

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 19.07.2021****CORAM****THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI****Crl.RC(MD)No.396 of 2021****WEB COPY**

K.Rajasekar

: Petitioner/Petitioner/
Appellant/Accused

Vs.

G.Kannan

: Respondent/Respondent/
Respondent/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure, against the order, dated 27.04.2021 passed by the Principal Sessions Judge, Virudhunagar District at Srivilliputhur, in Crl.M.P No.1089 of 2021 in C.A No.58 of 2021 imposing a condition upon the petitioner to deposit a sum of Rs.2,00,000/- before the trial court on or before 15.06.2021 to suspend the sentence imposed by the Judicial Magistrate, Aruppukottai, in CC No.138 of 2021, dated 26.03.2021.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.M.Jothi Basu

O R D E R

This Criminal Revision is filed against the condition imposed on the petitioner in the impugned order to the effect that the petitioner shall pay 20% of the compensation amount, for granting suspension of sentence, before the Judicial Magistrate, Aruppukottai, passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur, in Cr.M.P.No.1089 of 2021 in C.A No.58 of 2021, dated 27.04.2021 against the CC No.138 of 2013 on the file of the learned Judicial Magistrate, Aruppukottai, dated 26.03.2021.

2.The petitioner was convicted by the Judicial Magistrate, Aruppukottai and sentenced him to undergo SI for the period of one year and to pay a compensation to the tune of Rs.10,00,000/- to the complainant within a period of two weeks from the date of judgment, in default whereof to undergo further period of SI for two months for the offence under section 138 of the Negotiable Instruments Act. Against which, the petitioner filed petition seeking suspension of sentence against the conviction and sentence passed by the Judicial Magistrate, Aruppukottai in CC No.138 of 2013 by judgment, dated 26.03.2021. Being aggrieved by the condition imposed in the order, the petitioner is before this court.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Heard the learned counsel appearing on either side and perused the materials available on record.



4.The main contention of the petitioner is that as per section 389 of the Criminal Procedure Code, at the time of passing order of suspension, the condition imposed on the petitioner to deposit the amount is against rule of law, but the first appellate court imposed the condition on passing the suspension order to deposit 20% of the amount, which is not correct and prays for allowing the criminal revision by setting aside the above condition.

5.Per contra, on the side of the respondent, it is argued that as per section 148 of the Negotiable Instruments Act, while passing suspension of sentence, some amount has to be deposited as conditional order.

6.At this juncture, it is necessary to refer section 148 of the Negotiable Instruments Act, which would run thus:-

"148.Power of Appellate Court to order payment pending appeal against conviction-(1) Notwithstanding anything contained in the Code Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent, of the fine or compensation awarded by the trial court.

(2)...

(3)...

7.On coming to the instant case on hand, the first appellate court, while granting suspension of sentence, has rightly imposed condition to the effect that the petitioner shall deposit 20% of the compensation amount before the learned Judicial Magistrate, Aruppukottai. This court finds no error in the order of the court below.

8.In the result, this Criminal Revision is dismissed. Since the time granted to comply with the condition expired on 15.06.2021, the petitioner is directed to deposit a sum of Rs.2,00,000/- before the trial court, within a period of two weeks from the date of receipt of a copy of this order. On such compliance, the respondent is permitted to withdraw the entire amount. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Principal District and Sessions Judge,
Virudunagar District @ Srivilliputtur.

2.The Judicial Magistrate,
Aruppukottai.

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RD(12.08.2021) 3P 3C