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CrI.O.P.No. 4095 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2025

CORAM:

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

CrI.O.P.No.4095 of 2025

R.Kumar

... Petitioner

Vs.

B.Sivaganesan @ Sivaganapathy

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records relating to the impugned order passed on 25.10.2024 in CrI.M.P.No.29691 of 2024 in CrI.A.No.804 of 2024 by the learned Principal Sessions Judge at Chennai which is now pending on the file of the learned XXI Additional Judge, Chennai and modify the order of directing the respondent / accused to deposit to a minimum of 20% of compensation amount of Rs.2,42,00,000\ - awarded by the learned VIII Metropolitan Magistrate at George Town, Chennai in its judgment dated 27.09.2024 in C.C.No.2616/2018 instead of Rs.9,00,000\ -.



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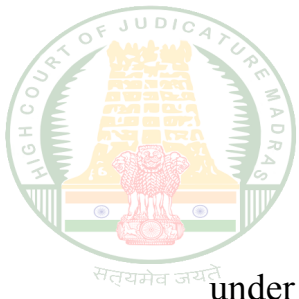
For Petitioner : M/s.A.Priyadarshini

ORDER

This Criminal Original Petition has been filed challenging the order dated 25.10.2024 in CrI.M.P. No. 29691 of 2024 in CrI.A. No. 804 of 2024 passed by the learned Principal Sessions Judge, Chennai, which is now pending before the learned XXI Additional Judge, Chennai, thereby, the Appellate Court has directed the respondent to deposit a sum of Rs. 9,00,000/- to the credit of the Trial Court while suspending the sentence.

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

3. The petitioner is the complainant and the respondent is the accused in C.C. No. 2616 of 2018 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, registered for the offence under Section 138 of the Negotiable Instruments Act, 1881. After a full-fledged trial, the respondent was convicted for the offence

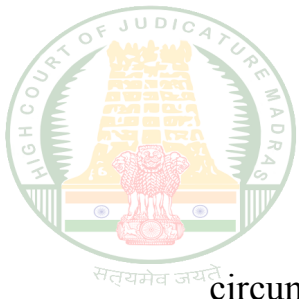


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under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo one year of imprisonment, in addition to being directed to pay compensation to the tune of cheque amount. Aggrieved by the same, the respondent filed an appeal along with an application in CrI.M.P. No. 29691 of 2024 in CrI.A. No. 804 of 2024. The Appellate Court suspended the sentence on the condition that the respondent shall deposit a sum of Rs. 9,00,000/- to the credit of the Trial Court. Aggrieved by this, the petitioner, being the complainant, has filed this petition on the ground that Section 148 of the Negotiable Instruments Act, 1881 is clear in its mandate that the Appellate Court shall impose a condition of deposit at least 20% of the cheque amount. However, the Appellate Court imposed the condition to deposit Rs. 9,00,000/-, which is only 3.7% of the cheque amount.

4. On perusal of the provision under Section 148 of the Negotiable Instruments Act, 1881, it is clear that the provision is not mandatory but merely directive in nature. Therefore, it is within the discretion of the Appellate Court to impose such a condition, depending on the facts and



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circumstances of each case. If the respondent had made out a case for an exceptional category where no condition should be imposed, the Appellate Court might have exercised its discretion accordingly. However, in the present case, the Appellate Court imposed the condition for the deposit of Rs. 9,00,000/- which, in the opinion of this Court, does not suffer from any infirmity or illegality. That apart, the respondent has complied with the condition imposed by the Appellate Court.

5. That being the case, this Court does not find any merit in this petition. However, the Appellate Court is directed to dispose of the appeal within a period of twelve weeks from the date of receipt of a copy of this order.

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

17.03.2025

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



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To

1. Principal Sessions Judge at Chennai
2. XXI Additional Judge, Chennai
3. VIII Metropolitan Magistrate at George Town, Chennai



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G.K.ILANTHIRAIYAN, J.

shk

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