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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/12/2022

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.1084 of 2022

S.Mahendran : Petitioner/Petitioner

Vs.

P.Manoharan : Respondent/Respondent

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the impugned order made in Cr.M.P No.3536 of 2022, dated 22/09/2022 on the file of the Principal Sessions Judge, Theni and thereby, set aside the condition imposed therein and direct to the learned Fast Track Court, Uthamapalayam to refund the amount of Rs.1,50,000/- deposited by the petitioner vide DD No.546861, dated 29/09/2022 drawn at Bank of Baroda, Hanumanthapanpatti Branch, Theni.

For Petitioner : Mr.P.R.Prithiviraj

For Respondent : No appearance

**ORDER**

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This revision has been filed seeking in order to set aside the impugned order passed in Cr.M.P No.3536 of 2022, dated 22/09/2022 by the Principal Sessions Judge, Theni and thereby, set aside the condition No.1 imposed therein and direct to the learned Fast Track Court, Uthamapalayam to refund the amount of Rs.1,50,000/- deposited by the petitioner vide DD No.546861, dated 29/09/2022 drawn at Bank of Baroda, Hanumanthapanpatti Branch, Theni.

2.The facts in brief:-

The petitioner was convicted by the trial court for the offence under section 138 of the Negotiable Instruments Act and accordingly, sentenced the petitioner to undergo one year simple imprisonment 3 months simple imprisonment and since, a suit is pending before the civil court for recovery of the cheque amount, no compensation was ordered to the complainant under section 357(3) Cr.P.C. Against which, the appeal has been preferred and the appeal was allowed and imposed a condition to deposit 15% of the cheque amount as a condition for suspension of sentence.



3.Challenging the above said order of the first appellate court, this criminal revision has been preferred by the accused.

4.Heard both sides.

5.Reading of the order passed by the first appellate court shows that a portion of the judgment of the trial was not taken into account, while, the conditional order. The trial court has given a reason for not imposing the compensation upon the accused stating that for recovering the above said cheque amount, separate suit has been filed by the complainant. So on that ground only, the imprisonment alone was imposed and not compensation under section 357(3) Cr.P.C. It appears that this portion of the order of the trial court was not considered by the first appellate court, while passing the above said conditional order.

6.As rightly contended by the petitioner, the reason must be assigned by the first appellate court, while passing the above said conditional order, when already a suit has been filed for recovery of the cheque



amount. So imposing of the condition upon the accused, in my considered view was not proper and appears to be unreasonable.

7. So on the sole ground, the criminal revision is **allowed** and conditional order passed by the first appellate court in respect of the above said portion of directing the petitioner to deposit 15% of the amount alone is set aside. The petitioner shall be refunded with the said amount. Other conditions stand unaltered.

01/12/2022

Index:Yes/No
Internet:Yes/No
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To,

1. The Principal Sessions Judge,
Theni.
2. The Judicial Magistrate, (FTC),
Uthamapalayam, Theni District.



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G . ILANGO VAN , J

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