

Varghese vs State of Kerala

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Court : Kerala

Decided On : Apr-11-2025

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : OP(Crl.)/254/2025

Appellant : Varghese

Respondent : State of Kerala

Judgement :

..1..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947
OP(CRL.) NO. 254 OF 2025 AGAINST THE COMMON ORDER DATED
04.02.2025 IN CRL.M.P.NO.925 OF 2024 & CRL.M.P.NO.102 OF 2025
IN CrI.A NO.65 OF 2024 OF ADDITIONAL SESSIONS COURT - V,
KOTTAYAM PETITIONER/APPELLANT/ACCUSED: VARGHESE AGED
51 YEARS, S/O M.V. THOMAS, MATHUPURAM HOUSE,
PUZHAVATHU KARA, CHANGANACHERRY P.O, KOTTAYAM
DISTRICT, PIN - 686101 BY ADVS.
K.N.RADHAKRISHNAN(THIRUVALLA) ANJU SUSAN REJI

RESPONDENTS/RESPONDENTS/RESPONDENTS/STATE: 1 STATE OF KERALA REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 BAIJU ABRAHAM AGED 36 YEARS, S/O BABYCHEN KOTTACKAL HOUSE, THRICKODITHANAM KARA, THRICKODITHANAM P.O, CHANGANACHERY, KOTTAYAM DISTRICT, PIN - 686105 SRI.M.P. PRASANTH, PP THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

JUDGMENT

The petitioner is the accused and the 2 nd respondent is the complainant in S.T.No.9857 of 2016 on the file of Judicial First Class Magistrate Court-I, Changanacherry.

2. The petitioner was convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act'). He was also directed to pay a

fine of Rs.15,00,000/-. The petitioner challenged the conviction and sentence in appeal before the Additional Sessions Court-V, Kottayam as Crl.Appeal No. 65 of 2024. The Sessions Court suspended the execution of sentence on condition among other things that the petitioner shall deposit 20% of the fine amount. Aggrieved by the said condition, the petitioner approached this Court by filing Crl.M.C.No. 6499 of

2024. This Court as per Ext.P2 order, set aside the said condition and directed the Sessions Court to reconsider the matter regarding deposit under Section 148 of the N.I.Act ..3..

afresh, on the ground that the order challenged was not a speaking order. Thereafter, the Sessions Court considered the matter and passed Ext.P3 order, again directing the petitioner to deposit 20% of the fine amount. The said order is under challenge in this revision petition.

3. I have heard both sides.

4. The Division Bench of this Court in Sreenivasan P.

v. Babu Raj [2024 (2) KHC 621], on reference has held that the appellate court has 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. It was further held that, in either event, since the appellate court would be exercising a statutory discretion, it would be legally obliged to furnish reasons for its decision.

I have perused Ext.P3 order. In paragraph 8 of the order, the Sessions Court has given clear reasons for exercising its discretion to direct the petitioner to deposit 20% of the fine ..4.. amount. Hence, I see no reason to interfere with the impugned order. Accordingly, this original petition is dismissed. The petitioner is granted one month's time to make the deposit.

Sd/- DR. KAUSER EDAPPAGATH JUDGE APA ..5.. APPENDIX OF OP(CRL.) 254/2025 PETITIONER EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE JUDGEMENT IN ST 9857/2016 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT CHANGANACHERRY, DATED 23.02.2024 EXHIBIT P2 THE COPY OF THE JUDGEMENT IN CRL.M.C NO 6499 OF 2024 DATED 02.08.2024 EXHIBIT P3 A TRUE COPY OF THE ORDER IN CRL.MP.925/24 AND JUDICIAL FIRST-CLASS MAGISTRATE COURT-I, CHANGANACHERRY DATED 04.02.2025

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