

**Ramlath vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1402592](https://sooperkanoon.com/1402592)

**Court :** Kerala

**Decided On :** Nov-30-2023

**Judge :** Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No. :** Crl.MC/9182/2023

**Appellant :** Ramlath

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH  
AGRAHAYANA, CRL.MC NO. 9182 OF 2023 AGAINST THE  
ORDER/JUDGMENT CRA 125/2023 OF ADDITIONAL DISTRICT  
COURT, IRINJALAKUDA PETITIONER/S: RAMLATH, AGED 49 YEARS  
W/O MOITHUNNY, KODAMBY HOUSE, KAZHIMBRAM.P.O.,  
VALAPPAD VILLAGE, CHAVAKKAD THALUK, PIN - 680566 BY ADVS.  
ELDHO PAUL TESSY JOSE RESPONDENT/S: 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, KOCHI , PIN - 682031 2 BAHULEYAN AGED  
67 YEARS S/O IDICHIRAN, VADAKKOOT HOUSE, VALAPPAD.P.O.,

THRIPRAYAR DESOM, NATTIKA VILLAGE, CHAVAKKAD THALUK,  
PIN - 680566 OTHER PRESENT: SRI RENJITH TR, PP THIS  
CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
30.11.2023, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING: -2-

**P.V.KUNHIKRISHNAN, J.**

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Dated this the 30th day of November, 2023

## **ORDER**

The above Crl.M.C is filed with following prayers: i.To set aside AnnexureA3 order and also to modify the conditions in Annexure A2 passed by the learned Sessions Judge Thrissur in the interest of justice. ii. For a direction to keep the non bail able warrant against the petitioner in CC No.2333/2017 of JFCM Kodungalloor in abeyance till the disposal of this criminal M.C. iii. To grant such other reliefs as this Honorable court may deem fit in the facts and circumstances of the Case. (sic)

2. Annexure A2 is an order passed by the Sessions Court,

Thrissur, by which the sentence imposed in Annexure A1 judgment is suspended with an additional condition of depositing 20% of the compensation amount ordered by the trial court. The petitioner filed an application to modify the order. The same is also dismissed as per Annexure A3 order. Aggrieved by the same, this Crl.M.C is filed.

3. Heard counsel for the petitioner. Even though notice is issued to respondents, there is no appearance. -3-

4. The counsel for the petitioner submitted that in the light of

the decision of the Apex Court in Jamboo Bhandari v. MP State Industrial Development Corporation Ltd. [2023 (6) KHC 80], the apex court observed that

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. That itself shows that the appellate court should consider the contentions of the petitioner by a speaking order. It will be better to extract the relevant paragraphs of the judgment in Jamboo Bhandaris case (Supra).

6. What is held by this Court is that a purposive

interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section

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 Section 389 of the Cr.P.C. of an accused who has -4-

been convicted for offence under Section 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 Section 389 of the Cr.P.C. 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.

10. In these cases, both the Sessions Courts and the High

Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception. underline supplied. -5-

5. In the light of the above principle laid down by this Court,

it is the duty of the appellate court to pass a speaking order, after adverting the contentions raised by the petitioner. As observed by the apex court, 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. In the light of the above principle, I am of the considered opinion that the matter is to be reconsidered by the appellate court. Therefore, this CrI.M.C is disposed of in the following manner:

The order directing to deposit 20% of the compensation amount as per Annexure A2 is set aside and the appellate court is directed to reconsider the matter in the light of the principle laid down by this Court in *Jamboo Bhandari v. MP State Industrial Development Corporation Ltd.* [2023 (6) KHC 80], after giving an opportunity of hearing to the petitioner and the 2nd respondent.

sd/- P.V.KUNHIKRISHNAN JUDGE das -6- APPENDIX OF CRL.MC 9182/2023  
PETITIONER ANNEXURES Annexure A1 A TRUE COPY OF THE JUDGMENT  
IN CC NO.2333/2017 DATED 6.5.2023 ON THE FILES OF THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT KODUNGALLOOR Annexure A2 A TRUE COPY  
OF THE ORDER IN CRL.M.P.NO.2296/2023 IN CRL. APPEAL NO.125/2023  
DATED 30.5.2023 OF THE SESSIONS JUDGE, THRISSUR Annexure A3 THE  
CERTIFIED COPY OF THE ORDER IN

CRL.M.P.NO.259/2023 IN CRL. APPEAL NO.125/2023 BY THE LEANED ADDL.  
SESSIONS COURT, IRINJALAKUDA DATED 16.10.2023 Annexure A4 THE  
MEDICAL CERTIFICATE ISSUED BY THE ENT SURGEON THRISSUR  
INSTITUTE OF ENT, HEAD AND NECK SURGERY, DATED 6.10.2023

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