

WEB COPY



CrI.R.C(MD)No.1175 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.03.2025

Pronounced on : 18.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

CrI.R.C(MD)No.1175 of 2024

Titus Samuel

... Petitioner/Sole Accused

Vs.

1.Joseph Selvaraj

... 1st Respondent /Complainant

2.State; The Inspector of Police,
Tuticorin South Police Station,
Tuticorin District.

... 2nd Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 of BNSS, to call for records and set aside the order passed in Cr.M.P.No.3469 of 2024 in C.A.No.40 of 2022, dated 23.05.2024 on the file of the Principal Sessions Judge, Tuticorin, Tuticorin District.

For Petitioner : Mr.KA.Ramakrishnan

For R1 : Mr.S.Ramesh

For R2 : Mr.M.Vaikkam Karunanithi
Government Advocate (CrI.side)



Crl.R.C(MD)No.1175 of 2024

ORDER

WEB COPY

This Criminal Revision Case is filed to set aside the order passed in Crl.M.P.No.3469 of 2024 in Crl.A.No.40 of 2022, dated 23.05.2024 by the learned Principal Sessions Judge, Tuticorin, Tuticorin District.

2.The brief facts of the case:

The revision petitioner is the accused in C.C.No.102 of 2018 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level), Tuticorin. The first respondent has filed the said case U/s.138 of the Negotiable Instruments Act against the revision petitioner on the basis of dishonour of cheques for Rs.72,48,000/-. After contest, the learned Judicial Magistrate found the petitioner guilty U/s.138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and also directed the petitioner to pay Rs.72,48,000/- to the complainant towards compensation U/s.357(3) of CrP.C. by his judgment, dated 28.02.2022. Challenging the above conviction judgment, the revision petitioner preferred the appeal in Crl.A.No.40 of 2022 before the Principal Sessions Court, Tuticorin. During the pendency of the appeal, the revision petitioner has filed the petition in Crl.M.P.No.3469 of 2024 to suspend the sentence, dated 28.02.2022 in C.C.No.102 of 2018. The learned Principal Sessions Judge, Tuticorin, dismissed that petition on 23.05.2024. Being aggrieved

by the dismissal of the petition, the petitioner has preferred this criminal revision case.

3. Heard the learned counsel appearing for the petitioner and learned counsel for the first respondent and the learned Government Advocate (Crl.side) for the second respondent. Perused the records in this Criminal Revision Case.

4. The learned counsel appearing for the revision petitioner has submitted that the revision petitioner was directed to pay 20% of compensation amount while suspending the sentence in Crl.M.P.No1731 of 2022 in Crl.A.No.40 of 2022 by the learned Principal Sessions Judge, Tuticorin. When the petitioner challenged that order before this Court in Crl.R.C(MD)No.1140 of 2023, which was dismissed on the ground that the criminal revision was not maintainable. The petitioner is now in custody and filed another petition before the Principal Sessions Court, Tuticorin, for suspension of sentence, but it was negatived. The petitioner is not able to mobilize 20% of cheque amount of Rs.72,48,000/-. In a case filed under the provisions of N.I Act, when the accused is in custody, the petition for suspension of sentence has to be considered in a lenient manner, when the petitioner is ready to pay 10% of compensation. In support of his contention, the learned counsel has relied on the following citations:



WEB COPY



Crl.R.C(MD)No.1175 of 2024

(i) (2004) MLJ (Crl.) 1001 (State rep by Inspector of Police and Ors. /v/ N.M.T.Joy Immaculate).

(ii) 2024 INSC 96 (Akanksha Arora /v/ Tanay Maben).

(iii) Order of this Court passed in a case Padmanabhan /v/ Nagajothi dated 25.09.2007.

(iv) Order of this Court passed in Crl.O.P.(MD)No. 4284 of 2018, dated 28.03.2018.

5. The learned counsel for the first respondent submitted that the petitioner failed to comply with the condition for depositing 20% of the compensation amount even after dismissal of the criminal revision by this Court. It is contended that the revision against the condition imposed in suspension of sentence or bail is not maintainable, which is held by this Court in Crl.R.C.No.766 of 2019, dated 21.06.2022.

6. The case is relating to dishonor of cheque filed under the provisions of N.I. Act. The accused preferred the criminal appeal against the conviction and compensation awarded by the trial Court. Whiles, the Appellate Court imposed the condition directing the revision petitioner to deposit 20% of compensation amount while suspending the sentence awarded by the trial Court. It is not disputed that the petitioner filed the criminal revision challenging 20% of deposit and the same was dismissed by this Court as it was not maintainable.



7. The Hon'ble Supreme Court in the subsequent decision reported in 2023

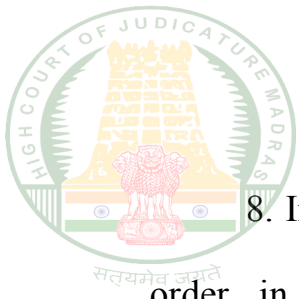
LIVE LAW SC 776 (Jamboo Bhandari vs. M.P.State Industrial Development

Corporation Ltd., & Ors.) has directed the Courts to consider the facts of each

case before imposing 20% deposit. The relevant paragraphs are as follows:

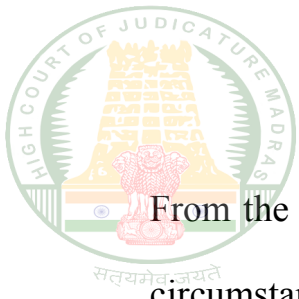
"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition 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 Appellate Court considers the prayer under Section 389 of the Cr.P.C., of an accused who has been convicted for offence under Section 138 of the N.I 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. In such nature of case, the learned Single Judge of this Court has passed order in Crl.R.C(MD)Nos.356 of 2024 batch cases on 23.04.2024 after considering the decisions of the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal @ Col. S.S.Deswal and Othres Vs. Virender Gandhi***, reported in ***2019 11 SCC 341*** and in the case of ***Surinder Singh Deswal @ Col. S.S.Deswal & Ors. Vs. Virender Gandhi and Another*** reported in ***2020 (2) SCC 514*** and also (***Jamboo Bhandari vs. M.P.State Industrial Development Corporation Ltd., & Ors.***) reported in ***2023 LIVE LAW SC 776***, as follows:

"11. From the consideration of the above law laid down by the Hon'ble Supreme Court and the object behind the incorporation of Section 148 of the Negotiable Instruments Act, the contention of the petitioner that the Court below erred in imposing the condition to deposit 20% of the cheque amount cannot be accepted. But, the percentage of the amount, which has to be deposited could be assessed on the facts and circumstances of each case. In this case, it is the specific case of the petitioner/accused that he has paid substantial payments and the same was admitted by the respondent in his cross examination. Therefore, this Court considering the said submission, is inclined to reduce the condition imposed by the learned appellate Judge, vide orders, dated 03.02.2024, from 20% of compensation amount to 10% of compensation amount."



From the above, it is clear that the Appellate Court has to consider the facts and circumstances of each case while imposing the condition.

WEB COPY

9. On the petitioner's side, it is argued that the petitioner is in prison as he was arrested on execution of NBW, so the earlier order of this Court is fully exhausted. Further, the petitioner is now ready to deposit 10% of compensation. The petitioner should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh as per proposition of the **Hon'ble Supreme Court in (2007) 6 Supreme Court Cases 528 (Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Anr.)**, in which, the Hon'ble Supreme Court held as follows:

“72. We, therefore, are of the opinion:

(i) In a case of this nature, sub-section(2) of the Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation.

(ii) The appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) The amount of compensation must be reasonable sum;

(iv) The court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of Criminal Procedure;



Crl.R.C(MD)No.1175 of 2024

(v) No unreasonable amount of compensation can be directed to be paid.”

WEB COPY

10. Admittedly, the Criminal Appeal preferred by the petitioner has been taken on file by the Appellate Court/Principal Sessions Court, Tuticorin and the same is pending. The revision petitioner is in prison on execution of NBW since his earlier petition for suspension was dismissed on the ground as not maintainable. Earlier petition was dismissed while he failed to comply with the condition though suspension of sentence was granted on condition and now he is in prison. So, there are changed circumstances for this petition which is filed second time. After dismissal of Crl.R.C(MD)No.1140 of 2023 on 07.03.2024, the petitioner was arrested on execution of NBW and the petitioner has filed a fresh petition U/s.389(1) of Cr.P.C. to suspend the sentence before the learned Principal Sessions Court, Thoothukudi in Cr.M.P.No.3469 of 2024 in C.A.No.40 of 2022 and the same was dismissed on 23.05.2024. Against which, this Criminal Revision Case has been filed before this Court. Hence, this Court hold that this revision case is maintainable.

11. Accordingly, this Court is inclined to allow this case by directing the petitioner to deposit 10% of compensation. In view of the proposition of the Hon'ble Supreme Court in **(2007) 6 Supreme Court Cases 528** and considering the incarceration period of the petitioner and considering all other facts and



circumstances of the case, this Court is of the considered view that the petitioner is entitled to the relief of suspension of sentence on condition.

12. In the result, this Criminal Revision Case is allowed and the sentence of the imprisonment is suspended against the revision petitioner till the disposal of the main Crl.A.No.40 of 2022 on the file of the Principal Sessions Court, Tuticorin and ordered to be released on bail on the following conditions:-

(i) The revision petitioner is directed to deposit 10% of the compensation amount i.e. Rs.7,24,800/- (Rupees Seven Lakhs Twenty Four Thousand and Eight Hundred only) to the credit of C.C.No.102 of 2018 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level), Tuticorin.

(ii) On such deposit being made the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Tuticorin.

(iii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and



Crl.R.C(MD)No.1175 of 2024

WEB COPY

(iv) The petitioner shall appear before the trial Court once in a month i.e, on the first working day of every English Calendar month at 10.30 a.m. until further orders.

18.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Principal Sessions Judge,
Tuticorin,
Tuticorin District.
- 2.The Judicial Magistrate,
Fast Track Court (Magistrate Level),
Tuticorin.
- 3.The Inspector of Police,
Tuticorin South Police Station, Tuticorin District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.1175 of 2024

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1175 of 2024

18.03.2025