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Crl.O.P.No.947 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.947 of 2024

C.R.Balasubramanian
S/o.C.R.Raju

... Petitioner

Vs.

P.Eswaramoorthi
S/o.N.Palaniyappan

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside and modify the condition passed in Crl.M.P.No.3983 of 2023 in C.A.No.372 of 2023, dated 09.11.2023 on the file of Principal District and Sessions Judge, Erode.

For Petitioner : Mr.B.Singaravelu

ORDER

This petition has been filed as against one of the condition that was imposed by the Court below directing the petitioner to deposit 20% of the cheque amount while suspending the sentence imposed against the petitioner u/s.138 of the Negotiable Instruments Act.



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2. This Court carefully considered the submissions made by learned counsel for petitioner and the materials available on record.

3. The petitioner faced trial for offence u/s.138 of the Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court II, Erode, in STC No.523 of 2019. The trial Court, by judgment dated 22.09.2023, convicted the petitioner and sentenced him to undergo three months simple imprisonment and to pay the cheque amount as compensation, in default, to undergo one month simple imprisonment. Aggrieved by the same, the petitioner filed C.A.No.372 of 2023 before the Principal District and Sessions Judge, Erode. Along with this appeal, the petitioner also filed an application for suspension of sentence in Crl.M.P.No.3983 of 2023. The Court below, while suspending the sentence, imposed certain conditions. One such condition that was imposed by the Court below to the effect that the petitioner must deposit 20% of the cheque amount has been put to challenge in the present petition.



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4. The main ground that was urged by learned counsel for petitioner is that the petitioner had already filed an insolvency petition before the concerned Court and the respondent/complainant after being aware of the same misused the cheque and deposited in the bank. The insolvency petition that was filed was also marked as Ex.D1. Therefore, this was one of the main ground that was taken in the grounds of appeal. It was contended that even without considering the same, the Court below had mechanically imposed the condition of deposit of 20% of the cheque amount.

5. The Apex Court in ***Jamboo Bhandari v. M.P.State Industrial Development Corporation Ltd. and others* [2023 (3) MWN (Cr.) DCC 104 (SC)]** has held that deposit of 20% of the compensation amount is not an absolute rule and it can be reduced or even exempted in exceptional cases by assigning reasons. The Kerala High Court also taken into consideration the scope of Section 148 of the Negotiable Instruments Act and it was held that reasons must be assigned while directing deposit of 20% of the fine amount/compensation amount imposed by the trial Court. Useful reference can be made to the judgment in ***Baiju v. State of Kerala* [2023 (3) MWN (Cr.) DCC 140 (Ker.)]**



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6. In the light of the above judgments, it is clear that there is an element of application of mind that is involved while directing deposit of 20% of the amount as contemplated u/s.148 of the Negotiable Instruments Act. If the accused person is able to make out a ground for reduction of this percentage or for exemption of deposit, the same has to be considered by the appellate Court before directing deposit of compensation amount as a condition while suspending the sentence/ granting bail.

7. In the instant case, the petitioner has raised a *prima facie* ground before the appellate Court and is seeking for exemption of deposit of the cheque amount/compensation amount. The lower appellate Court ought to have applied its mind on this ground that was raised by the petitioner and passed a reasoned order. The same has not been done in this case. Hence, this Court is inclined to remand the matter bank to the file of Principal District and Sessions Judge, Erode, to deal with the issue regarding exemption sought for by the petitioner in depositing 20% of the compensation amount. The ground raised by the petitioner shall be considered and it is left open to the lower appellate Court to pass



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appropriate orders in this regard on its own merits, within a period of four (4) weeks from the date of receipt of a copy of this order.

8. 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 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



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N.ANAND VENKATESH, J.

gm

shall be circulated to all the Principal District Courts across the State of
Tamil Nadu.

22.01.2024

Note: Issue today

Speaking Order

Index :Yes

Neutral citation: Yes

gm

To

1.The Principal District and Sessions Judge,
Erode.

2.The Principal District Courts,
Tamil Nadu.

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