



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.26003 of 2023

Harshitha Tiles, Marbles and Granites
Represented by its authorized signatory,
Purushothaman, S/o.Ranganathan,
No.21/4, Santhi Nagar, Salavathy Village,
Tindivanam Taluk.
Petitioner

...

-VS-

Saravanan

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to partly set-aside the condition passed by the learned Principal Sessions Court, Villupuram in Crl.M.P.No.6576 of 2023 in Crl.A.No.67 of 2023 dated 18.08.2023 imposing 20% of the compensation amount in condition No.2.

For Petitioner

: Mr.G.Mohana Krishnan

ORDER

This Original Petition is filed against the order passed by the lower



appellate Court directing the petitioner herein to deposit 20% of the cheque amount as security to pursue the appeal and enjoy the suspension of sentence imposed by the trial Court in C.C. No.148 of 2018 dated 29.05.2023.

2. The brief facts of the case leading to file this petition is as below:

One Mr.Saravanan has initiated private complaint under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) against this petitioner for issuing a cheque for Rs.10,00,000/- without sufficient fund in the Account. Having received memo from the Bank stating “cheque could not be honored due to insufficient of the fund”. After serving the statutory notice, complaint been filed and taken up for trial by the learned Judicial Magistrate No.I, Thindivanam in C.C. No.148 of 2018, after examination of witnesses on either side and receiving the Exhibits, the trial Court vide judgment dated 29.05.2023 held the accused/petitioner guilty of offence under Section 138 of the NI Act, sentenced to undergo six months Simple Imprisonment and liable to pay Rs.10,00,000/- as compensation being the cheque amount within a period of one month, in default, to pay the compensation amount, there will be further sentence of one month Simple Imprisonment.

3. Against this judgement , the petitioner has preferred an Appeal before the learned Principal District and Sessions Judge, Villupuram in C.A. No.67 of



2023 and sought for suspension of sentence by filing CMP No.6576 of 2023, the lower appellate Court allowed the petition for suspension of sentence, on condition to deposit 20% of the compensation amount as security before the learned Judicial Magistrate No.I, Thindivanam. Being aggrieved by this condition, the present Original Petition is filed on the ground that the condition is very onerous and the judgment is per se perverse. Therefore, without any precondition to deposit the compensation amount, suspension of sentence should be granted.

4. The learned counsel appearing for the petitioner submitted that the lower appellate Court without applying its mind has mechanically applied Section 148 of the Negotiable Instruments Act, 1881 and also has not granted time for deposit of the said amount.

5. Section 148 of the NI Act, empowers the appellate Court to impose conditions to entertain the appeal and suspend the sentence, depositing 20% of the compensation amount awarded to be deposited within a period of 60 days. In the impugned order though the learned Principal District Judge has not mentioned the time for payment of the conditional order, it is implicit that it should be deposited within a period of 60 days. If sufficient cause is shown by the appellant, the appellate Court shall extend the period for further 30 days.



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6. Insofar as, the allegation that the appellate Court has mechanically exercised the power under Section 148 of the NI Act, this Court finds no reason to substantiate the said allegation, since the conditional order is well within the scope and ambit of Section 148 of NI Act as well as taking note of the fact that the case is of the year 2018, got completed only in the year 2023 after 5 years, the conditional order is fair, just and within the scope and power of the appellate Court. Hence, this petition is *dismissed*. 60 days time from the date of order has expired on 17th October 2023. Therefore, taking note of the fact that the petitioner has approached this Court, time to deposit is extended upto 04.12.2023.

22.11.2023

Internet : Yes/No

Index : Yes/No

rkp

To

1.The Principal Sessions Judge,
Villupuram.2.The Judicial Magistrate No.I,
Thindivanam.



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Dr.G.JAYACHANDRAN, J.

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