IN THE COURT OF ADDITIONAL SESSIONS JUDGE -III, KASARAGOD
Present: Sri.Achindya Raj Unni, Addl. Sessions Judge -III
Wednesday, the 22nd day of October, 2025/30th Aswina, 1947

Crl. M.P. No. 6752/2024 and Crl. M.P. No. 5317/2025
in Crl.Appeal No. 213/2024

Crl. M.P. No. 6752/2024 in Crl.Appeal No. 213/2024

Between:-

T.A.Sulaiman, aged 58 years, S/o.T.A.Abdul Khader Haji, Thuruthi, Kasargod Kasaba Village and Post, Kasaragod Taluk and District.	Appellant/Accused

And

Mohammed Kunhi A.M, aged 43 years, S/o.A.M.Abdul Rahiman, R/at Alampady Post, Kasaragod Taluk and District, Represented by Power of Attorney Holder, Ayshathul Shehdhana T.I., Aged 38 years, W/o.Mohammed Kunhi A.M., R/at Wafaaza Heritage, Alampady, Muttathody Village, Alampady Post, Kasaragod Taluk and District.	Respondent.

Application filed under Section 430 of BNSS, 2023 by the appellant/accused to suspend the execution of the sentence passed against him in S.T.C. No. 36/2023 by the Chief Judicial First Class Magistrate, Kasaragod, as per the judgment dated 29.10.2024.

Petition presented on : 28.11.2024

Crl. M.P. No. 5317/2025 in Crl.Appeal No. 213/2024

Between:-

T.A.Sulaiman, aged 58 years,
S/o.T.A.Abdul Khader Haji,
Thuruthi, Kasargod, Kasaba Village
and Post, Kasaragod Taluk and District. — Petitioner/Appellant.

And

1. Mohammed Kunhi A.M, aged 43 years,
   S/o.A.M.Abdul Rahiman,
   R/at Alampady Post, Kasaragod Taluk
   and District, Represented by Power of
   Attorney Holder, Ayshathul Shehdhana T.I.,
   Aged 38 years, W/o.Mohammed Kunhi A.M.,
   R/at Wafaaza Heritage, Alampady,
   Muttathody Village, Alampady Post,
   Kasaragod Taluk and District.
2. State of Kerala, Rep by Addl.Public
   Prosecutor, Kasaragod.

— Respondents.

Application filed under Section 422 of BNSS, 2023, by the appellant/accused to enlarge the time for executing the bond for a further period of two weeks.

Petition presented on : 17.09.2025

These two petitions are coming on 16th day of October, 2025 for final hearing before me in the presence of Sri.Shajid Kammadam, Advocate for petitioner in both Crl.MP's; of S/Sri.Rajagopala A and Bharath V Karanth, Advocates for respondent in Crl.M.P.No. 6752/2024 and respondent No.1 in Crl.M.P.No. 5317/2025; of Addl.Public Prosecutor for 2nd respondent (state) in Crl.M.P. No. 5317/2025 and having stood over to this day for consideration; the Court passed the following:

COMMON ORDER

Crl.M.P 6752/2024 is filed under Section 430 of BNSS, 2023, by the appellant/accused to suspend the execution of the sentence passed against him in S.T.C. No. 36/2023 by the Chief Judicial First Class Magistrate, Kasaragod, as per the judgment dated 29.10.2024.

Crl.M.P 5317/2025 is filed under Section 422 of BNSS, 2023, by the appellant/accused to enlarge the time for executing the bond for a further period of two weeks.

2. **<u>Brief facts which led to the filing of the present petitions can be unfolded as follows:</u>** The first respondent/complainant herein filed a complaint before the trial court against the petitioner/accused alleging the commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881. (hereinafter referred to as the N.I.Act). On his appearance, the petitioner/accused pleaded not guilty and claimed to be tried. After trial, the petitioner/accused herein was convicted and sentenced to undergo simple imprisonment till the rising of the Court and to pay a fine of Rs. 1,30,00,000/- with interest and cost 12% per annum from the date of the cheque till the date of the judgment i.e. 29.10.2024 and in default whereof, to undergo simple imprisonment for six months for the offence under section 138 of the the N.I.Act.

3. Being aggrieved and dissatisfied by the trial court's judgment, the above appeal has been preferred by the petitioner/appellant. Along with the appeal, the petitioner/ appellant had filed Crl. M.P. 6752/2024 with a prayer to suspend the execution of the sentence. After hearing the parties, the Sessions Court vide order dated 29.11.2024 allowed the petition, and the execution of the sentence imposed by the trial court stands suspended on condition that the petitioner has to deposit 20% of the fine amount. The relevant portion of the order reads as follows:

> *"In the result, the execution of sentence against the petitioner/appellant in STC No.36/2023 on the file of the Court of Chief Judicial Magistrate, Kasaragod stands suspended on his executing a bond for ₹ 50,000/- (Rupees Fifty Thousand only) with a solvent surety for the like sum, and also on his depositing 20% of the fine amount imposed upon him as per the impugned judgment within a period of two months from today.*

However the appellant shall execute bond before the trial court on or before 02.12.2024 ”

4. The aforementioned order in Crl.M.P. No. 6752/2024 was challenged by the petitioner/appellant before the Hon’ble High Court by filing Crl.M.C. No. 4214/2025. The Hon’ble High Court, vide order dated 22.05.2025, set aside the order passed by the Sessions Court in Crl.M.P. No. 6752/2024 dated 29.11.2024, observing that the impugned order directing the petitioner to deposit 20% of the fine amount did not disclose any valid reasons for issuing such a direction. The relevant portion of the order is given hereunder.

“ 3. The cited decision of the Division Bench gives no room for doubt that the reason for either directing or exempting the appellant from the deposit under Section 148 of the Negotiable Instruments Act should be discernible from the order. Indisputably, the impugned order does not satisfy that requirement.

4. In the nature of the order being passed, notice to the 1st respondent is dispensed with.

In the result, the Crl.M.C is allowed and Annexure A1 order, to the extent it directs deposit of 20 % of the fine amount, is quashed. The Appellate court can pass a fresh reasoned order under Section 148 of the Negotiable Instruments Act.”

5. Thus, the Hon’ble High Court has set aside the original order passed in Crl. M.P. No. 6752/2024 and directed this Court to dispose of the petition afresh on merits. Thereafter, the petitioner has filed Crl. M.P. 5317/2025 seeking extension of the time to execute the bond before the trial court till the disposal of the present petition. The first respondent has filed a counter statement in Crl. M.P.

5317/2025. However, this Court proceeded to hear the main petition, i.e.Crl. M.P. No. 6752/2024.

6. The counsel for the petitioner submitted that the trial court's findings are contrary to law and facts and liable to be set aside. He further submitted that there are exceptional circumstances to exempt the deposit of the fine amount as directed by section 148 of the N.I.Act in the case at hand. He submitted that the fine amount imposed by the Trial Court is very huge and he did not have the wherewithal to deposit 20% of the fine amount.

7. According to the learned counsel for the accused/petitioner, the prosecution's case is that the petitioner had agreed to sell his immovable properties to the complainant/respondent. However, the sale transaction, as agreed between the parties, did not materialise. Consequently, in order to return the advance sale consideration received from the complainant, the petitioner issued the cheques in question. The learned counsel further submitted that, in addition to the present criminal proceedings, a civil suit involving the same cheques is also pending between the petitioner and the first respondent. It was also brought to the notice of the Court that, in the said civil suit, the Subordinate Court has already ordered the attachment of the petitioner’s immovable properties. As a result, the entire immovable properties belonging to the petitioner are currently under attachment, thereby preventing him from raising funds by either pledging or selling those assets. It is further submitted that the complainant/respondent is attempting to harass the petitioner. Hence, in the interest of justice, the petitioner prays to suspend the operation of the sentence imposed by the trial court unconditionally or else upon depositing ₹.3,00,000/-.

8. Per contra, the counsel for the first respondent/ complainant stoutly opposed the contentions put forth by the petitioner and further contented that no exceptional circumstances were brought on record by the petitioner/appellant to save himself from the mandatory deposit as stipulated by Section 148 of the N.I.

Act. According to the learned counsel, the financial inability of the petitioner is not a valid ground to exempt the petitioner from making the deposit. It was further submitted that once this Court has determined that the petitioner is liable to make the deposit as per Section 148 of the N.I.Act, it has no authority to reduce the amount below 20% of the fine imposed. The fact that a civil dispute is pending with respect to the same transaction and immovable properties of the petitioner were attached in the said suit is fairly conceded by the counsel for the first respondent.

9. Heard both sides and perused the records, the point that arises for consideration is

1) Is the petition allowable?

10. **<u>The point:</u>** Section 148 of the Negotiable Instruments Act provides that, in an appeal filed by the drawer against a conviction under Section 138, the Appellate Court may direct the appellant to deposit a sum, which shall be a minimum of twenty per cent of the fine or compensation awarded by the Trial Court. The Division Bench of the Honourable High Court of Kerala in **P Sreenivasan v Baburaj** reported in **(2024 (2) KHC 621)** considered the scope and ambit of Section 148 of the N.I.Act, in the light of various decisions by the honourable Apex Court in this regard. The relevant paragraphs are outlined below:

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

11. Therefore, the points which are to be considered by the Court while disposing of a petition of like nature are no longer a res integra. The learned counsel for the petitioner placed reliance on the decision of the single bench of the Honourable High Court of Kerala in **Baby Eldho v. O.M.Rakesh and another** reported in **(2024 KER 60437)** to contend that, considering the peculiar facts and circumstances of the case, as well as the fine amount imposed on the petitioner, a

reasonable sum which is less than 20% of the fine amount may be directed to be deposited while suspending the execution of the sentence.

12. However, in ***P. Sreenivasan*** **(supra),** the Division Bench has categorically held that if the Appellate Court, in the exercise of its discretion, determines 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 shall not be less than 20% of the fine or compensation awarded by the Trial Court. Therefore, the contention of the petitioner that leniency may be shown while directing the deposit of a portion of the fine amount, considering his financial condition, is devoid of merit and liable to be rejected.

13. The counsel for the petitioner argued that the petitioner suffers from serious financial difficulty. It is to be noted that financial difficulty by itself cannot be considered as a special circumstance to exempt the petitioner from payment of the deposit.

14. However, it is to be noted that the dispute between the parties arises from the dishonour of Ext. P1 to P3 cheques dated 06-02-2023 for a total amount of ₹1,30,00,000-/-. The impugned judgment was passed on 29-10-2024. The trial court has convicted the accused and imposed a fine amount of ₹1,30,00,000-/-, with interest at the rate of 12% per annum. Regarding imposition of fine in cases under the Negotiable Instruments Act, the Honourable Supreme Court in **Vijayan v. State of Kerala, reported in 2012 (1) SCC 260,** held as follows:

> *"As the provisions of Chap.17 of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the Courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss)*

and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different Courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of Courts of justice.”

15. Thus, while imposing a sentence for offences under the N.I. Act, the court concerned has a duty to fix the fine amount, keeping in view the cheque amount and the simple interest thereon at 9% per annum as a reasonable quantum of loss. The Hon’ble Supreme Court has directed that the trial courts shall exercise the powers to levy a fine up to twice the cheque amount, keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss. However, the trial court has fixed an interest of 12% per annum while imposing fine, no special reason was assigned by the trial court for awarding interest at the rate of 12% per annum, even though the cheque was issued less than two years ago.

16. Furthermore, it is an admitted fact that the immovable properties of the petitioner are under attachment by order of the Civil Court in a suit initiated on the basis of Ext. P1 to P3 cheques. In this context, the contention of the petitioner that he is not in a position to alienate or pledge his immovable properties in order to deposit 20% of the fine amount to secure suspension of the substantive sentence assumes significance. Notably, the attachment was effected at the instance of the first respondent in a case arising out of the same transaction in question. Even if the petitioner intends to deposit 20% of the fine amount, it is practically impossible for him to do so through the disposal of his immovable assets.

17. In such circumstances, the petitioner finds himself in a difficult position, with his assets already under attachment at the request of the respondent arising out of a civil case instituted on the basis of the same cheques in question. This also may be treated as an exceptional and peculiar circumstance justifying a deviation from the requirement to deposit 20% of the fine amount as contemplated under Section 148 of the N.I. Act.

18. The counsel for the petitioner further submitted that the trial court's findings are both contrary to law and facts and liable to be set aside and the present application in question is not allowed, the substantial part of the sentence imposed by the lower court will be executed and the same will result in the deprivation of the right of appeal recognised by the statute. However, this court finds that marshalling of evidence and facts to evaluate the correctness of the judgment rendered by the trial court is not an advisable task at this stage.

19. After hearing the parties, reading the memorandum of appeal and reading the impugned judgment, this court is of the considered view that a prima facie case has been made out by the petitioner to exempt him from depositing the amount as stipulated by section 148 of the N.I.Act. Therefore, this Court is of the considered view that, for the reasons outlined above, the petitioner can be exempted from depositing the amount mandated by section 148 of the N.I.Act. Hence, this court finds that the condition of a deposit of 20% of the fine amount in the present case will be unjust and imposing such a condition will amount to a deprivation of the right of appeal of the appellant. The point is found in favour of the petitioner.

In the result, the Crl.M.P 6752/2024 is allowed with the following conditions

1. The execution of the sentence passed by the trial Court dated 26.10.2024 in ST 36/2023 hereby stands suspended.

2. The petitioner /accused shall be released on bail, on his execution of a bond for ₹1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum to the satisfaction of the trial court.

3. In the light of the order in Crl.M.P 6752/2024, the prayer in Crl.M.P 5317/2025 became Infructuous. Hence, Crl.M.P 5317/2025 is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, revised and corrected by me and pronounced on this the 22nd day of October 2025)

Sd/-

ADDL. SESSIONS JUDGE-III
KASARAGOD.

Typed &
Compared by: Beena N

<u>Fair/Copy of Common Order</u> **<u>in Crl.M.P. No.6752/2024 & Crl.MP No. 5317/2025</u>** **<u>in Crl.Appeal No.213/2024</u>**
Dated: 22.10.2025