



Crl.O.P.No.10816 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2025

CORAM:

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

Crl.O.P.No.10816 of 2025

P.Raju

... Petitioner

Vs

Srinivasan

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023/ Section 482 of Cr.P.C, to call for the records in Crl.M.P.No.1 of 2025 in Crl.A.No.326 of 2025 on the file of the learned Principal Sessions Judge, Chennai and modify the condition – para-4 “Further, the petitioner shall deposit 15% of the cheque amount before the Trial Court at the credit of S.T.C within four weeks from the date of this order”, imposed in Crl.M.P.No.1 of 2025 in Crl.A.No.326 of 2025 passed by the learned Principal Sessions Judge, Chennai.

For Petitioner : Mr.S.T.S.Murthy
Senior Counsel
for Mr.R.Hari

ORDER

This Criminal Original Petition has been filed to modify the condition imposed in Crl.M.P.No.1 of 2025 in Crl.A.No.326 of 2025 on the file of the learned Principal Sessions Judge, Chennai.



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2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act in S.T.C.No.4869 of 2022 on the file of the Fast Track I, Metropolitan Magistrate Court, Egmore, Chennai. After full-fledged trial, the Trial Court convicted the petitioner under Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and also awarded compensation to the tune of cheque amount. Aggrieved by the same, the petitioner preferred an appeal along with an application for suspension of sentence in Crl.M.P.No.1 of 2025 in Crl.A.No.326 of 2025, on the file of the Principal Sessions Judge, Chennai. The appellate Court suspended the sentence imposed by the Trial Court, on condition that the petitioner shall deposit 15% of the cheque amount before the trial Court to the credit of S.T.C, within a period of four weeks from the date of the order, viz., 10.03.2025.



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4. The learned Senior Counsel appearing for the petitioner would submit that the cheque was issued for security purpose at the time of receiving advance to sell the property owned by the petitioner comprised in S.No.127/10B, 127/16 part and 127/15B part situated at Maduravoyal Village, Maduravoyal Taluk, Thiruvallur to an extent of 1 acre 49 ½ cents, as per the agreement dated 21.11.2012. In fact, the said agreement did not stipulate any specific time frame for execution of the sale. Subsequently, stated there is no encumbrance in respect of the subject property and only thereafter, the respondent agreed to purchase the said property for a total sale consideration of Rs.22 Crores and paid a sum of Rs.1,50,00,000/- as advance. In fact, on the date of agreement, the entire possession of the subject property has been handed over to the respondent and the respondent is still in possession of the subject property. Even then, the respondent presented the cheques which were given as security purpose at the time of receiving advance.

5. He further submitted that though the petitioner replied by way of a reply notice for the statutory notice issued by the respondent and had also subjected the respondent to extensive cross examination before the Trial Court, the trial Court without considering the same, convicted the petitioner for the

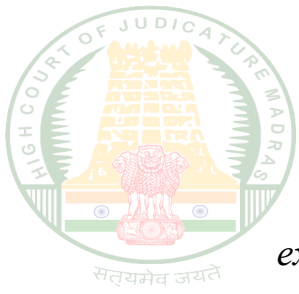


offence under Section 138 of Negotiable Instruments Act. Further, the appellate Court also without considering the facts, mechanically imposed a condition while suspending the sentence of the petitioner directing the petitioner to deposit 15% of the compensation amount.

6. In this regard, the learned counsel for the petitioner relied upon the Judgment reported in **(2023) 10 Supreme Court Cases 446** in the case of **Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and others**, in which, the Hon'ble Supreme Court of India held 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 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



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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.

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.”

7. Thus, it is clear that if the accused is able to make out a prima facie case demonstrating exceptional circumstances, the Appellate Court may consider the case of the accused and need not impose any condition after recording the reasons.



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8. A perusal of records revealed that admittedly, the petitioner entered into an agreement for sale with the respondent and received a sum of Rs.1,50,00,000/- as an advance. On the date of agreement, the petitioner issued five cheques for security purpose. A perusal of the agreement for sale dated 21.11.2012 revealed that the petitioner received a sum of Rs.1.5 Crores as an advance for a total sale consideration of Rs.22 Crores. Further, the possession of the subject property was also handed over to the respondent. Therefore, the petitioner made out a prima facie case of exceptional circumstances, warranting that no condition be imposed while suspending the sentence.

9. This petition is filed as against the condition imposed by the appellate Court and as such, notice is not necessary to dispose of this petition.

10. In view of the above, the condition imposed in Crl.M.P.No.1 of 2025 in Crl.A.No.326 of 2025 on the file of the learned Principal Sessions Judge, Chennai alone is hereby set aside. The other conditions shall remain intact. The appellate court is directed to dispose of the appeal in Crl.A.No.326 of 2025 within a period of three months from the date of receipt of a copy of this order.



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11. With the above directions, this Criminal Original Petition stands disposed of.

08.04.2025
(3/5)

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J.

mn

To

The Principal Sessions Judge, Chennai.

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