BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.594 of 2025

and

CRL MP(MD)No.6610 of 2025

K.Sundari ... Petitioner/ Appellant / Sole Accused

Vs.

C.A.R.P.Mari ... Respondent / Respondent / Complainant

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records pertaining to the impugned order in Cr.MP.No.1123/2025 in C.A.No.28/2025 dated 25.04.2025 pending on the file of the learned Principal District and Sessions Judge, Sivagangai, and set aside the same.

For Petitioner : Mr.G.Karuppasamypandiyan

For Respondent : M/s.G.Dhanalakshmi

ORDER

This Criminal Revision Case has been filed challenging the order dated 25.04.2025 passed by the learned Principal Sessions Judge, Sivagangai, in Crl.M.P. No.1123 of 2025 in C.A. No.28 of 2025, whereby the Appellate Court, while suspending the sentence imposed by the Trial Court in C.C. No.

898 of 2022, directed the petitioner to deposit 20% of the compensation amount under Section 148 of the Negotiable Instruments Act, 1881.

2. ***Factual Matrix:***

The petitioner is the second accused in C.C. No.898 of 2022 on the file of the learned Judicial Magistrate, Manamadurai. The respondent/complainant, who is none other than the own brother of the petitioner, filed a private complaint alleging that the petitioner, being the Managing Trustee of Thangachi Ammal Trust running Seikalathur Kamatchiamman Polytechnic College, had engaged him, a building contractor by profession, for construction of a new block in the said college. Towards discharge of part liability of Rs.98,07,207/-, a post-dated cheque dated 11.03.2020 was issued by the authorised signatory/Principal. On presentation, the cheque was returned for “insufficient funds”. After issuance of statutory notice and non-payment within the prescribed period, the complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed. The Trial Court convicted the petitioner under Section 138 NI Act, sentenced her to six months’ simple imprisonment, and directed her to pay compensation equivalent to the cheque amount. The Appellate Court, while suspending the sentence, imposed a condition that the petitioner shall deposit 20% of the compensation awarded, invoking Section 148 NI Act. Aggrieved by such direction, the present Revision Petition is filed.

3. ***Contentions of the Petitioner:***

The petitioner is neither the drawer nor the signatory of the cheque in question, which was signed by the Principal of the College (arrayed as A1). The liability of the petitioner, being a Managing Trustee, is wrongly presumed, though she is not the account holder. The Appellate Court mechanically imposed the condition under Section 148 NI Act without recording any reasons, thereby rendering the order unsustainable.

4. ***Contentions of the Respondent:***

The cheque was issued towards discharge of liability arising out of the contract for construction of a college block. The petitioner, as Managing Trustee of the Trust running the institution, was instrumental in engaging the complainant and is therefore liable under Section 141 NI Act for offences committed by the company/trust. The Appellate Court rightly imposed the condition of 20% deposit in terms of Section 148 NI Act.

5. ***Relevant Provisions of Law:***

Section 138, Negotiable Instruments Act, 1881:

"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person, from out of that account, for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid ... such person shall be deemed to have committed an offence...”

Section 139, NI Act:

“It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.”

Section 148(1) NI Act (as amended by Act 20 of 2018):

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.”

6. ***Precedents & Judicial Interpretation:***

(i) ***Rangappa v. Sri Mohan***[1]:

"The presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is a rebuttable presumption and it is open to the accused to raise a defence."

(ii) ***Kumar Exports v. Sharma Carpets***[2]:

"Bare denial of liability cannot suffice. The accused must prove the non-existence of liability by adducing cogent evidence."

(iii) ***Kishan Rao v. Shankargouda***[3]:

"The Court must lean in favour of the presumption under Section 139 unless the accused discharges the burden by raising a probable defence."

(iv) ***Surinder Singh Deswal v. Virender Gandhi***[4]:

"Section 148 of the NI Act confers discretion upon the Appellate Court to direct deposit of at least 20% of the compensation. The object of the amendment is to curb delay tactics of unscrupulous drawers of dishonoured cheques. The provision is procedural and applicable retrospectively."

1 (2010) 11 SCC 441
2 (2009) 2 SCC 513
3 (2018) 8 SCC 165
4 (2019) 11 SCC 341

7. ***Analysis:***

A perusal of the record shows that the cheque was admittedly issued by the Principal of the Institution, not by the petitioner in her personal capacity. However, being the Managing Trustee of the Trust, she may fall within the ambit of Section 141 NI Act, subject to proof that she was in charge of and responsible for the conduct of the affairs of the Trust. The Trial Court convicted the petitioner under Section 138 NI Act, and the Appellate Court suspended the sentence but imposed 20% deposit. From ***Surinder Singh Deswal***[5], it is clear that Section 148 empowers the Appellate Court to direct such deposit. However, it is equally clear that reasons must be recorded. In the present case, the impugned order merely records that "petitioner was on bail" and imposed 20% deposit mechanically, without any detailed reasoning. The law is settled that reasons are the heartbeat of a judicial order (Kishan Rao, supra). Absence of reasons renders the order vulnerable. Therefore, though the Appellate Court was empowered under Section 148 NI Act, the order suffers from non-application of mind and absence of reasons. The conviction under Section 138 NI Act by the Trial Court is not interfered with at this stage, as the appeal is pending. The conditional order of the Appellate Court directing 20% deposit without recording reasons is held unsustainable.

5 Extracted supra

8. The Criminal Revision Case is allowed in part. The order dated 25.04.2025 in Crl.M.P. No.1123 of 2025 in C.A. No.28 of 2025, insofar as it directs the petitioner to deposit 20% of the compensation, is set aside. The matter is remitted back to the learned Principal Sessions Judge, Sivagangai to reconsider the application for suspension of sentence afresh. The learned Principal Sessions Judge, Sivagangai, shall pass orders within four weeks after affording opportunity to both sides. Consequently, connected miscellaneous petition is closed.

25.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The Principal District and
Sessions Judge, Sivagangai.

L.VICTORIA GOWRI, J.,

Sml

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