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Crl.O.P.No. 8467 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2025

CORAM:

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

Crl.O.P.No.8467 of 2025

K.L.Lakshmipathi

... Petitioner

Vs.

K.Kasirajan

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to modify condition petitioner shall deposit 20% of compensation amount for period of sixty days before the Judicial Magistrate at Tiruthani to the credit of STC No.673 of 2018 the order dated 16.11.2024 made in Crl.M.P.No.7013 of 2024, on the file of the Principal District and Sessions Judge at Thiruvallur, enabling the petitioner to comply with the order.

For Petitioner : Mr.P.Chandrasekar



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ORDER

This Criminal Original Petition has been filed to modify condition that the petitioner shall deposit 20% of compensation amount within a period of sixty days before the Judicial Magistrate at Tiruthani to the credit of STC No.673 of 2018 by an order dated 16.11.2024 made in CrI.M.P.No.7013 of 2024, on the file of the Principal District and Sessions Judge at Thiruvallur.

2. Heard both sides and perused the materials placed on record.

3. The petitioner is the accused in the complaint lodged by the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881 in STC No.673 of 2018 on the file of the Judicial Magistrate, Tiruthani. After a full-fledged trial, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo 10 months of imprisonment, in addition to being directed to pay compensation to the

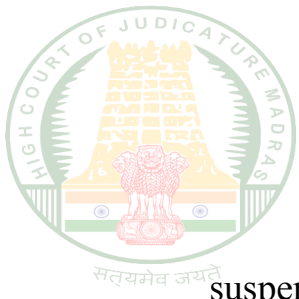


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tune of cheque amount. Aggrieved by the same, the petitioner filed an appeal along with an application in CrI.M.P. No. 7013 of 2024 in CrI.A. No. 234 of 2024. The Appellate Court suspended the sentence on the condition that the petitioner shall deposit 20% of the compensation amount to the credit of the Trial Court within a period of sixty days.

4. On perusal of the records, it is revealed that the respondent lodged a complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881, alleging that the petitioner had borrowed a sum of Rs.5,00,000/- and in part repayment of said loan, the petitioner issued a cheque. The specific defence of the petitioner is that the respondent conducted a chit and received the cheque as a security and despite the repayment of the entire amount, the cheque was not returned and the cheque was misused by the respondent, who presented it for collection and the same was returned dishonoured on the ground that “funds insufficient”. In support of this defence, the petitioner had also examined DW1 and DW2. Therefore, the petitioner made a case for exceptional circumstances for not imposing any condition while



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suspending the sentence as per the dictum laid down by the Hon'ble Supreme Court of India in the case ***Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and others***, reported in ***(2023) 10 Supreme Court Cases 446***, which reads as follows

:-

“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 dispensing with. He submits that if such a prayer was not made by the appellants, there was no reason for the courts to consider the said plea.



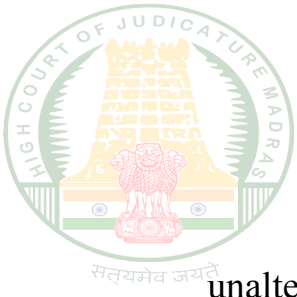
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9. *We disagree with the above submission. When an accused applies under Section 389 CrI.P.C for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought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

5. In view of the above, there is no need to issue any notice to the respondent, as the Appellate Court, by suspending the sentence, imposed conditions on the petitioner. The petitioner has now made out a *prima-facie* case for not imposing the condition as contemplated under Section 148 of the Negotiable Instruments Act. Therefore, the condition imposed by the Appellate Court cannot be sustained and is liable to be set aside.

6. Accordingly, the condition imposed on the petitioner to deposit 20% of the compensation amount alone is hereby set aside. The other conditions imposed on the petitioner by the Appellate Court remain



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unaltered. The Appellate Court is directed to dispose of the appeal in C.A.No.234 of 2024, within a period of three months from the date of receipt of a copy of this order.

7. In the result, this Criminal Original Petition stands modified.

21.03.2025

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



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To

1. Judicial Magistrate at Tiruthani
2. Principal District and Sessions Judge at Thiruvallur,



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G.K.ILANTHIRAIYAN, J.

shk

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