

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19693 of 2020

The Branch Head,
IDBI Bank,
Neelamangalam Branch,
Kallakurichi Taluk,
Villupuram District.

... Petitioner.

Vs.

M.Ponnusamy

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crl.M.P.No.1829 of 2020 in C.A.No.11 of 2020 on the file of the learned Principal Sessions Judge, Villupuram, and set aside the impugned order dated 03.03.2020 passed by the learned Principal Sessions Judge, Villupuram, in Crl.M.P.No.1829 of 2020 in C.A.No.11 of 2020.

For Petitioners : Mr.P.Elayaraj Kumar
For Ramalingam Associates
For Respondent : Mr.A.Rajkumar

ORDER

This petition has been filed challenging the order passed by the Court below in the Suspension of Sentence Petition filed by the respondent without directing the respondent to deposit the amount as provided under Section 148 of the Negotiable Instruments Act, 1881 (hereinafter called as the Act).

2.The respondent, who underwent trial for an offence under Section 138 of the Act, was convicted and sentenced by the trial Court through judgment dated 28.08.2019. The trial Court had directed the respondent to pay the entire cheque amount as compensation to the petitioner under Section 357(3) of Code of Criminal Procedure. Aggrieved by the same, the respondent had filed an appeal before the Principal Sessions Court, Villupuram, and had also sought for suspension of sentence. The appellate Court while suspending the sentence, did not impose the condition as mandated under Section 148 of the Act. Aggrieved by the same, the

present petition has been filed before this Court.

3.The learned counsel for the petitioner heavily relied upon the language used under Section 148 of the Act and also the judgment of the Hon'ble Supreme Court in the case of **Surinder Singh Deswal Vs. Virender Gandhi** reported in **(2019) 11 SCC 341** and submitted that the Court below ought to have directed the respondent to deposit a minimum of 20% of the cheque amount and this should have been made as a condition precedent for suspension of sentence. The learned counsel submitted that it is the duty of the Court below to impose such a condition and on such deposit, the petitioner will be entitled to withdraw the amount under Section 148(3) of the Act.

4. Heard the learned counsel appearing on behalf of the respondent.

5. This Court finds a lot of force in the submission made by the learned counsel for the petitioner. The Court below completely lost sight of the mandate imposed under Section 148 of the Act which was brought in as an amendment in the year 2018 in order to ensure that the accused person who is convicted for the offence is made to deposit some amount for the purpose of contesting the appeal. This provision has been upheld by the Hon'ble Supreme Court and the scope of the said provision has been dealt in detail in the judgment referred supra. The Hon'ble Supreme Court has gone to the extent of holding that this provision will apply even to those complaints which were filed prior to the amendment that took place in the year 2018. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal @ Col.S.S.Deswal and others Vs. Virender Gandhi*** reported in (2020) 2 Law Weekly 981.

6.In view of the above discussion, there shall be a direction to the respondent to deposit 20% of the cheque amount before the trial Court in C.C.No.32 of 2018, within a period of 90 days from today. It is made clear that if such deposit is not made by the respondent, the suspension of sentence granted by the appellate Court will stand automatically canceled.

7.This Criminal Original Petition is accordingly allowed with the above directions.

22.03.2021

Note:Upload order copy by 24.03.2021.

Speaking order/Non-Speaking order

Index :Yes/No

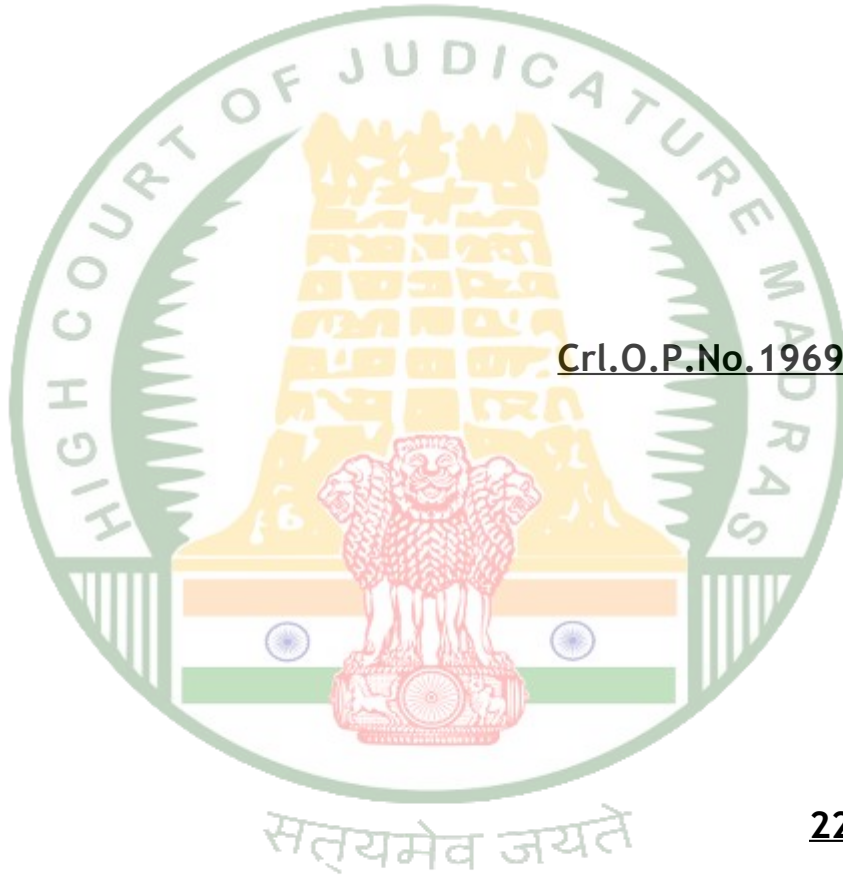
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N.ANAND VENKATESH, J.,
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