

Ranisha Winston, vs Anil Dev,

Ranisha Winston, vs Anil Dev,

SooperKanoon Citation : sooperkanoon.com/1442367

Court : Kerala

Decided On : Nov-16-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/270/2022

Appellant : Ranisha Winston,

Respondent : Anil Dev,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 16TH DAY OF NOVEMBER 2022 / 25TH
KARTHIKA, 1944 CRL.MC NO. 270 OF 2022 AGAINST THE
ORDER/JUDGMENT IN CRL.MP 1878/2021 IN CRA 154/2021 OF THE
SESSIONS COURT, THIRUVANANTHAPURAM

PETITIONER/PETITIONER/RESPONDENT/ACCUSED: RANISHA
WINSTON, AGED 28 YEARS, PROPRIETOR , GEN X
TECHNOLOGIES, W/O. JOE WINSTON, 3/43-F, HILL VIEW, TOWN
RAILWAY STATION, NAGERCOIL. BY ADVS. V.N.GOPALAKRISHNAN
NAIR G.ARUN A.CHANDRA BABU G.VARUN
RESPONDENTS/COUNTER

PETITIONER/RESPONDENT/COMPLAINANT/STATE:

1 ANIL DEV, AGED 32 YEARS, S/O. PUSHPAN, RESIDING AT BHAGYASREE, PADA NORTH MURI, KARUNAGAPALLY 690 518. 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR , HIGH COURT OF KERALA, ERNAKULAM 682 031. BY ADV RAKESH TT SR.PP-SRI.RENJIT GEORGE THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16.11.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 16th day of November, 2022 This is a petition filed under Section 482 of the Code of Criminal Procedure (herein referred to as `Cr.P.C for short) challenging Annexure-VI order in Crl.M.P.No.1878/2021 in Crl.Appeal No.154/2021 pending before the Sessions Court, Thiruvananthapuram. The petitioner is the accused in the above Crl.M.P.

2. As per the order impugned, the learned Sessions

Judge while suspending the sentence imposed by the trial court in C.C.No.946/2016 on the file of the Judicial Magistrate First Class Court-XII, Thiruvananthapuram, directed the petitioner to deposit 30% of the cheque amount as compensation.

3. Aggrieved by the said order, the petitioner has approached this Court, for a direction to quash Annexure-1

order in Crl.M.P.No.1878//2021 in Crl.App.No.154/2021 on the

file of Sessions Court, Thiruvananthapuram.

4. At the time of argument, it is submitted by the

learned counsel for the petitioner that, this Court can set aside the order since the statutory wording under Section 148 of the N.I.Act is may and therefore, the

deposit is not mandatory, but only the discretion of the Court. In Fact, the Apex Court in the decision reported in [2019 (3) KHC 355 : 2019 (2) KLD 1 : 2019 (2) KLT 985 : ILR 2019 (2) Ker. 713 : 2019 (2) KLJ 983 : 2019 (8) SCALE 445 : AIR 2019 SC 2956 : 2019 Cri LJ 3507 : 2019 (11) SCC 341], Surinder Singh Deswal @ Col. S.S.Deswal & Ors. v. Virender Gandhi held that the word 'may' used in Section 148 of the Negotiable Instruments Act (hereinafter referred to as 'N.I Act' for convenience) to be construed as a 'rule' or 'shall'. Therefore, the direction to deposit not less than 20% of cheque amount as compensation is not discretionary.

5. This Court also followed the said ratio in a decision reported in [2020 (1) Crimes(HC) 582], Thomas v. State of Kerala & anr.

6. The legal position is not in dispute that as per the statutory mandate under Section 148 of the N.I Act, in an appeal filed against conviction for the offence punishable

under Section 138 of the N.I Act, the appellate court can order

the appellant to deposit such sum which shall be a minimum of 20% of the fine amount or compensation awarded by the trial court. It is provided that the amount payable under sub section (1) of Section 148 of the N.I Act, shall be paid by the accused under Section 143-A of the N.I Act.

7. Thus it appears that the direction for deposit of

30% of the compensation amount as per the impugned order

is within the power of the appellate court and the Apex Court in Surinder Singh Deswal @ Col. S.S.Deswal & Ors. v. Virender Gandhi (supra) held that such direction can be issued reading the word 'may' in Section 148 of the N.I Act as 'rule' or 'shall'. Therefore, the order impugned does not require any interference. Accordingly, this petition fails and is accordingly dismissed. Sd/- A. BADHARUDEEN SK/16.11. JUDGE APPENDIX OF CRL.MC 270/2022 PETITIONER'S ANNEXURES ANNEXURE A1 TRUE COPY OF THE COMPLAINT IN C.C. NO.

BEFORE THE TEMPORARY SPECIAL COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS UNDER SECTION 138 OF N.I. ACT TRIVANDRUM. ANNEXURE A2 TRUE COPY OF THE JUDGMENT DATED 9.11.21 BEFORE THE HONBLE COURT 946/206 BEFORE THE TEMPORARY SPECIAL COURT O OF THE JUDICIAL MAGISTRATE OF FIRST CLASS UNDER SECTION 138 OF N.I. ACT TRIVANDRUM. ANNEXURE A3 TRUE COPY OF THE MEMORANDUM OF CRL.APPEAL NO. 154/2021 BEFORE THE SESSIONS COURT THIRUVANANTHAPURAM DATED 6.12.2021. ANNEXURE IV TRUE COPY OF THE ACKNOWLEDGEMENT. ANNEXURE V TRUE COPY OF THE APPLICATION IN CRL. M. P. NO. 1878/2021 IN CRL.APPEAL NO. 154/2021 BEFORE THE SESSIONS COURT THIRUVANANTHAPURAM DATED 6.12.2021. ANNEXURE VI TRUE COPY OF THE ORDER IN CRL.M.P NO. THE SESSIONS CORT THIRUVANANTHAPURAM DATED 9.12.2021. RESPONDENTS' EXHIBITS: NIL

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com