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Crl.O.P.No.6344 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P No.6344 of 2024

Shri Sainath Enterprises,
Represented by its Proprietor,
D.Prabhavathy, New Door No.5,
Old No.3, Ashok Nagar Main Road,
4th Avenue, Dr.Ambedkar Road,
Kodambakkam, Chennai 600 024

...Petitioner

Vs.

D.Prakash

...Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set-aside the conditional order of the lower Appellate Court in Para No.7 “Further the petitioner shall deposit 20% of the compensation amount to the credit of STC No.2811 of 2022 on the file of Trial Court within 60 days from the date of this order” passed in Crl MP No.3603 of 2024 in CA No.90 of 2024 dated 05.02.2023 on the file of learned Principal Session Judge, Madras.

For Petitioner

: Mr.T.I.Ramanathan



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ORDER

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This Criminal Original petition has been filed challenging one of the condition that was imposed by the Court below while suspending the sentence imposed against the petitioner by the Trial Court for offence under Section 138 of the Negotiable Instruments Act.

2. Heard Mr.T.I.Ramanathan, learned counsel for the petitioner and carefully perused the materials available on record.

3. The petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo six months simple imprisonment and to pay the cheque amount as compensation and in default to undergo two months simple imprisonment. The petitioner aggrieved by the judgment of the Trial Court filed an appeal before the Court below in Crl A No.90 of 2024. The petitioner also filed an application seeking for suspension of sentence in Crl MP No.3603 of 2024. The Court below suspended the sentence by an order dated 05.02.2024. While suspending the sentence, the Court below imposed certain conditions and one such condition was that the petitioner should deposit 20% of the cheque amount as compensation. Aggrieved by this condition imposed by the Court below, the present petition has been filed before this Court.



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4. There are two main grounds that were raised by the learned counsel for the petitioner. The 1st ground was that there was no legally enforceable debt since the debt itself is time barred. The next ground that was raised was that the cheque that was given to one Suresh Babu has been misused by the respondent / complainant. These grounds were also taken in the grounds of criminal appeal.

5. This Court in **[C.R.Balasubramanian Vs.P.Eswaramoorthi]** in **Crl OP No.947 of 2024 dated 22.01.2024** has held as follows :-

This Criminal Original Petition is disposed of in the above terms.

Before drawing the curtains in this case, this Court thought it fit to bring to the notice of the District Judiciary the above two judgments, particularly, the judgment of the Apex Court.

While dealing with an application for suspension of sentence or for grant of bail when an appeal is filed against the conviction for offence u/s.138 of the Negotiable Instruments Act, the Courts must not mechanically impose a condition of deposit of 20% of the compensation amount/cheque amount



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u/s.148 of the Negotiable Instruments Act. When any ground has been raised by the appellant for reducing the percentage or for exempting the deposit of such amount, it has to be dealt with by the appellate Court and a reasoned order must be passed if the Court wants to direct the appellant to deposit 20% of the compensation amount/cheque amount. A copy of this order shall be circulated to all the Principal District Courts across the State of Tamil Nadu.

6. In the instant case, the petitioner has raised arguable grounds which ought to have been considered by the Court below before imposing the maximum 20% deposit of compensation. Since, the Court below did not consider the grounds raised, this Court is inclined to interfere with the condition imposed by the Court below directing the petitioner to deposit 20% of the compensation amount and the same is hereby set-aside. The matter is remanded back to the file of the V Additional City Civil Court, Chennai and the learned Judge shall deal with the grounds raised by the appellant and pass appropriate orders under Section 148 of the Negotiable Instruments Act for deposit of compensation amount within a period of four weeks from the date of receipt of a copy of this order.



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7. This Criminal original petition is disposed of in the above terms.

15.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order : Yes/No
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To

1.The Principal Session Judge, Chennai

2.The Public Prosecutor,
High Court, Madras.



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