANILKUMAR (KALLESSERIL)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 28.12.2021, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**VIJU ABRAHAM,J.**

.....  
**Crl.M.C. No.6699 of 2021**  
.....

**Dated this the 28<sup>th</sup> day of December, 2021**

**ORDER**

The above Crl.M.C is filed by the petitioner who is an accused in C.C.No.340 of 2014 on the file of the Judicial First Class Magistrate Court-III, Ernakulam, for offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The trial court as per Annexure-A2 judgment convicted and sentenced the petitioner to undergo simple imprisonment for a period of one year and to pay a fine of Rs.7,17,000/- with a default clause of three months. The appeal filed by the petitioner as Crl.Appeal No.148 of 2017 on the file of the Additional Sessions Court-V, Ernakulam was dismissed as per Annexure-A3 judgment. The Criminal Revision Petition filed by the petitioner as Crl.R.P.No.41 of 2020 was disposed of as per Annexure-A4 order by affirming the conviction but modifying the sentence of simple imprisonment for one year as a sentence to pay fine of Rs.7,17,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. The petitioner/accused was granted a period of six months to remit the amount of fine in the trial court.

2. Pursuant to the said order, the petitioner paid the entire amount of compensation/fine to the complainant/2<sup>nd</sup> respondent herein

and a receipt was also issued by the complainant acknowledging the payment. The said receipt was produced before the trial court and the petitioner filed C.M.P.No.315 of 2021 before the trial court to close the case and to recall the non bailable warrant pending against the petitioner since the entire compensation has been paid to the complainant. But, the said petition was dismissed by the trial court as per Annexure-A1 order holding that since the direction in Annexure-A4 order of this Court was to remit the amount of fine in the trial court and since the petitioner has directly paid the amount to the complainant, the court is not in a position to accept the receipt of acknowledgement of money issued by the complainant. It is challenging Annexure-A1 order passed in C.M.P.No.315 of 2021 in C.C.No.340 of 2014 that the present case is filed. In support of the contention the petitioner relies on the judgment of this Court in **Sivankutty v. John Thomas (2012(4) KLT 21)**.

3. Heard the learned counsel appearing for the petitioner and the 2<sup>nd</sup> respondent as well as the learned Public Prosecutor appearing for the 1<sup>st</sup> respondent.

4. It is the case of the petitioner that even though in Annexure-A4 order the petitioner was directed to remit the amount of fine in the trial court, she has paid the amount directly to the complainant who is the 2<sup>nd</sup> respondent herein.

5. The learned counsel appearing for the 2<sup>nd</sup> respondent submitted that she has received the entire amount of compensation and

has also issued a receipt acknowledging reception of the amount. Further that, the 2<sup>nd</sup> respondent has also filed an affidavit before this Court as Annexure-A5 stating that she has received the entire amount of compensation and a receipt has been issued by her.

6. This Court has occasion to consider a similar issue in **Beena v. Balakrishnan (2010 (2) KLT 1017)** and held as follows:

*“5. That however, cannot be the end of the matter so far as grievance of petitioners is concerned. According to the petitioners they have already paid amount payable to respondent No.1. That is revealed from petitions filed by them in this Court. True, by the final orders disposing of Revision Petitions this Court while modifying the sentence as simple imprisonment till rising of the court sentenced petitioners to payment of fine which is to be deposited in the court concerned and directed that fine if realised will be paid to respondent No.1 under S.357(1)(b) of the Code. The proper procedure for petitioners was to deposit fine in the court concerned so that such court would pay the said amount to respondent No.1 as provided under S.357(1)(b) of the Code after making necessary entries in the fine register of that court. Now that petitioners have paid the amount to respondent No.1 to their satisfaction, what is required is only to make necessary entries in the fine register that amount of fine is realised and paid to respondent No.1. In the particular facts and circumstances of these cases I direct the learned Magistrate that if respondent No.1 filed a statement within one month from this day in the court concerned through his counsel in that court acknowledging receipt of amount of fine ordered to be paid as per final order disposing of the Revision Petitions, learned Magistrate will accept that as sufficient compliance of direction contained in the orders disposing of the Revision Petitions and make necessary entries in the fine register as if fine is realised and paid to respondent No.1 and close the matter accordingly. The warrant of arrest if any issued against petitioners will stand in abeyance during the said period of one month*

*or statement is filed in the court concerned and necessary entry in the fine register is made, whichever is earlier.”*

Doubting the correctness of the decision cited supra, a reference was made by this Court which culminated in the judgment in **Sivankutty's** case (supra) which is relied on by the petitioner in support of her contention. In **Sivankutty's** case (supra) this Court found that there is no error or defect in the direction given in **Beena's** case (supra) and held thus:

*“..... But if the Court permits payment of fine as compensation to the complainant directly, it enables the accused to pay the entire fine as compensation directly to the complainant, as is the case with the sentence in C.C.785/2003, the Magistrate cannot insist that fine is to be paid in Court and it cannot be paid directly to the complainant and is to be paid to the complainant only after making necessary entries in Form No.20. In such a case when the statement is filed by the complainant regarding satisfaction of the compensation, the Magistrate has to make necessary entry in Form No.20, based on that statement, as in the case of compensation payable under S.357(3) of Code of Criminal Procedure. ....”*

7. Admittedly, there is substantial compliance of the direction issued by this Court in Annexure-A4 order in as much as the total amount of fine was directed to be paid as compensation to the complainant and in fact the complainant has received the amount also. An affidavit endorsing the said fact was also placed before this Court by the 2<sup>nd</sup> respondent. In view of the above said facts and circumstances, in the interest of justice I set aside Annexure-A1 order in C.M.P.No.315 of 2021 in C.C.No.340 of 2014 and direct the court below to make necessary entry in the fine

register recording the factum of settlement between the parties, as if fine is realised and paid to the complainant.

With the abovesaid direction, the above case is disposed of.

Sd/-  
**VIJU ABRAHAM**  
Judge

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APPENDIX OF CRL.MC 6699/2021

PETITIONER ANNEXURES

- Annexure 1 CERTIFIED COPY OF THE ORDER DATED 27.10.2021 IN C.M.P. NO. 315/2021 IN CC NO. 340/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT -III ERNAKULAM.
- Annexure 2 TRUE COPY OF THE JUDGMENT DATED 17.04.2017 IN C.C. 340/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III ERNAKULAM.
- Annexure 3 TRUE COPY OF THE ORDER DATED 14.10.2019 IN CRL. APL NO. 148/2017 ON THE FILE OF ADDITIONAL SESSIONS COURT-V.
- Annexure 4 TRUE COPY OF THE ORDER IN CRL RP NO. 41/2020 DATED 29.01.2020 OF THIS HONBLE COURT.
- Annexure 5 THE TRUE COPY OF THE AFFIDAVIT DATED 21.10.2021 FILED BY THE FIRST RESPONDENT COMPLAINANT.

RESPONDENTS ' ANNEXURES

NIL