



Crl.O.P.No.1366 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 1366 of 2025 &
Crl.M.P.No.764 of 2025

A. Chellan

... Petitioner

Vs.

Parasmal,
Proprietor M/s.Paras Finance,
represented by Goutham Chand
(Power Agent),
Old No.91, New No.91,
Govindappan Naicken Street,
1st Floor, Chennai 600 084.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the order dated 22.08.2024 passed by the learned Sessions Judge, Chennai in Crl.M.P.No.23586 of 2024 in Crl.A.No.614 of 2024, set aside the same in so far as it relates to directing the petitioner to deposit 20 per cent of the compensation amount ordered in C.C.No.2366 of 2013 by the learned Metropolitan Magistrate FTC-IV, G.T.Chennai.

For Petitioner : Mr.Sharath Chandran

For Respondents : Mr.S. Ramesh Kumar

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the order dated 22.08.2024 passed by the learned Sessions Judge, Chennai in Crl.M.P.No.23586 of 2024 in Crl.A.No.614 of 2024, set



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aside the same in so far as it relates to directing the petitioner to deposit 20 per cent of the compensation amount ordered in C.C.No.2366 of 2013 by the learned Metropolitan Magistrate FTC-IV, G.T.Chennai.

2. The petitioner was convicted and sentenced by the learned Metropolitan Magistrate in C.C.No.2366 of 2013 for the offence committed under section 138 of Negotiable Instruments Act by its judgment dated 29.07.2024. The trial court sentenced the petitioner to undergo 3 months SI and directed him to pay compensation amount of Rs.13,60,000/- to the complainant within one month from the date of order, in default, to undergo three weeks simple imprisonment. Aggrieved against the conviction and sentence imposed by the trial court, the petitioner preferred appeal before the learned Sessions Judge, Chennai in Crl.A.No.614 of 2024 along with Crl.M.P.No.23586 of 2024 for suspension of sentence imposed on the petitioner by the trial court.

3. Pending criminal appeal, the Appellate court suspended the sentence imposed on the petitioner on condition that the petitioner shall deposit 20% of the compensation amount to the credit of C.C.No.2366 of 2013 before the trial court within sixty days from the date of the order.



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Challenging the condition imposed by the appellate court, the petitioner has filed the present criminal original petition.

4. Learned counsel for the petitioner submitted that the properties owned by the petitioner were already mortgage with the respondent herein and as such, the petitioner could not be able to mobilise funds to comply with the condition of 20% deposit of the compensation amount imposed by the appellate court. Further, the condition as contemplated under section 148 of Negotiable Instruments Act is not mandatory in nature and it is a directory. Therefore, the appellate court, ought not to have imposed any condition while suspending the sentence imposed upon the petitioner. In support of his contention, he relied upon the decision of the Supreme Court reported in (2023) 10 Supreme Court Cases 446 in the case of ***Jamboo Bhandar Vs. Madhya Pradesh State Industrial Development Corporation Limited and others.***

5. In the above judgment rendered by the Supreme Court, it is held as follows:

'7. Therefore, when the appellate court considers the prayer under section 389 CrPC of an accused who has been convicted for offence under section 138 NI act, it is always open for the appellate court to consider whether it



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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. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases in the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under section 389 CrPC for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions courts and the High Court have proceeded on the erroneous premise that deposit or minimum 20% amount is an absolute rule which does not accommodate any exception.

and submitted that in the light of the above judgment, the appellate court ought to have suspended the sentence of the petitioner without imposing condition of deposit of 20% of the compensation amount. Therefore, he prayed for setting aside the condition imposed on the petitioner to deposit 20 per cent of the compensation amount by allowing this criminal original petition.



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6. In the above decision, the Hon'ble Apex Court has held that the

Appellate Courts have to see whether the case falls under exception for not imposing any condition as contemplated under section 148 of Negotiable Instruments Act while granting suspension of sentence.

7. On perusal of records, it reveals that the petitioner has not mortgaged any property with the respondent while borrowing loan from the respondent. The petitioner executed a pronote and borrowed the loan amount for purchase of Mini Buses for transportation in and around Marthandam. Towards repayment of loan, he issued post dated cheque(s) to the respondent and when the same was presented for encashment, it was dishonoured for the reason 'Funds Insufficient'. Therefore, the petitioner failed to make out a case for any exception to suspend the sentence imposed by the trial court without any condition. Therefore, the above judgment is not applicable to the facts of the present case.

8. In view of the above discussion, this Court finds no infirmity or illegality in the order passed by the Appellate Court imposing condition to deposit 20% of the compensation amount while granting suspension of sentence. Hence, this Criminal Original Petition is dismissed.



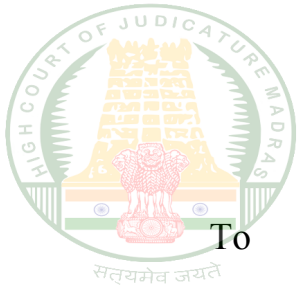
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WEB COPY 9. At this juncture, the learned counsel for the petitioner would submit that time to comply with the condition imposed by the appellate court may be extended.

10. Considering the submission of the learned counsel for the petitioner, time is extended till 28.02.2025 to comply with the condition imposed by the appellate court. It is made clear that if the petitioner fails to comply with the condition of deposit of 20% of the compensation amount on or before 28.02.2025, the appellate court is directed to proceed against the petitioner in accordance with law. Consequently, the connected miscellaneous petition is closed.

19.02.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

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1.The Sessions Judge, Chennai

2.The Metropolitan Magistrate FTC-IV, G.T.Chennai.



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G.K.ILANTHIRAIYAN, J.

msr

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