



CRL.MC NO. 4732 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 22ND DAY OF JULY 2026 / 31ST ASHADHA, 1948

CRL.MC NO. 4732 OF 2026

**AGAINST THE ORDER DATED 25.04.2026 IN CRMP 1/2026 IN CrI.A
NO.231 OF 2026 OF SPECIAL C IDAMALAYAR INVN & 5 ADDITIONAL
DISTRICT COURT/RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM/ II
ADDITIONAL MACT, EKM**

PETITIONER/RESPONDENT/COMPLAINANT :

**IBRAHIM E.A
AGED 36 YEARS
S/O ALIYAR, IRUPPAKKOOTIL HOUSE, KUNNATHUNADU VILLAGE,
KUMAAPURAM P.O, ERNAKULAM,, PIN - 683565**

BY ADV SRI.SIRAJ KAROLY

RESPONDENTS/APPELLANT/ACCUSED:

- 1 JENIMON
AGED 57 YEARS
S/O DANIEL, VANDARATHIL HOUSE, ARACKAPADY VILLAGE,
KUNNATHUNADU TALUK, , WEST VENGOLA P.O, PERUMBAVOOR-,
PIN - 683556**
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031**

BY ADV SRI.ANANTHAKRISHNAN A. KARTHA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
22.07.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**C.S.DIAS, J.**-----
CRL.MC NO. 4732 OF 2026
-----**Dated this the 22nd day of July, 2026****ORDER**

The petitioner had filed S.T.No.240/2018 before the Court of the Judicial First Class Magistrate, Kakkanad, (Trial Court), against the 1st respondent alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I.Act', in short). By Annexure -1 common judgment the Trial Court convicted and sentenced the 1st respondent for committing the above offence. Aggrieved by the conviction and sentence, the 1st respondent has preferred Crl.Appeal No.231/2026 before the Court of Sessions, Ernakulam, (now pending before the Court of the Additional Sessions Judge-II, Ernakulam), (Appellate Court). Along with appeal, the 1st respondent also filed applications to suspend the execution of sentence and also to waive the statutory deposit as envisaged under Section 148 of the NI Act. The Appellate Court, by the impugned Annexure 10 order, without



affording the petitioner an opportunity of being heard has waived the statutory deposit and unconditionally suspended the execution of the sentence. In fact, in Crl. Appeal Nos.241/2026, 242/2026 and 243/2026 filed by the 1st respondent against the petitioner in identical matters, the Appellate Court has ordered the 1st respondent to deposit 20% of the fine amount, after being convinced that the 1st respondent has the financial means to make the deposit. However, in the present case, the Appellate Court was misled by the 1st respondent. Hence, Annexure 10 order may be set aside.

2. I have heard the learned counsel for the petitioner, the learned counsel for the 1st respondent and the learned Public Prosecutor.

3. A reading of Annexure 10 order substantiates that the application to waive the statutory deposit was passed without affording the petitioner an opportunity of being heard.

4. It is the petitioner's specific case that, the 1st respondent has extensive landed properties and has the means



to make the statutory deposit. It is considering the above aspect that the Appellate Court in the connected Criminal Appeals has ordered the 1st respondent to make the deposit.

5. On the contrary, it is the 1st respondent's case that all his properties have been attached in SARFAESI proceedings by financial institutions. Moreover, he had to spend a substantial amount for his mother's medical treatment. Therefore, he does not have the means to deposit said amount. It is considering the exceptional circumstances made out by the 1st respondent that the Appellate Court waived the statutory deposit.

6. In ***Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virendar Gandhi*** (2019 (11) SCC 341), the Honourable Supreme Court has categorically held that the language under Section 148 of the N.I.Act is 'may' and not 'shall'. Therefore, the discretion is vested with the Appellate Court to decide whether 20% of the fine/compensation amount is to be deposited or waived, for suspending the sentence imposed on the accused. The said provision has to be



purposefully interpreted in furtherance of the objects and reasons of the amendment under Section 148 of the N.I.Act.

7. The above view has been reiterated in ***Jamboo Bhandari v. M.P.State Industrial Development Corporation Ltd*** (2023 (6) KHC 80) , by holding that when an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief for suspension of sentence without condition. Therefore, when a blanket order is sought by the appellant, the Appellate Court has to consider whether the case falls within exceptional grounds. An identical view has been taken by a Division Bench of this Court in ***Sreenivasan P. v. Babu Raj*** (2024 (2) KHC 621), by holding that the Appellate Court has a discretion to either order the appellant to deposit a portion of the fine/ compensation amount awarded by the Trial Court or to waive such deposit. In either case, the Appellate Court has to give reasons for exercising such statutory discretion.

8. On a consideration of the facts, the materials on record, the rival submissions made across bar, the law laid



down by the Hon'ble Supreme Court, and taking note of the fact that Annexure 10 order was passed without affording the petitioner an opportunity of being heard, I am of the definite view that Annexure 10 order is to be set aside and the Appellate Court be directed to reconsider the matter, after affording both sides an opportunity of being heard and after considering all the materials produced by both sides. Moreover, in the appeals where the Appellate Court had dismissed the application for waiver, this Court has already set aside the order and remitted the matter for fresh consideration. Thus, I am satisfied that this is a fit case to exercise the inherent powers of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

In the aforesaid circumstances, I allow the Crl.M.C., by setting aside Annexure 10 order and directing the Appellate Court to reconsider the application filed by the 1st respondent for waving the statutory deposit after affording both parties an opportunity of being heard and after adverting to all the materials, in accordance with law and as expeditiously as



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possible, at any rate, within one month from the date of production of a copy of this order, untrammelled by any observation made in the present order.

The Crl.M.C. is ordered accordingly.

Sd/-

C.S.DIAS, JUDGE

SCB.22.07.2026.



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APPENDIX OF CRL.MC NO. 4732 OF 2026

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF THE JUDGMENT IN ST 240/2018 DATED 25.03.2026
Annexure 2	TRUE COPY OF THE MEMORANDUM OF CRIMINAL APPEAL AS CRL.A 231/2026 FILED BY THE RESPONDENT CHALLENGING ANNEXURE 1 JUDGMENT DATED 23.04.2026
Annexure 3	TRUE COPY OF THE WAIVER PETITION FILED BY THE 1ST RESPONDENT BEFORE THE HON'BLE SESSIONS COURT AS CRL MP 1/2026 IN CRL.A 231/2026 DATED 23.04.2026
Annexure 4	TRUE COPY OF THE SALE DEED NO 2636/2005 OF SRO PERUMBAVOOR SHOWING THAT HE IS THE OWNER OF 62.84 ARES OF PROPERTY IN ARACKPADY VILLAGE SITUATED IN 112/1 IN BLOCK NO 22 DATED 31.03.2005
Annexure 4a	TRUE COPY OF THE SALE DEED NO 2637/2005 OF SRO PERUMBAVOOR SHOWING THAT HE IS THE ABSOLUTE OWNER AND IN POSSESSION OF 41.16 ARES OF PROPERTY SITUATED IN SYNO 112/1 IN BLOCK NO 22 OF ARACKPADY VILLAGE DATED 31.03.2005
Annexure 4b	TRUE COPY OF THE SALE DEED NO 4123/1999 OF SRO PERUMBAVOOR SHOWING THAT HE IS HAVING 39.66 ARES OF PROPERTY IN SYNO 112/1 IN BLOCK NO 22 OF ARACKPADY VILLAGE DATED 17.09.1999
Annexure 4c	TRUE COPY OF THE SALE DEED NO 5179/1997 OF SRO PERUMBAVOOR SHOWING THAT HE IS HAVING 24.29 ARES OF PROPERTY IN BLOCK NO 22 NO 22 OF ARACKPADY VILLAGE DATED 14.11.1997
Annexure 4d	TRUE COPY OF THE SALE DEED NO 1724/1991 OF SRO PERUMBAVOOR SHOWING THAT HE IS HAVING 26.72 ARES OF PROPERTY IN BLOCK NO 22 OF ARACKPADY VILLAGE DATED 21.05.1991
Annexure 5	TRUE COPY OF THE ATTACHMENT SCHEDULE PERTAINING TO THE PROPERTY SITUATED IN IRIKULAM VILLAGE IN O.S 34/2018 DATED 05.10.2018
Annexure 6	TRUE COPY OF THE ATTACHMENT SCHEDULE IN O.S 34/2018 AS REGARDS THE PROPERTY SITUATED IN VATHIKUDY VILLAGE DATED 05.10.2018
Annexure 7	TRUE COPY OF THE DECREE IN O.S 34/2018 DATED 12.01.2023



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Annexure 8	TRUE COPY OF THE COMMON ORDER INCLUDING CRL.MC NO. 8499 OF 2023 DATED 19.02.2024
Annexure 9	TRUE COPY OF THE ORDER IN CRL MC 11096/2025 DATED 13.03.2026
Annexure 10	TRUE COPY OF THE ORDER WAIVING THE STATUTORY DEPOSIT IN CRL MP 1/2026 IN CRL APPEAL 231/2026 DATED 25.04.2026
Annexure 11	TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER AGAINST THE WAIVER PETITION CRL. A 241/2026 DATED 02.04.2026
Annexure 12	TRUE COPY OF THE COMMON ORDER IN CRL MP 1/2026 AND CRL MP 2/2026 IN CRL APPEAL 241/2026, 242/2026, 243/2026 DATED 07.05.2026