



Crl.O.P.Nos.29254 and 29256 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 30.06.2023	Orders Pronounced On 07.07.2023
----------------------------------	------------------------------------

Crl.O.P.Nos.29254 and 29256 of 2022

R.Rajamani

... Petitioner
in both Crl.O.Ps

Vs.

Dr.M.Chandrasekar,
Son of S.K.Mayilanandam,
Managing Director,
M/s.SKM Animal Feeds and Foods
India Pvt. Ltd.,
Rep. by his Power Agent
K.Rajendran, Assistant General Manager,
M/s.SKM Animal Feeds and Foods
India Pvt. Ltd.,
Nanjai Uthukuli [PO], Erode.

... Respondents
in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the conditional order dated 08.11.2022 passed in Crl.M.P.Nos.3433/2022 and 3434/2022 in



Crl.O.P.Nos.29254 and 29256 of 2022

C.A.Nos.215/2022 and 216/2022 on the file of Principal District and Sessions Judge, Erode with respect the condition that (i) that 20% of the cheque amount [less if any of the amount paid under Section 143(A) of NI] is ordered to be deposited before the Trial Court by the petitioner/appellant/accused in terms of Section 148 of Negotiable Instrument Act within a period of 30 days from the date of this order, failing which this order of the suspension of execution of sentence of the said imprisonment shall stand vacated automatically is concerned and allow the Criminal Original Petitions.

For Petitioner
in both Crl.O.Ps : Mr.R.Nalliyappan

For Respondent
in both Crl.O.Ps : Mr.N.Manoj Kumar

COMMON ORDER

Since the petitioner, the respondent and the relief sought for in both the petitions are one and the same, this Court dispose of both these petitions by way of a common order.

2.The petitioner is an accused in a private complaint filed by the respondent under Section 138 of Negotiable Instruments Act in



Crl.O.P.Nos.29254 and 29256 of 2022

S.T.C.No.170/2019 and S.T.C.No.171/2019 before the learned Judicial Magistrate, Fast Track Court No.1, Erode. After full-fledged trial in both the cases, the petitioner was convicted by the Trial Court by judgment dated 10.10.2022. In S.T.C.No.170 of 2019, the petitioner was sentenced to undergo three months simple imprisonment and to pay a sum of Rs.2,00,00,000/- towards compensation to the respondent. In S.T.C.No.171 of 2019, the petitioner was sentenced to undergo three months simple imprisonment and to pay a sum of Rs.1,59,68,318/- as compensation to the respondent. Aggrieved against the same, the petitioner filed appeals in C.A.Nos.215/2022 and 216/2022 and he also filed petitions for suspension of sentence under Section 389(1) Cr.P.C. in Crl.M.P.Nos.3433/2022 and 3434/2022 respectively. The learned Principal Sessions Judge, Erode, by order dated 08.11.2022 suspended the sentence imposed on the petitioner with a condition that 20% of the cheque amount [less if any of the amount paid under Section 143A of NI Act] is ordered to be deposited before the Trial Court by the petitioner/accused in terms of Section 148 of NI Act within a period of 30 days from the date of the order, failing which the order of suspension of execution of sentence of the said imprisonment shall stand



Crl.O.P.Nos.29254 and 29256 of 2022

vacated automatically. Aggrieved against the same, the above two petitions have been filed.

3.The contention of the petitioner is that the Trial Court had not properly considered the evidence in its proper perspective. He would submit that D.W.1, Senior Manager of the complainant Company had clearly stated that he was directed by the complainant to collect security cheques from all the dealers and the cheques involved in the above two cases are the security cheques which were collected in the year 2013, six years thereafter it was filled up and presented when there is no liability in existence between the petitioner/accused and the respondent/complainant. He would further submit that the liability itself has been disputed even at the initial stage when he had sent a reply notice. He further submit that the Trial Court failed to look into the admitted case of the respondent that the cheques in these cases were obtained pursuant to the criminal case, the petitioner's duress and after his release on bail and in such circumstances, no compensation ought to have been ordered. Putting these facts, the petitioner approached the Sessions Court. The learned Principal Sessions



Crl.O.P.Nos.29254 and 29256 of 2022

Judge, Erode, not considered the same and in a routine manner, had suspended the sentence with a condition to the petitioner to pay 20% of the cheque amount. He further submitted that imposing condition of 20% of the cheque amount under Section 143A of the NI Act without assigning any reason is not correct. Hence the order of the Court below has to be set aside. In support of his contention, the learned counsel for the petitioner placed reliance on the decisions of this Court in ***L.G.R.Enterprises rep. by its Propreitrix Singu @ Lakshmi and another vs. P.Anbzhagan [Crl.O.P.Nos.14538 & 14550 of 2019 dated 12.07.2019]*** and ***Pujita Creators rep. by its Managing Director Mr.M.Ragunath and others vs. S.M.Venkatesh [Crl.O.P.No.10236 of 2022]***.

4.The learned counsel for the respondent submitted that the petitioner's contention has to be dismissed *in limine*. He would submit that Section 143A of NI Act comes into play at the conclusion of trial and judgment it provides power to direct interim compensation during the pendency of the trial. In this case, the petitioner herein was convicted by the Trial Court after full-fledged trial in both S.T.C.Nos.170/2019 and



Crl.O.P.Nos.29254 and 29256 of 2022

171/2019 by a well reasoned judgment dated 10.10.2022 and the petitioner invoking Section 143A of NI Act is on a wrong notion. Further, a bare perusal of the order of the Sessions Court would show that the condition to deposit 20% of the cheque amount is in terms of Section 148 of NI Act. Section 148 of NI Act is the power to be invoked by the Appellate Court. He further submitted that in this case, trial is completed, case is at the appeal stage the petitioner filed a petition under Section 389(1) of Cr.P.C. seeking suspension of sentence before the Appellate Court and order has been passed in that petition invoking Section 148 of NI Act and hence, the present petitions to be dismissed. He further submitted that the petitioner though suffered a conviction as early as 10.10.2022, he had not complied with the condition and successfully avoiding the conviction passed by the Trial Court for the past eight months. Learned counsel for the respondent further submitted that the Apex Court in the case of ***Surinder Singh Deswal Alias Colonel S.S.Deswal and others vs. Virender Gandhi*** reported in ***[2019] 11 SCC 341*** held that deposit of 20% of fine amount as compensation can be ordered either on an application filed by the complainant or even on the application filed by the appellant/accused under



Crl.O.P.Nos.29254 and 29256 of 2022

Section 389(1) of Cr.P.C. seeking suspension of sentence. Hence, the order passed by the Sessions Court is proper in order, needs no interference.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner has filed these petitions on a wrong notion that the order passed by the Principal Sessions Judge, Erode, is under Section 143A of NI Act. Section 143A of NI Act provides power to direct interim compensation at the stage of trial on sufficient cause being shown by the drawer of the cheque. In Sub-section (2) of Section 143A of NI Act, it is clear that the interim compensation under sub-section (1) shall not exceed 20% of the amount of the cheque. Under Sub-section (1) of Section 148 of NI Act, it is the Appellate Court may order the appellant to deposit minimum of 20% of the fine or compensation awarded by the Trial Court. At the stage of trial, interim compensation shall not exceed 20% of the amount of the cheque on sufficient cause being shown by the drawer of the cheque and on the other hand, in the appellate stage this 20% is the minimum amount to be deposited as interim compensation and the condition of sufficient cause is not provided for the reason that the accused after trial,



Crl.O.P.Nos.29254 and 29256 of 2022

convicted by the Trial court and on conviction, prefers the appeal. This being so, the petitioner doubting the order of the learned Sessions Judge and camouflaging the same to be an order under Section 143A of NI Act is not proper and sustainable. In view of the above, this Court does not find any merit in these petitions and are liable to be dismissed.

6.In the result, the Criminal Original Petitions are dismissed.

07.07.2023

Index : Yes/No
Neutral Citation: Yes/No
cse

To

The Principal District and Sessions Judge,
Erode.



WEB COPY



Crl.O.P.Nos.29254 and 29256 of 2022

M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

Crl.O.P.Nos.29254 and 29256 of 2022

07.07.2023