



Crl.R.C(MD)No.1383 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1383 of 2024

Selva Ganesan

... Petitioner

Vs.

M.Gandhi

... Respondent

PRAYER: This Criminal Revision Case is filed under Section 438 r/w 442 of BNSS, to call for the records pertaining to the order, dated 06.10.2023 made in Crl.M.P.No.6422 of 2023 in C.A.No.194 of 2023 on the file of the Principal Sessions Judge, Thoothukudi and set aside the same and consequently proceed with C.A.No.194 of 2023 on the file of the Principal Sessions Judge, Thoothukudi and allow the above criminal revision case.

For Petitioner : Mr.J.Sulthan Basha
For Respondent : Mr.N.Pragalathan

ORDER

This Criminal Revision Case is filed to set aside the conditional order, dated 06.10.2023 passed in Crl.M.P.No.6422 of 2023 in Crl.A.No.194 of 2023 on the file of the learned Principal Sessions Judge, Thoothukudi and consequently proceed with Crl.A.No.194 of 2023.



2.The brief facts of the case:

The revision petitioner is the accused in C.C.No.212 of 2015 on the file of the learned Judicial Magistrate, FTC at Magistrate Level, Thoothukudi. The said case was filed by the respondent against the revision petitioner U/s.138 of the Negotiable Instruments Act r/w Section 200 of Cr.P.C. upon the dishonour of cheque for Rs.21,00,000/- issued by the revision petitioner. After contest, the learned Judicial Magistrate, FTC at Magistrate Level, Thoothukudi found the petitioner guilty U/s.138 of the NI Act and sentenced to undergo simple imprisonment for a period of one year and also directed the petitioner to pay Rs.31,08,000/- (cheque amount Rs.21,00,000/- with subsequent interest at 6% p.a from date of cheque i.e., 15.09.2015) to the complainant towards compensation within one month, in default, to undergo simple imprisonment for a period of two months by the judgment dated 13.09.2023. Challenging the said judgment, the revision petitioner preferred the appeal in Crl.A.No.194 of 2023 before the Principal Sessions Court, Thoothukudi. Along with the appeal, the revision petitioner has also filed the petition in Crl.M.P.No.6422 of 2023 in Crl.A.No.194 of 2023 to suspend the sentence, in which, the learned Principal Sessions Judge, Thoothukudi passed the conditional order to deposit 20% of cheque amount i.e., Rs.4,20,000/- within one month from the date of order, failing which that petition for suspension of sentence should stand dismissed, and as the revision petitioner has not deposited 20% of cheque amount as directed, the petition stood dismissed.



3. Being aggrieved by the order, the petitioner preferred this criminal revision case.

4. Heard the learned counsel appearing for the petitioner and perused the records in this Criminal Revision Case.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner was not informed about the conditional order of the Appellate Court and also he is not aware of the back drop of the case. He would further submit that as the petitioner was not able to mobilize 20% amount as per conditional order and was not able to deposit within the stipulated time, the petition for suspension of sentence was dismissed. The petitioner is under apprehension of arrest on issuance of NBW. Now, the petitioner has mobilized the amount and he is ready to deposit before the trial Court within the stipulated time as ordered by this Court and the petitioner is ready to conduct the appeal as he has a good case. Therefore, the dismissal of the petition for suspension of imprisonment may be set aside.

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 while considering suspension of sentence imposed the condition to deposit



20% of the cheque amount of Rs.4,20,000/- within one month, failing which that petition should stand dismissed. Since the petitioner has not deposited the 20% of the cheque amount as ordered by the Appellate Court, the petition stood dismissed. However, now the petitioner submitted that he is ready to deposit 20% cheque amount and he may be given an opportunity to conduct the criminal appeal before the first appellate court. It is a settled principle that every opportunity must be given to the litigant. In view of the submission/undertaking given by the petitioner and also considering the other facts and circumstances, this court is inclined to allow this petition on condition.

7. Accordingly, this Criminal Revision Case is allowed on condition as follows:

(i) The petitioner is directed to deposit **20% of the cheque amount i.e., Rs.4,20,000/-** (Rupees Four lakhs and twenty thousand only) to the credit of C.C.No.212 of 2015 on the file of the learned Judicial Magistrate, FTC at Magistrate Level, Thoothukudi **within a period of two weeks** from the date of receipt of a copy of this order;

(ii) On such deposit, the conditional order of dismissal by the learned Principal Sessions Judge, Thoothukudi in Crl.M.P.No.6422 of 2023 in Crl.A.No.194 of 2023, dated 06.10.2023 is set aside. The sentence of



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imprisonment awarded in C.C.No.212 of 2015 on the file of the Judicial Magistrate, FTC at Magistrate Level, Thoothukudi is suspended till the disposal of Crl.A.No. 194 of 2023 on the file of the learned Principal Sessions Judge, Thoothukudi;

(iii) Thereafter, the petitioner is ordered to be enlarged on bail on his executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) along with two sureties each for the like sum to the satisfaction of the learned Judicial Magistrate, FTC at Magistrate Level, Thoothukudi;

(iv) 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

(v) The petitioner shall appear before the learned Judicial Magistrate, FTC at Magistrate Level, Thoothukudi once in a month i.e, on the first working day of every English Calendar month at 10.30 a.m. until further orders.

03.01.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD



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To

1.The Principal Sessions Judge,

Thoothukudi.

2.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Order made in
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