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CrI.O.P.No.5820 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.5820 of 2025

1. M/s. Viswas Flat Promoters Pvt. Ltd.,
Rep. by its Managing Director, K.A.Shivago.

2. K.A.Shivago

3. V.P.Asha

... Petitioners

Vs

T.Prakateeswaran

... Respondent

Criminal Original Petition is filed under Section 483(1)(b) of B.N.S.S., 2023, to modify the condition Nos.1 and 3 order passed by the learned Additional District and Sessions Judge, Chengalpattu District in CrI.M.P.No.4264 of 2024 in CrI.A.No.120 of 2024 dated 02.01.2025

For Petitioners : Mr.E.Kannadasan

For Respondent : Mr.R.K.Ramaiah



Crl.O.P.No.5820 of 2025

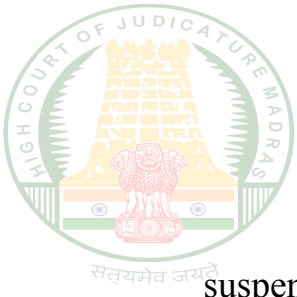
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ORDER

This petition is filed to modify condition Nos. 1 and 3 in Crl.M.P. No. 4264 of 2024 in C.A. No. 120 of 2024, dated 02.01.2025, passed by the learned Additional District and Sessions Judge, Chengalpattu District, thereby imposing a condition to deposit 20% of the compensation amount while suspending sentence.

2. Heard the counsel for both sides and perused the materials available on record.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act' for short) in C.C. No. 99 of 2022. After a full-fledged trial, the Trial Court convicted the second and third petitioners for the offence under Section 138 of the NI Act and sentenced them to undergo simple imprisonment for 6 months and directed the first petitioner to pay a fine amount of Rs. 1,89,07,600/- as compensation. Aggrieved by the same, the petitioners preferred an appeal in C.A. No. 120 of 2024, along with a petition, Crl.M.P. No. 4264 of 2024, to



Crl.O.P.No.5820 of 2025

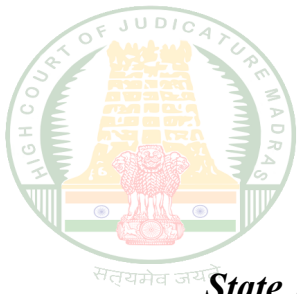
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suspend the sentence on the file of the learned Principal Sessions Judge, Tiruppur. The Appellate Court suspended the sentence on the condition that the petitioners shall deposit 20% of the compensation amount on or before 03.02.2025.

4. The learned counsel for the petitioners would submit that for the very same cheque amount, the respondent filed a suit before this Court in C.S. No. 109 of 2021 and also obtained an order of attachment before judgment, thereby attaching the property of the petitioners. Therefore, the petitioners could not mobilize funds for selling the said property to comply with the condition imposed by the Appellate Court.

5. The learned counsel for the respondent would submit that there are other sources for the petitioner to mobilize funds. Therefore, the Appellate Court has rightly imposed the condition under Section 148 of the NI Act and as such, it does not warrant any modification.

6. In this regard, it is relevant to extract the Judgment reported in **2023 (10) SCC 446** in the case of ***Jamboo Bhandari Vs Madhya Pradesh***



Crl.O.P.No.5820 of 2025

WEB COPY

State Industrial Development Corporation Limited and other, in which the

Hon'ble Supreme Court of India held as follows:-

“ 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. 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 and 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



WEB COPY



Crl.O.P.No.5820 of 2025

an accused applies under Section 389 of the Cr.P.C. 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.”

7. Thus, it is clear that though the petitioners failed to plead that there are exceptional circumstances, it can be considered while suspending the sentence and imposing conditions.

8. In view of the above exceptional circumstances, the petitioners could not deposit 20% of the compensation amount. Accordingly, the condition imposed by the Appellate Court in Crl.M.P. No. 4264 of 2024 in C.A. No. 120 of 2024, dated 02.01.2025, is modified only to the extent of deleting the condition that the petitioners shall deposit 20% of the compensation amount. It is made clear that, except for the said modification, in all other respects, the order dated 02.01.2025 shall remain unaltered. The Appellate Court is directed to dispose of the appeal in C.A. No. 120 of 2024 within a period of three months from the date of receipt of a copy of this



Crl.O.P.No.5820 of 2025

order.
WEB COPY

04.03.2025

Index: Yes/No
Neutral Citation: Yes/No
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To

The Additional District and Sessions Judge,
Chengalpattu District.



WEB COPY



Crl.O.P.No.5820 of 2025

G.K.ILANTHIRAIYAN, J.

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Crl.O.P.No.5820 of 2025

04.03.2025