

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 21ST DAY OF MARCH 2024/1ST CHAITHRA, 1946

CRL.M.C.NO.1077 OF 2024

AGAINST THE ORDER DATED 04.12.2023 IN CRL.M.P.NO.2216 OF 2023 IN
C.R.A.NO.149 OF 2023 OF DISTRICT COURT & SESSIONS COURT, MANJERI

PETITIONER(S)/PETITIONER/APPELLANT/ACCUSED:

P. SREENIVASAN
AGED 48 YEARS
S/O.NARAYANAN EZHUTHASSAN, PARAYANCHOLA HOUSE,
VALAMKULAM POST, ANAMANGAD VILLAGE, PERINTHALMANNA
TALUK, MALAPPURAM DISTRICT., PIN - 679357

BY ADV.SRI.P.SAMSUDIN PANOLAN
BY ADV.SRI.MILAN RACHEL MATHEW
BY ADV.SMT.LIRA A.B.
BY ADV.SMT.NASRIN WAHAB

RESPONDENT(S)/RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1 BABU RAJ
S/O.CHAMIKKUTTY, IMBRAN PARAMBIL HOUSE, ANAMANGAD,
PERINTHALMANNA, MALAPPURAM DISTRICT., PIN - 679357

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

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21.03.2024 ALONG WITH CRL.M.C.NO.558 OF 2024, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.C.NO.1077 OF 2024
&
CRL.M.C.NO.558 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 21ST DAY OF MARCH 2024/1ST CHAITHRA, 1946

CRL.M.C.NO.558 OF 2024

AGAINST THE ORDER DATED 01.01.2024 IN CR.M.P.NO.2 OF 2024 IN
CRL.A.NO.525 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS
COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER(S) /PETITIONER/APPELLANT:

SINI SHELLY
AGED 49 YEARS
W/O.SHELLY, PULICKKAL HOUSE, MANAKKODAM,
NEAR CHALIYAPALAM, CHENDAMANGALAM.P.O.,
NORTH PARAVUR, ERNAKULAM, PIN - 683512

BY ADV.M.SHAJU PURUSHOTHAMAN
BY ADV.SRI.K.S.RAJESH
BY ADV.SRI.JACOB GEORGE (PARAVUR)
BY ADV.SRI.SEBASTIAN.K.C.

RESPONDENT(S) /RESPONDENT/COMPLAINANT:

- 1 JAYAPALAN.K.
AGED 70 YEARS
S/O.KARUNAKARAN, KACHANIKODATH HOUSE,
VALLUVALLY KARA, KOTTUVALLY VILLAGE,
KONAMMAVU.P.O., PARAVUR, PIN - 683518

- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, PIN - 682031

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21.03.2024 ALONG WITH CRL.M.C.NO.1077 OF 2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

'C.R.'

ORDER

Dr. A.K. Jayasankaran Nambiar, J.

The above cases have been placed before us by an order of the Chief Justice pursuant to a reference order dated 20.02.2014 of a learned Single Judge of this Court. The issue referred to us concerns the interpretation of the provisions of Section 148 of the Negotiable Instruments Act, 1881 [hereinafter referred to as the "N.I. Act"] that deals with the power of an Appellate Court to order payment pending an appeal against conviction. In particular, we are called upon to clarify the nature and extent of the statutory discretion conferred on the Appellate Court, in the matter of ordering payments pending appeal against conviction under Section 138 of the N.I. Act. as also on the requirement of furnishing reasons in support of the order passed by the Appellate Court in exercise of that discretion.

2. In both the cases before us, orders passed by the Sessions Court [Appellate Court] directing deposit of a percentage of the

compensation amount ordered by the trial court under Section 148 of the N.I. Act are impugned *inter alia* on the ground that the orders passed by the Appellate Court were not supported by any reasons. The referring Judge noticed that different perspectives had been embraced by Single Judges of this Court while comprehending the law laid down by the Supreme Court in **Surinder Singh Deswal @ Col. S.S. Deswal and Others v. Virender Gandhi - [(2019) 11 SCC 341]** and **Jamboo Bhandari v. M.P.State Industrial Development Corporation Ltd. - [(2023) 10 SCC 446]**. The different perspectives of the Single Judges of this Court are found in **Ambili R. v. Sree Gokulam Chit and Finance Company (P) Ltd. and Another - [2020 (1) KHC 476]** and **Baiju v. State of Kerala - [2023 (7) KHC 669]**, and the referring Judge, while favouring the view taken in **Ambili R. (supra)**, believed that a conflicting view had been taken in **Baiju (supra)** and referred the issues to be considered by this Division Bench.

3. We have heard Sri.Samsudin Panolan, the learned counsel for the petitioner as also Sri.Alex M. Thombra, the learned Public Prosecutor for the respondent State.

4. In the interests of brevity and clarity, we feel it apposite not to elaborately discuss the findings of the learned Single Judges of this Court in the decisions referred above. We feel it would suffice to

merely analyse the statutory provision and express our opinion on the interpretation to be placed on the provisions of Section 148 of the N.I. Act in the light of the binding precedents of the Supreme Court in **Surinder Singh Deswal and Jamboo Bhandari (supra)**.

5. Section 148 of the N.I. Act reads as under:

“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.”

6. The Statement of Objects and Reasons of the Amendment Act No.20 of 2018 by which Section 148 of the N.I. Act came to be amended, reads as under:

“The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in Court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:-

(i) to insert a new S.143A in the said Act to provide that the Court trying an offence under S.138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new S.148 in the said Act so as to provide that in an appeal by the drawer against conviction under S.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.

4. The Bill seeks to achieve the above objectives.”

It is also necessary to notice the provisions of Section 389 of the Code

of Criminal Procedure, 1973 [hereinafter referred to as the 'Cr.P.C.'] that deals with the power of the Appellate Court to suspend the sentence awarded by the trial court and to release an appellant on bail pending an appeal. The said provision reads as under:

“389. Suspension of sentence pending the appeal, release of appellant on bail

(1) Pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

PROVIDED that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release;

PROVIDED FURTHER that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an appellate court may be exercised also by the High Court in the case of an appeal by a convicted person to a court subordinate thereto.

(3) Where the convicted person satisfies the court by which he is convicted that he intends to present an appeal, the court shall-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years;

or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the appellate court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to

imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

7. In **Surinder Singh Deswal (supra)**, the Supreme Court had to consider the object and purpose of the amendment in Section 148 of the N.I. Act in the backdrop of the general power available to the Appellate Court under Section 389 of the Cr.P.C. to suspend the sentence imposed by the trial court. Noticing that the provisions of Section 148 of the N.I. Act, as amended, conferred powers on an Appellate Court that was considering an appeal against a conviction and sentence under Section 138 of the N.I. Act, which powers were an exception to the general power available to an Appellate Court under Section 389 of the Cr.P.C. to unconditionally suspend the sentence pending appeals challenging a conviction and sentence, the Supreme Court found that while it was no doubt true that under the amended Section 148 of the N.I. Act, the word used in the context of exercising the discretion is “may”, it is generally to be construed as a “rule” or “shall” and it was only in exceptional cases, for which special reasons had to be assigned, that an Appellate Court could refrain from issuing a direction to deposit the prescribed percentage of the fine or compensation awarded by the trial court. In the later decision of the Supreme Court in **Jamboo Bhandari (supra)**, however, the Court found that what was held by it earlier in **Surinder Singh Deswal**

(supra), was that a purposive interpretation should be made of Section 148 of the N.I. Act and that, while under normal circumstances the Appellate Court would be justified in imposing the condition of deposit as provided in Section 148, in a case where the Appellate Court was satisfied that the condition of deposit of 20% would be unjust or imposing such a condition would amount to a deprivation of the right of appeal of the appellant, an exception could be made for reasons specifically recorded. The Court, in other words, found that in its earlier decision, it had never envisaged the deposit of a minimum of 20% of the fine or compensation awarded by the trial court as an absolute rule which did not accommodate any exception.

8. In our view, a reading of Section 148 of the N.I. Act as an exception to the general principles of suspension of sentence by an Appellate Court as contained in Section 389 of the Cr.P.C., and in the backdrop of the decisions of the Supreme Court in **Surinder Singh Deswal** and **Jambo Bhandari (supra)** would result in the following interpretation as regards the nature and manner of exercise of discretion by the Appellate Court under Section 148 of the N.I. Act:

- (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.

9. The above interpretation would, in our view, result from a harmonious reading of the judgments in **Surinder Singh Deswal** and **Jamboo Bhandari (supra)** and would also be in accordance with the express provisions of Section 148 of the N.I. Act, as amended, and its stated object as discernible from the Statement of Objects and Reasons of the Amendment Act No.20 of 2018. The issue referred to us for our consideration is answered accordingly.

While under ordinary circumstances, we would have been inclined to remit these cases back to the learned Single Judge for disposal based on the answer provided to the issue referred to us, we find that the orders of the Appellate Court impugned in these cases do not contain any reasons to support the findings therein. Under such circumstances, we deem it appropriate to dispose the CrI.MC's as well, by setting aside the impugned orders of the Appellate Court and directing the said court to pass fresh orders in the petitions filed under Section 389 of the Cr.P.C. before it by the petitioners herein, after taking note of the observations in this order. The Appellate Court shall pass fresh orders as directed within a period of three months from the date of receipt of a copy of this order.

The CrI.M.C.s are disposed as above.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

prp/22/3/24

APPENDIX OF CRL.MC.NO.1077/2024

PETITIONER ANNEXURES:

Annexure -A1 TRUE COPY OF THE MEMORANDUM OF APPEAL IN
CRL APP. NO. 149/2023 ON THE FILES OF
SESSIONS COURT MANJERI

Annexure -A2 TRUE COPY OF THE PETITION IN CRLMP
2216/2023 IN CRL APPEAL 149/2023 FILED BY
THE PETITIONER

Annexure -A3 CERTIFIED COPY OF THE ORDER DATED 04-12-
2023 IN CRLMP 2216/2023 IN CRL APPEAL NO.
149/2023 ON THE FILES OF SESSIONS COURT
MANJERI.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

APPENDIX OF CRL.MC.NO.558/2024

PETITIONER ANNEXURES:

Annexure -1 TRUE COPY OF THE CRL APP.NO.525/2023 WHICH IS FILED BEFORE THE ADDITIONAL SESSIONS COURT, N.PARAVUR DT. 16.12.2023.

Annexure -2 TRUE COPY OF THE PETITION, CRL.M.P.NO.02/2024 FILED IN CRL.APPEAL.NO.525/2023 BEFORE THE ADDITIONAL SESSIONS COURT, N. PARAVUR.

Annexure -3 CERTIFIED COPY OF THE ORDER IN CRL.M.P.NO.02/2024 IN CRL.APPEAL.NO.525/2023 PASSED BY THE ADDITIONAL SESSIONS COURT, N.PARAVUR, DT. 01/01/2024.



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RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE