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Crl.O.P.No.5754 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.5754 of 2024
and Crl MP No.4194 of 2024

S.Vengadesan

... Petitioner

Vs.

R.Palanisamy

...Respondent

Criminal Original Petition under Section 482 of the Criminal Procedure Code filed to set-aside the order dated 21.11.2023 passed in Crl MP No.4245 of 2024 in CA No.403 of 2023 on the file of Principal District and sessions Judge, Erode with respect the condition a(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 the Negotiable Instruments 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.

For Petitioner : Mr.R.Nalliyappan



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ORDER

This Criminal original petition has been filed challenging one of the condition that was imposed by the Court below in Crl MP No.4245 of 2024 dated 21.11.2023 wherein the Court below while granting suspension of sentence directed the petitioner to deposit 20% of the cheque amount within a period of 30 days in terms of Section 148 of the Negotiable Instruments Act.

2. This Court has carefully heard the learned counsel for the petitioner and perused the materials available on record.

3. The petitioner had taken a defence before the Trial Court to the effect that the respondent / complainant did not have the financial wherewithal to lend a sum of Rs.10,00,000/- to the petitioner. That apart, the petitioner also took a stand that the cheque that was given as a security was misused by the respondent. The petitioner has basically questioned the very existence of a legally enforceable debt. The Trial Court had convicted the petitioner for offence under Section 138 of the Negotiable Instruments



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Act and had sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.10,00,000/- as compensation and in default to undergo two months simple imprisonment. The Court below had suspended this sentence and while doing so, directed the petitioner to deposit 20% of the compensation amount. Since no reasons were assigned by the Court below while directing the petitioner to deposit 20% of the compensation amount and the Court below did not consider the grounds raised by the petitioner, the present petition has been filed questioning this condition imposed by the Court below.

4. In the considered view of this Court, the petitioner has raised certain arguable grounds with respect to the very existence of the legally enforceable debt. The same ought to have been taken into consideration by the Court below while imposing the condition directing the petitioner to deposit 20% of the compensation amount. The law on this issue was discussed in detail by this Court in Crl OP No.947 of 2024 dated 22.01.2024.



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5. In view of the above, the condition imposed by the Court below directing the petitioner to deposit 20% of the cheque amount alone is interfered and the same is set-aside. The matter is remanded back to the file of the learned District and Sessions Court, Erode and the learned Judge, is directed to deal with the grounds raised by the petitioner and thereafter, take a decision with regard to the deposit of the amount under section 148 of the Negotiable Instruments Act, within a period of four weeks from the date of receipt of a copy of this order.

6. This Criminal Original petition is disposed of in the above terms. Consequently, the connected miscellaneous petition is closed.

11.03.2024

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N.ANAND VENKATESH,J

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No

To

1. Principal District and sessions Judge, Erode
2. The Public Prosecutor,
Madras High Court.

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