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Crl.R.C(MD)No.1154 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.12.2024

Pronounced on : 20.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1154 of 2024

and

Crl.M.P(MD)No.12273 of 2024

N.Akbar Alikhan

... Petitioner

Vs.

K.Tirupathirajan

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to set aside the order in Crl.M.P.No.4858 of 2024, dated 20.09.2024 on the file of the Principal Sessions Judge, Madurai directing to deposit 20% of compensation amount by allowing the above criminal revision.

For Petitioner : Mr.S.Rabeek Raja

For Respondent : Mr.K.Saravanan



ORDER

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This Criminal Revision Case is filed to set aside the order, dated 20.09.2024 passed in Crl.M.P.No.4858 of 2024 in Crl.A.No.174 of 2024 on the file of the learned Principal Sessions Judge, Madurai directing to deposit 20% of compensation amount.

2.The brief facts of the case:

The revision petitioner is an accused in S.T.C.No.488 of 2022 on the file of the learned Judicial Magistrate No.II, FTC at Magistrate Level, Madurai. The said case was filed by the respondent against the revision petitioner U/s.138 of the Negotiable Instruments Act upon the dishonour of cheque issued by the revision petitioner. After contest, the learned Judicial Magistrate No.II, Fast Track Court (Magistrate Level), Madurai 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 a sum of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand Only) to the complainant towards compensation, in default, to undergo simple imprisonment for a period of 2 months by his judgment, dated 08.08.2024. Challenging the judgment, the revision petitioner preferred the



appeal in Crl.A.No.174 of 2024 before the Principal Sessions Court, Madurai.

Along with appeal, the revision petitioner has also filed the petition in Crl.M.P.No.4858 of 2024 to suspend the sentence, in which, the learned Principal Sessions Judge, Madurai passed the impugned order. While suspending the sentence, the learned Principal Sessions Judge, Madurai, imposed the condition to deposit 20% of the compensation amount. Being aggrieved by the order, the petitioner preferred this Criminal Revision Case.

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

4. The learned counsel appearing for the revision petitioner has submitted that the petitioner met with an accident and he was taking treatment as inpatient for one month and also continuously taking medicines. He was bedridden for a month without any income. The learned Judge failed to consider these facts while imposing the condition directing the petitioner to deposit 20% of the compensation amount. The imposing condition to deposit 20% of the amount is not mandatory. Therefore, the condition may be set aside.



5. The case is relating to dishonor of cheque filed under the provisions of the Negotiable Instruments Act. The accused preferred the Criminal Appeal against the conviction and compensation awarded by the trial Court. Whiles, the Appellate Court while considering suspension of sentence imposed the condition to deposit 20% of the compensation amount, which is challenged in this criminal revision.

6. The Hon'ble Supreme Court in its decision reported in **2023 LIVE LAW SC 776 (Jamboo Bhandari vs. M.P.State Industrial Development Corporation Ltd., & 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 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



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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."

7. In such nature of case, the learned Single Judge of this Court has passed order in CrI.R.C(MD)Nos.356 of 2024 batch cases on 23.04.2024 after considering the decisions of the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal @ Col. S.S.Deswal and Othres Vs. Virender Gandhi***, reported in ***2019 11 SCC 341*** and in the case of ***Surinder Singh Deswal @ Col. S.S.Deswal & Ors. Vs. Virender Gandhi and Another*** reported in ***2020 (2) SCC 514*** and also ***2023 LIVE LAW SC 776***, as follows:

"11. From the consideration of the above law laid down by the Hon'ble Supreme Court and the object behind the incorporation of Section 148 of the Negotiable Instruments Act, the contention of the petitioner that the Court below erred in imposing the condition to deposit 20% of the cheque amount cannot be accepted. But, the percentage of the amount, which has to be deposited could be assessed on the facts and circumstances of each case. In this case, it is the



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specific case of the petitioner/accused that he has paid substantial payments and the same was admitted by the respondent in his cross examination. Therefore, this Court considering the said submission, is inclined to reduce the condition imposed by the learned appellate Judge, vide orders, dated 03.02.2024, from 20% of compensation amount to 10% of compensation amount."

8. From the above, it is clear that the Appellate Court has to consider the facts and circumstances of each case while imposing the condition. In this case, the petitioner stated that he met with an accident and took treatment as inpatient for one month as bedridden. To show the same, the petitioner has produced the medical records along with photos. Therefore, I concur the decision of the learned Single Judge of this court passed in CrI.R.CNo.356 of 2024 batch cases and considering the submission of the petitioner and I am inclined to reduce the condition imposed by the learned Appellate Judge, from 20% of compensation amount to 10% of compensation amount.

9. Accordingly, this Criminal Revision Case is partly allowed and modified the conditions as follows:

(i) The petitioner is directed to deposit 10% of the compensation amount i.e. Rs.65,000/- (Rupees Sixty Five Thousand Only) before the



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learned Judicial Magistrate No.II, Fast Track Court (Magisterial Level) Madurai, instead of 20% as condition imposed by the learned Principal Sessions Judge, Madurai in CrI.M.P.No4858 of 2024 in CrI.ANo.174 of 2024, dated 20.09.2024 within a period of two weeks from the date of receipt of a copy of this order;

(ii) In other respects, the order of the learned Principal Sessions Judge, Madurai passed in CrI.M.P.No4858 of 2024 in CrI.ANo.174 of 2024. dated 20.09.2024 shall remain as such.

Consequently, the connected Miscellaneous Petition is closed.

20.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Principal Sessions Judge,
Madurai.
- 2.The Judicial Magistrate No.II,
Fast Track Court (Magisterial Level),
Madurai.



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P.VADAMALAI, J.

VSD

**Pre - Delivery Order made in
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and
Crl.M.P(MD)No.12273 of 2024**

20.12.2024