

IN THE COURT OF SESSION (VACATION COURT),
ERNAKULAM DIVISION

Present:-

**Sri. V P M Suresh Babu, Additional District and Sessions Judge-VII
Judge, (Vacation Court)**

Thursday, 7th day of May, 2026/ 17th Vaisakha, 1948

Crl.MP No.01 of 2026 & Crl MP No. 2 of 2026 in
Crl.Appeal No.242 of 2026

Crl.MP No.01 of 2026

Petitioner/
Appellant/
Accused:

Jeninmon, aged 50/18, S/o. Daniel Varghese,
Vandanathil House, West Vengola P O, Vengola
Kara, Arakkapady Village, Kunnathunad Thaluk,
Pin-683 556.

By Adv. Tissarant A G

Respondents/
Respondents
Complainants:

1 The State of Kerala represented by the Public
Prosecutor, District and Sessions Court,
Ernakulam.

2 Ibrahim E A, aged 28/18, S/o. Aliyar,
Iruppakkoottil House, Pallikkara Kara,
Kumarapuram P O, Kunnathunadu Village, Pin-
683 565.

**R1- By Addl Public Prosecutor Sri. Jolly
George.**

Crl.MP No.02 of 2026

**Petitioner/
Appellant/
Accused:**

Jeninmon, aged 50/18, S/o. Daniel Varghese, Vandanathil House, West Vengola P O, Vengola Kara, Arakkapady Village, Kunnathunad Thaluk, Pin-683 556.

By Adv. Tissarant A G

**Respondents/
Respondents
Complainants:**

1 The State of Kerala represented by the Public Prosecutor, District and Sessions Court, Ernakulam.

2 Ibrahim E A, aged 28/18, S/o. Aliyar, Iruppakkoottil House, Pallikkara Kara, Kumarapuram P O, Kunnathunadu Village, Pin-683 565.

R1- By Addl.Public Prosecutor Sri. Jolly George.

This petitions filed under Section 430 of Bharatiya Nagarik Suraksha Sanhita to suspend the execution of the sentence and under section 148 of Negotiable Instruments Act to waive conditional deposit respectively.

This petition coming on for hearing on 04.05.2026 and the Court on the 07.05.2026 passed the following:

COMMON ORDER

1. Crl.M.P.No. 1/2026 is filed under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) by the petitioner/appellant to suspend the execution of the sentence passed by the Court of Judicial Magistrate of First Class,

Kakkanad in ST No.1919/2018 dated 01.04.2026. Whereas, Crl.M.P.No.2/2026 is filed for exemption from imposing the condition for depositing 20% of the fine amount in order to suspend execution of sentence stated in the above case.

2. Short facts necessary for the disposal of the petitions are as follows:- The purpose of both petitions is one and same, i.e., to suspend execution of the sentence of the trial court giving exemption from depositing 20% of the fine amount. The trial court in the judgment convicted the petitioner for offence under Section 138 of the NI Act and sentenced to undergo simple imprisonment till the rising of the court and to pay fine of ₹ 25,00,000/-. In default of payment of fine, he shall undergo imprisonment for a period of 3 months. It is also ordered to pay entire fine amount as compensation to R2. The petitioner submitted that there are sufficient, valid and legal grounds to allow the above appeal in favour of the appellant and the conviction and sentence of the trial court is not sustainable. The petitioner further submits that he has valid ground to believe that the appeal will succeed. Unless the judgment of the trial court is suspended till the disposal of the appeal, the petitioner would be put to untold hardships and irreparable loss.

3. The petitioner sought exemption from deposit of 20% of the fine amount. It is pleaded that he is undergoing severe financial crisis and earlier his mother was diagnosed with cancer and undergone surgery. She is no more. Huge amounts spent for her treatment. His house is also under the SARFAESI recovery proceedings. He has no financial capacity to deposit 20% of the fine amount, as

stipulated u/s.148 (1) of NI Act. So, prayed to grant leniency by granting exemption from imposing of deposit of 20% of the fine amount in the trial court and to suspend execution of sentence passed against him.

4. The second respondent entered appearance and filed a detailed objection to the application. The second respondent submitted that appellant has received an amount of ₹ 1.65 crores in the year 2015 from the second respondent as a security deposit as per an agreement executed between the appellant and respondent in respect of a Crusher owned by the appellant. The amount was advanced after availing loan from the Standard Chartered Bank after mortgaging his family properties. In order to return the above mentioned amount, the appellant has issued six cheques. All the above cheques were dishonored and ended up in prosecution under Section 138 of the NI Act. In all 6 cases he was convicted. The transaction was in the year 2015 and so far no compensation has been granted to the 2nd respondent.

5. It is also submitted that the statutory direction under Section 148 of the Negotiable Instruments Act is incorporated with an intention to give relief to the complainant. In the above case, it is pertinent to note that appellant herein has dragged the matter to 8 years from the date of filing of the complaint. The appellant owns property in various villages in Kerala and he runs a petrol pump as well. The details of property are also stated in the application filed by the petitioner.

The respondent further submitted that appellant had approached the Hon'ble High Court of Kerala while the matter was pending before the trial Court. Initially he filed application to quash the proceedings along with other criminal proceedings. The application was dismissed by the High Court of Kerala vide judgment dated 19.02.2024 as per the common order. The order is also produced along with the objection. In 2025, the appellant approached the Hon'ble High Court by suppressing material facts from the court and consequently, his application was dismissed, observing that the appellant had perpetrated fraud on the High Court of Kerala. A copy of that order dated 13.03.2026 was also produced.

6. In suit for recovery of money is filed is decreed and the appellant has not paid any money. The execution petition is pending. There is no exceptional circumstances in the case to waive the statutory requirement to deposit 20% of the cheque amount while suspending the execution of the sentence. Therefore, the respondent prayed to dismiss the application to waive the condition to deposit 20% of the amount.

7. Heard both sides.

8. The points for consideration are :

(1) Whether the petitioner is entitled have the execution of sentence passed against him suspended?

(2) Whether there is valid ground to exempt the appellant from the requirement to deposit 20% of the compensation amount?

(3) What is the order to be passed.

9. **Point No. 1 and 2 :-** The learned counsel for the petitioner repeated the same facts stated in the affidavit of the petitioner and prayed to suspend execution of sentence seeking waiver of deposit of 20% of the fine amount imposed by the trial court. The learned counsel also submitted that the petitioner has no financial capacity to pay 20% of the fine amount. So, prayed to grant full exemption from imposing condition of depositing 20% of fine amount as stated in S.148 (1) of N.I. Act.

10. The Learned Advocate for the respondent/complainant on the other hand submit that the petitioner has sufficient financial capacity to deposit 20% of the amount imposed by the court. The available property details of the appellant is already stated in the objection filed by the respondent. The appellant has dragged on the proceedings for the past eight years. In fact the money was paid to the accused by the complainant by borrowing from the bank and he has to pay huge interest. Therefore there is no justification for exempting him from the requirement to deposit 20% of the fine amount as stated in Section 148(1) of the Negotiable Instruments Act.

11. The main reason pointed out by the learned counsel for seeking full exemption from depositing of 20% of the fine amount in the trial court is that the petitioner is undergoing severe financial crisis. The learned counsel also submitted that his residential house is under SARFAESI recovery proceedings and he has no means to raise amount to deposit in the trial court in the above matter. The petitioner is entitled exemption from depositing 20% of that amount of fine.

12. The objection filed by the respondent has, in paragraph 7, detailed the several properties belonging to the accused. According to the same, the appellant have a property measuring an extent of 62.84 Are in Block No. 22, Survey No. 112/1 in Arackapady Village as per Document No. 2636/2025 of Perumbavur SRO., he has possession of 18.10 Ares in Block No. 22 in Survey No. 112/1 as per document 2637/ 2005, another property having an extent of 39.66 Are in Block No. 22 in the same Survey No. as per Document No. 4123/99 of Perumbabur SRO, property having 24.29 are in the same Survey No. as per Document No. 5179/97, another property measuring 26.72 Are as per Document No. 1724/91 of Perambavur SRO and property having an extent of 58.40 Are in Block No. 10 in Re-survey No. 539/2 in Irulam Village in Wayanad, and property having an extent of 80.94 Are in Survey No. 1/1-124/2-2 in Vathikudy Village, Idukki District and another property having an extent of 69.20 are in Survey No. 1/124/2-2 in Vathikudy Village, Idukki District. Therefore the objection filed by the respondent no. 2 shows that the appellant has numerous properties. Therefore, the contention

that he has financial constraints prima facie cannot be acceptable. The requirement of the deposit 20% of the fine amount is a statutory requirement which can be exempted by the court only when the court finds that there are valid reasons. The reason stated is his financial stringency. But the objection filed by the respondent shows that he has several property. It is also seen that the application filed by the petitioner to quash the complaint was dismissed and suppressing that he again moved the Hon'ble High Court. Therefore, it shows that the matter was dragged on all these years. When the court is considering the requirement to deposit the fine amount, the nature of the appellant and the grievance of the complainant both has to be considered by the court. The complaint has been dragged on for so many years and if there is a chance of success in that case, it is a matter to be again adjudicated and till that time it cannot be stated that the complainant has to wait without a penny being paid to him. It is seen that even the suit was decreed against him as per the objection filed, but the execution petition also the amount is not paid.

13. Therefore, court is of the view that though the appellant has a statutory right of appeal, and that right of appeal become meaningless if the execution of sentence is not suspended, however, he is not entitled to get the exemption from depositing 20% of the fine amount in view of the facts of the present case especially showing that the appellant has sufficient property and means to deposit the amount. The point is answered accordingly.

14. **Point No.3** :- Considering the facts and circumstances and in view of the finding on points 1 and 2, I am of the view that execution of the sentence passed by the trial court is to be suspended by imposing condition of depositing 20% of the fine amount. Hence, application Crl M P 2/26 to exempt the petitioner from depositing 20% of the fine amount is dismissed.

In the result, the execution of sentence passed by the trial court is suspended till the disposal of the appeal and the petitioner shall be released on bail, on his executing bail bond for ₹100,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court and on deposit of 20% of the fine amount imposed upon by the trial court within one month from the date of this order.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 7th day of May, 2026.

Sd/-

V P M Suresh Babu
Judge (Vacation Court)

//True Copy//
(By Order)

Vacation Officer

Typed by: sm
Comp.by:

**Common Order in
Crl.MP No.01/2026 & Crl MP No 02/2026 in
Crl.Appeal No.242/2026
Order dated: 07.05.2026**