



CRL.O.P No.6291 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.6291 of 2024

and

CrI.M.P.No.4611 of 2024

S.Renuka Devi
W/o.T.Shanmugasundaram

...Petitioner

Vs.

1.A.R.R.Venkatachalam
S/o.Ramasamy Gounder

2.The State represented by
The Public Prosecutor,
Tiruppur.

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the entire records on the file of learned Principal Sessions Judge, Tiruppur, insofar as it relates to the order dated 26.02.2024 made in CrI.M.P.No.1 of 2024 in CrI.A.No.66 of 2024 and set aside the condition imposed on the petitioner to deposit 20% of the cheque amount awarded by the trial Court within a period of 15 days, by allowing this petition.



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For Petitioner : Mr.G.C.Nelson Britto

For Respondents : Mr.A.Damodaran

Additional Public Prosecutor [R2]

ORDER

This Criminal Original Petition has been filed challenging one of the condition imposed by the Court below while suspending the sentence passed by the trial Court for offence u/s.138 of the Negotiable Instruments Act.

2. Heard learned counsel for petitioner and carefully perused the materials available on record.

3. The petitioner was convicted for offence u/s.138 of the Negotiable Instruments Act by the learned Judicial Magistrate, Fast Track Court, Tiruppur, in STC No.1439 of 2022 by judgment dated 15.12.2023 and was sentenced to undergo six months simple imprisonment and to pay the cheque amount of Rs.1,00,00,000/- [Rupees One Crore] as compensation and in default to undergo one month simple imprisonment. The petitioner, aggrieved by the judgment of the trial Court, filed an



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appeal before the Court below in Crl.A.No.66 of 2024. The petitioner also filed an application for suspension of sentence in Crl.M.P.No.1 of 2024. The Court below had suspended the sentence by order dated 26.02.2024. However, the Court below imposed a condition to the effect that the petitioner should deposit 20% of the compensation amount awarded by the trial Court within 15 days. Aggrieved by this condition, the present petition has been filed before this Court.

4. Learned counsel for petitioner submitted that there was absolutely no explanation on the part of the respondent/complainant as to how a sum of Rs.1,00,00,000/- was given by way of hand loan. The cross-examination of PW-1 in this regard was also not properly appreciated by the Court below.

5. On carefully reading the order passed by the Court below, it is seen that the Court below had applied its mind on the cross-examination of PW-1, however, a finding has been given to the effect that the defence raised can be considered only at the time of final hearing and not at the time of suspending the sentence.



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6. This Court had an occasion to deal with the scope of Section 148 of the Negotiable Instruments Act and imposition of maximum condition to deposit 20% of the compensation amount. This Court took into consideration the judgment of the Apex Court in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. and others [2023 (3) MWN DCC 104 (SC)]***. This Court held that where the appellate Court deems it fit to impose the maximum condition of 20% deposit of the compensation amount, reasons will have to be assigned and it is not an absolute rule that the maximum percentage must be imposed in every case. In the instant case, the cheque amount involved is nearly Rs.1,00,00,000/- and this amount is said to have been given by way of hand loan. The petitioner has taken certain defence and the Court below ought to have considered the cross-examination of PW-1, in which the trial Court has dealt with the defence and also the grounds that were raised in the criminal appeal. This is more so where the appellate Court takes a decision to impose maximum deposit of 20% of the compensation amount. The same has not been done in the present case.



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7. In view of the above, the condition imposed by the Court below to deposit 20% of the compensation amount is set aside. The matter is remanded back to the Court below and the Court below shall deal with the defence of the petitioner by considering the deposition of PW-1, findings of the trial Court and also the grounds taken in the criminal appeal and pass an order under Sect 148 of the N.I. Act with reference to the deposit of the compensation amount within a period of four (4) weeks from the date of receipt of a copy of this order.

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

14.03.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
gm

To
1.The Principal Sessions Judge,
Tiruppur.

2.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

gm

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