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Crl.O.P.No.11553 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04..2025

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.11553 of 2025

R.Asia Begum Petitioner
Vs

Ashok Kumar Respondent

Prayer: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2025, to modify the order dated 19.12.2024 in Crl.M.P.No.36324 of 2024 in Crl.A.No.1060 of 2024 on the file of Principal Sessions Judge, Chennai to deposit the sum of 15% of total compensation amount and grant such other relief.

For Petitioner : Mr.A.Nirmal Kumar

ORDER

This Criminal Original Petition has been filed to modify the order dated 19.12.2024 in Crl.M.P.No.36324 of 2024 in Crl.A.No.1060 of 2024 on the file of Principal Sessions Judge, Chennai to deposit the sum of 15% of total compensation amount

2. Heard the learned counsel for the petitioner and perused the



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materials available on record.

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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. After a full-fledged trial, the Trial Court convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and also awarded compensation to the cheque amount. Aggrieved by the same, the petitioner preferred an appeal and also filed an application to suspend the sentence. The Appellate Court suspended the sentence in CrI.M.P.No.36324 of 2024 in C.A.No.1060 of 2024 on condition that the petitioner shall deposit 15% of the compensation amount awarded by the Trial Court within a period of sixty days.

4. The learned counsel for the petitioner would submit that the petitioner had only borrowed a loan from the respondent. It is contended that petitioner used to borrow small amounts from one Varatharajan for the purpose of security. The cheque in question was allegedly given to the respondent and has been misused by him by presenting it for



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collection. It is further submitted that the petitioner has examined the said Varatharajan to support her case. Therefore, the petitioner submits that a prima facie case of exceptional circumstances has been made out, warranting exemption from the condition as contemplated under Section 148 of Negotiable Instruments Act.

5. 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.7,00,000/- and in part repayment of said loan, the petitioner issued a cheque. The specific defence of the petitioner is that the respondent 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”. Therefore, the petitioner seeks to establish exceptional circumstances as held 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 :-



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“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.

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.”

6. In view of the above, there is no need to issue any notice to



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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.

7. Accordingly, the condition imposed on the petitioner to deposit 15% of the compensation amount alone is hereby set aside. The other conditions imposed on the petitioner by the Appellate Court remain unaltered. The Appellate Court is directed to dispose of the appeal in C.A.No.1060 of 2024, within a period of six months from the date of receipt of a copy of this order.

8. In the result, this Criminal Original Petition stands allowed.

17.04.2025

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

G.K.ILANTHIRAIYAN, J.

shk



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To

1. The Metropolitan Magistrate, Fast Track-II (Magisterial Level),
Egmore at Allikulam.
2. The Principal Sessions Judge, Chennai

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