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Crl.O.P.No.31548 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.31548 of 2022
& Crl.M.P.No.19300 of 2022

R.Priya

... Petitioner

vs.

Sankari Spintex Limited
Rep. by its Managing Director,
P.Shanmugam
S/o. Palanisamy
No.15/24-G, Shanmuga Complex
New Edapadi Road, Sankari.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order passed by the learned Principal District and Sessions Judge, Erode in Crl.M.P.No.3553 of 2022 in C.A.No.228 of 2022 dated 16.11.2022 in so far as it relates to imposition of condition by directing the petitioner to deposit 20% of the cheque amount before the Judicial Magistrate, Fast Track Court No.II, Erode and set aside the same.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.J.Titus Eroch



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ORDER

This petition has been filed challenging the condition imposed by the Court below, while allowing suspension of sentence application filed by the petitioner, by directing the petitioner to deposit 20% of the cheque amount in Crl.M.P.No.3553 of 2022, dated 16.11.2022.

2. Heard the learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondent.

3. The learned counsel for the petitioner submitted that petitioner/accused is a company and the complaint itself has been filed without impleading the company as an accused. In view of this legal infirmity, the Court below ought not to have imposed the condition by directing the petitioner to deposit 20% of the compensation amount.

4. On carefully going through the complaint filed by the respondent/complainant, it is seen that the petitioner has been described as a proprietorship concern. Even in the trial Court, the petitioner did not raise the ground that it is a company and that the company was not made as an accused. This issue has been taken up for the first time in the appeal.

5. In so far as the sole proprietorship concern is concerned, the sole proprietor and the concern are one and the same. They are not two entities



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like in the case of a company. Hence, the petitioner who has been described as a proprietor of a proprietorship concern, cannot be allowed to raise such a ground for the first time in the appeal and thereby get away from depositing 20% of the compensation amount fixed by the trial Court.

6. The respondent has succeeded before the trial Court and the petitioner has filed an appeal and Section 148 of the Negotiable Instruments Act was brought into force only to ensure that the petitioner/accused is made to deposit some amount while prosecuting the appeal.

7. This Court does not find any illegality in the order passed by the Court below imposing the condition, directing the petitioner to deposit 20% of the compensation amount and it does not warrant any interference of this Order.

8. In the result, this Criminal Original Petition is dismissed.
Connected Miscellaneous Petition is closed.

08.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citations: Yes/ No
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N. ANAND VENKATESH, J.
mpl

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