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Crl.O.P.No.26817 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

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THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.26817 of 2024

T.V.Ashwin

... Petitioner

Vs.

C. Remerin

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 BNSS, pleaded to set aside the order passed in Crl.M.P.No.2510 of 2024 in C.A.No. 75 of 2024 in respect of deposit of 20% fine amount, dated 20.09.2024, on the file of Session Judge, Mahila Court, Chengalpattu.

For Petitioner : Ms.D.Jayapriya

ORDER

The petitioner herein is an accused in C.C.No.108 of 2012 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur. The trial Court has found the petitioner guilty for issuing the cheque for Rs.40 lakhs which was returned with an endorsement 'Account closed'. The trial Court after considering the facts of the case and evidence held the petitioner guilty for the offence punishable under Section 138 of N.I.Act and sentenced him to undergo 6 months Simple Imprisonment and directed to pay a fine of Rs.40 lakhs which has to be



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taken as compensation to the complainant.

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2. Aggrieved by the judgment, the petitioner/accused has filed appeal before the Sessions Court, Chengalpattu and same was taken on file in Crl.A.No.75 of 2024. Along with the appeal, the petitioner has sought for suspension of sentence. The lower appellate Court granted suspension of sentence and directed the petitioner herein to deposit Rs.8 lakhs being the 20% of the compensation amount. Being aggrieved by the said condition, the present petition is filed.

3. The learned counsel appearing for the petitioner/accused submits that the Hon'ble Supreme Court had categorically held that while invoking Section 148 of N.I.Act, directing the appellant to deposit compensation amount, the Court shall record the reason in the order why the maximum of 20% to be deposited. In the absence of reasons, the order to deposit 20% of compensation amount is liable to be set aside. The learned counsel also on merits try to impress upon this Court that the appellant has good chance of success in the appeal and therefore, the appellant should not be burden with condition to deposit 20% of the compensation amount.



4. The perusal of the impugned order as well as the judgment which is now challenged before the lower appellate Court, this Court finds that admittedly the petitioner forced the complainant for receiving the loan of Rs.20 lakhs by mortgaging his property, he neither redeem the mortgage nor paid the debt. The subject cheque issued by the petitioner for discharge of the liability. However, he claims that it was not issued to discharge of liability, but as security at the time of getting loan. Further, he contends that even according to the complainant, the petitioner requested not to present the cheque. However, he has presented the cheque which was issued several years ago when the accused has maintained the account at ICICI bank, Kovilampakkam branch. On the date of presentation of the cheque, the account was not in existence and it was closed.

5. Thus, the cheque issued by the petitioner/accused has intended not to clear the debt and therefore, the offence under Section 138 of N.I.Act is clearly attracted. Since the transaction is of the year 2017 and to discharge the said debt, cheque been given and bounced, the lower appellate Court had thought fit that 20% of the compensation amount has to be deposited for suspending the sentence. When there is a



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justifiable reason though not placed on record to direct the appellant to deposit 20% of the compensation amount as per Section 148 of N.I.Act, same cannot be faulted or interfered.

6. Hence this Criminal Original Petition stands dismissed. However, the perusal of the impugned order indicates that the time for depositing 20% of the compensation amount not been specified in spite of time of 60 days prescribed under the Statute (i.e.,) Section 148 of N.I.Act. Therefore, it is clarified that the petitioner herein shall deposit 20% of the compensation amount on or before 20.11.2024.

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Index : Yes/No

Neutral Citation : Yes/No

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To

The Session Judge, Mahila Court, Chengalpattu.

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