



Crl.R.C(MD)No.1057 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1057 of 2024

Shyamala

... Petitioner

Vs.

K.Palanivel

... Respondent

PRAYER : Criminal Revision Case filed under Sections 438 r/w 442 of BNSS, to call for records in the order of the Principal Sessions Judge, Thoothukudi in Cr.M.P.No.6103 of 2024 in C.A.No.187 of 2024, dated 12.09.2024 and set aside the one of the conditions as the petitioner shall deposit 15% of cheque amount i.e. Rs.75,000/- before the trial Court within one month from the date of the order.

For Petitioner : Mr.S.Ramasamy

For Respondent : Mr.Ka.Raamakrishnan



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ORDER

This Criminal Revision Case is filed to set aside the order, dated 12.09.2024, passed in Crl.M.P.No.6103 of 2024 in Crl.A.No.187 of 2024 on the file of the learned Principal Sessions Judge, Thoothukudi, directing the petitioner to deposit 15% of the cheque amount.

2.The brief facts of the case:

The revision petitioner is accused in S.T.C.No.54 of 2022 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kovilpatti. The respondent has filed the said case against the revision petitioner U/s.138 of the Negotiable Instruments Act on the basis of dishonour of cheque for Rs.5,00,000/- issued by the revision petitioner. The revision petitioner contested the case. After contest, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kovilpatti found the petitioner guilty U/s.138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of 6 months and also directed the petitioner to pay compensation of Rs.5,00,000/- (Rupees Five Lakhs Only) to the complainant, in default, to undergo simple imprisonment for a period of 3 months by its



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judgment, dated 08.08.2024. Challenging the judgment, the revision petitioner preferred the appeal in Crl.A.No.187 of 2024 before the Principal Sessions Court, Thoothukudi. The revision petitioner has also filed the petition in Crl.M.P.No.6103 of 2024 along with the appeal to suspend the sentence, in which the learned Principal Sessions Judge, Thoothukudi passed the impugned order, dated 12.09.2024. While suspending the sentence of imprisonment imposed on the revision petitioner, the learned Principal Sessions Judge, Thoothukudi, directed the petitioner to deposit 15% of the cheque amount i.e., Rs.75,000/- (Rupees Seventy Five Thousand Only) before the trial Court within a period of one month from the date of order, failing which, the petition stood dismissed. Being aggrieved by the order of condition to deposit 15% of cheque amount i.e., Rs.75,000/- before the trial Court, the petitioner preferred this criminal revision case.

3. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent. Perused the records in this Criminal Revision Case.



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4. The learned counsel appearing for the revision petitioner has submitted that the revision petitioner is a widow, who is working as an employee in a flower shop and earning meager amount. She is maintaining her family with meager amount. The lower Appellate Court has not considered the financial status of the petitioner while passing the conditional order of suspension. The lower Appellate Court has erroneously passed the conditional order that the deposit of minimum cheque amount in Negotiable Instruments Act cases is an absolute one, which does not have any exception. The Provision U/s.148 of the Act is not mandatory. The learned counsel would further submit that since the revision petitioner was unable to deposit the conditional amount within a stipulated time, she has been arrested on 05.12.2024 and she has been in prison for the past 16 days. The revision petitioner is a widow and considering family status and financial status, the condition may be set aside and the revision petition may be allowed. In support of his argument, the learned counsel for the petitioner has relied on the Order, **dated 23.10.2024** passed in **S.B. Criminal Mis.(Pet.)No.7408 of 2024 of the High Court of Judicature for Rajasthan at Jodhpur.**



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5. The learned counsel for the respondent has not raised any objection.

6. The case is relating to dishonor of cheque filed under the provisions of N.I. Act. The accused preferred the Criminal Appeal against the conviction and compensation awarded by the trial Court. Whiles, the Appellate Court though considered the suspension of sentence imposed on the petitioner, directed the petitioner to deposit 15% of the cheque amount, which is challenged in this criminal revision.

7. The Hon'ble Supreme Court in a case reported in **2023 LIVE LAW SC 776 (Jamboo Bhandari /v/ M.P.State Industrial Development Corporation Ltd., and Ors.)** has directed the Courts to consider the facts of each case before imposing 20% deposit. The relevant paragraphs are as follows:

"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the



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condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C., of an accused who has been convicted for offence under Section 138 of the N.I Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded."

8. In the citation relied on by the petitioner the High Court of Judicature Rajasthan has considered the financial condition of the petitioner therein, who is a daily wager, and set aside the condition of 20% in view of the ratio of the Hon'ble Supreme Court in **Jamboo Bhandari case (supra)**. From the above ratio decidendi, the imposing of 20% deposit U/s.148 is not mandatory and imposing such condition will amount to deprivation of the right of appeal of the appellant and the



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Appellate Court has to consider whether it is an exception case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% and the Appellate Court has also to consider the facts and circumstances of each case while imposing the condition.

9. In this case, the revision petitioner stated that she is working as a coolie in a flower shop and that she being a widow is maintaining her family expenses with the said meager income. The revision petitioner is in custody for the past 16 days for non-compliance of the condition. The respondent's side has not raised any objection in this revision. Therefore, I am of the considered view that this case is an exceptional case not to direct for deposit of precondition of 15% of the cheque amount. In view of the decision of the Hon'ble Apex Court and Rajasthan High Court and considering the submission of the learned counsel for the petitioner, I am inclined to set aside the condition directing the revision petitioner to deposit 15% of the cheque amount imposed by the Appellate Court.



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10. Accordingly, this Criminal Revision Case is allowed.

(i) The conditional order imposed by the Appellate Court directing the revision petitioner to deposit 15% of the cheque amount i.e., Rs.75,000/- (Rupees Seventy Five Thousand only) before the trial Court within one month from the date of order, failing which petition for suspension stood dismissed, is set aside;

(ii) The order of suspension of imprisonment and compensation passed by the Principal Sessions Judge, Thoothukudi in Crl.M.P.No.6103 of 2024 in Crl.A.No.187 of 2024, dated 12.09.2024 till the disposal of Crl.A.No.187 of 2024 is restored and the revision petitioner is ordered to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees Ten Thousand Only) along with two sureties for the like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kovilpatti.

20.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal Sessions Judge,
Thoothukudi.
- 2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Kovilpatti.



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P.VADAMALAI, J.

VSD

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