



Crl.O.P.No.8204 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.03.2025**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8204 of 2025

A. Ayyappan

... Petitioner

Versus

M/s. Formprint,
Rep. by its Power Agent,
S. Vasantharaman,
No.9, New No.17, Baker Street,
Chennai – 600 001.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the condition that the petitioner shall deposit 20% of the compensation amount before the Trial Court at the credit of C.C, within sixty days from the date of the Order, passed in Crl.M.P.No.1 of 2025 in C.A.No.130 of 2025 dated 03.02.2025 on the file of the learned Principal Sessions Court, Chennai.

For Petitioner : Mr. M. Mohamed Nazar



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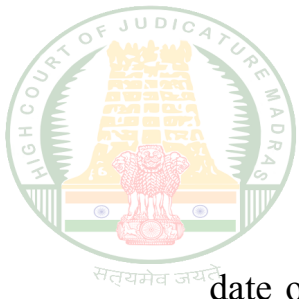
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ORDER

This petition has been filed challenging the order dated 03.02.2025 in Crl.MP.No.1 of 2025 in C.A.No.130 of 2025 in C.C. No.68 of 2017, passed by the learned Principal Sessions Judge, Chennai, thereby directing the petitioner to deposit 20% of the compensation amount to the credit of the Trial Court while suspending sentences.

2. Based on the complaint lodged by the respondent, a case was registered for the punishable offence under Section 138 of Negotiable Instruments Act, 1881, in C.C.No.68 of 2017 on the file of the Metropolitan Magistrate, FTC-IV, George Town, Chennai, as against the petitioner.

3. After fullfledged trial, the Trial Court convicted the petitioner for the offence under Section 138 of NI Act, and sentenced him to undergo eight months Simple Imprisonment and also ordered him to pay a compensation of Rs.9,42,150/- which is the cheque amount along with 3% interest per annum from the date of dishonor of the cheque till the



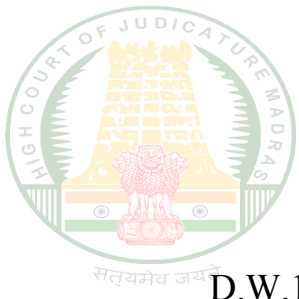
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date of judgment, within one month, in default, to undergo two months simple imprisonment.

4. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.130 of 2025 along with the application in Crl.MP.No.1 of 2025 for suspending the sentence imposed in C.C.No.68 of 2017. The Appellate Court suspended the sentence imposed in C.C.No.68 of 2017 by the Trial Court on condition that the petitioner shall deposit 20% of cheque amount as compensation to the credit of the Trial Court, as contemplated under Section 148 of NI Act. Against which, the petitioner has filed the present petition.

5. Learned counsel for the petitioner submitted that the petitioner is not the proprietor M/s. Shree Balaji Enterprises, and the cheque was issued on behalf of M/s. Shree Balaji Enterprises, by one Mr. N. Sridhar, who is the Proprietor, and it would be appropriate to initiate proceedings against the concerned person. Further, he submitted that from the cheque issued, the Manager of the Bank, who was examined as



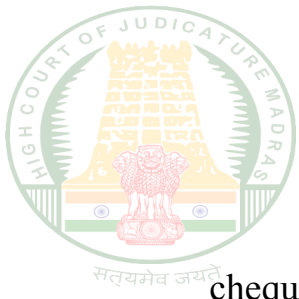
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D.W.1, it was proved that the petitioner does not have any account in that bank and he did not issue the disputed cheque. As per Ex.X2, it was unequivocally indentified that Mr. N. Sridhar is the properietor of M/s. Shree Balaji Enterprises. The Trial Court failed to consider this evidence and passed the order directing the petitioner to deposit 20% of the cheque amount as compensation. Therefore, he prays that the order passed by the Trial Court is liable to be set aside.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. On perusal of the deposition of D.W.1, it was revealed that the petitioner is not a properietor of M/s.Shree Balaji Enterprises. The Properietor of M/s. Shree Balaji Enterprises is one Mr. N. Sridhar. The said cheque was issued by the proprietorship concern of M/s. Shree Balaji Enterprises and signed by its properietor Mr. N. Sridhar. The petitioner received a statutory notice under Section 138 of NI Act. The petitioner had sent a detailed reply stating that he never issued any



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cheque on behalf of M/s. Shree Balaji Enterprises and that he is not the signature authority to the cheque.

8. Therefore, the Trial Court without considering the above facts, convicted the petitioner for the offence under Section 138 of NI Act. Therefore, the petitioner has made out a case for exceptional circumstances. After examining the imposing condition as contemplated under Section 148 of NI Act, it has also been decided in the Judgement the Hon'ble Supreme Court of India, reported in **(2023) 10 Supreme Court Cases 446**, in the case of **Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and others**, which holds as follows :-

“ 6. What is held by this Court is that a purpose interpretation should be made of Section 148 NI Act. Hence, normally, the 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



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appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when the appellate court considers the prayer under Section 389 Cr.P.C. 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 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 dispensed with. He submits that if such a prayer was not made by the appellants, there was no reasons for the courts to consider the said plea.



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9. *We disagree with the above submission.*

When an accused applies under Section 389 Crl.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.”

9. In view of the above, the petitioner has made out a case, as the case of the petitioner falls in the exceptional category. Therefore, the Appellate Court ought not to have imposed the condition as contemplated under Section 148 of NI Act mechanically while suspending the sentences.

10. In view of the above, the condition imposed by the Appellate Court, namely, that the petitioner shall deposit 20% of cheque amount as compensation to the credit of the Trial Court within 60 days from the date of that order alone is hereby set aside. The other conditions imposed on the petitioner remain intact.



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11. With the above observations and direction, this Criminal
Original Petition is allowed.

20.03.2025

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

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To

1.The Principal Sessions Court, Chennai.

2.The Metropolitan Magistrate, FTC-IV, George Town, Chennai.



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G.K.ILANTHIRAIYAN, J.

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