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Crl.R.C(MD)No.1288 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2025

Pronounced on : 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1288 of 2024

Muthaiah

... Petitioner

Vs.

Ramamoorthy

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 and 442 of BNSS, 2023, to call for the records and set aside the order in condition No.(i) passed by the Court of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in Crl.M.P.No. 4233 of 2024 in Crl.A.No.139 of 2024 on 13.11.2024 and allow this Criminal Revision Petition.

(Condition No.(i) in prayer is amended as per order of the Court, dated 10.12.2024 in Crl.M.P(MD)No.13435 of 2024 in Crl.R.C(MD)No.1288 of 2024 by PVMJ)

For Petitioner : Mr.M.Jothi Basu
For Respondent : Mr.M.Thirunavukkarasu



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ORDER

This Criminal Revision Case is filed to set aside the order, in condition No.(i) passed in Crl.M.P.No.4233 of 2024 in Crl.A.No.139 of 2024, dated 13.11.2024 by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

2.The brief facts of the case:

The revision petitioner is the accused in C.C.No.178 of 2021 on the file of the Judicial Magistrate Court, Aruppukottai, which was filed by the respondent U/s.138 of the Negotiable Instruments Act upon the dishonour of cheque for Rs.4,50,000/- (Rupees Four lakhs fifty thousand only) issued by the revision petitioner. 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 6 months and also directed the petitioner to pay twice the amount of the cheque i.e., Rs.9,00,000/- (Rupees Nine lakhs only) to the complainant towards compensation, in default, to undergo simple imprisonment for a period of 2 months, by his judgment, dated 18.10.2024. Challenging the above conviction judgment, the revision petitioner preferred the appeal in Crl.A.No.139 of 2024 before the Principal Sessions Court, Virudhunagar. Along with the appeal, the



revision petitioner has also filed the petition in Cr.M.P.No.4233 of 2024

to suspend the sentence, in which, the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur passed the order suspending the sentence subject to conditions. One of the conditions is that the petitioner has to deposit 20% of compensation amount. Being aggrieved by the condition of 20% of deposit, the petitioner preferred this criminal revision case.

3. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent and perused the records in this Criminal Revision Petition.

4. The learned counsel appearing for the revision petitioner has submitted that as per provision of Section 148 of the Negotiable Instruments Act, 20% of the cheque amount has to be imposed as condition, but the Appellate Court has directed to deposit 20% of compensation amount, which is double the cheque amount awarded by the trial court. The petitioner is a retired municipality employee and he is a senior citizen and he is not able to mobilize such huge amount. The learned Judge failed to consider these facts while imposing the condition directing the petitioner to deposit 20% of compensation



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amount. The imposing of condition to deposit 20% amount is not mandatory. Therefore, the condition may be set aside. The learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in **2023 (3) MWN (Cr.) DCC 104 (SC) (Jamboo Bhandari /v/ M.P.State Industrial Development Corporation Ltd., & Ors).**

5. The learned counsel for the respondent submitted that as per Section 148 of the Negotiable Instruments Act, 20% of fine or compensation amount has to be ordered to be deposited, so, it is not cheque amount.

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 condition directing the revision petitioner to deposit 20% of compensation amount while suspending sentence awarded by the trial Court.

7. The Hon'ble Supreme Court in its decision reported in **2023 (3) MWN (Cr.) DCC 104 (SC) (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.

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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.

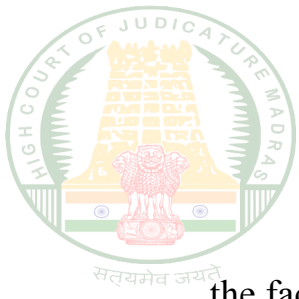
7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C., of an accused who has been convicted for offence under Section 138 of the N.I Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence 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."



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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 Others 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***, 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."

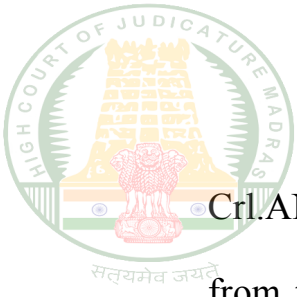


From the above, it is clear that the Appellate Court has to consider the facts and circumstances of each case while imposing condition.

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9. In this case, the petitioner stated that he is aged 60 years and retired municipality employee and he has no source to deposit such huge amount of 20% of compensation of Rs.9,00,000/- (Rupees Nine lakhs only). It is not disputed by the respondent. Moreover, the revision petitioner challenged the judgment of the trial Court on various grounds including that he borrowed only Rs.2,00,000/- (Rupees Two lakhs only), and he has a fair chance in appeal. Therefore, in the above facts and circumstances and also in view of the decision of the Hon'ble Supreme Court, this Court is inclined to reduce the condition imposed by the learned Appellate Judge, from 20% of compensation amount to 10% of compensation amount.

10. Accordingly, this Criminal Revision Case is allowed and the petitioner is directed to deposit 10% of the compensation amount i.e. Rs.90,000/- (Rupees Ninety Thousand only) before the learned Judicial Magistrate, Aruppukottai instead of 20% as condition No.(i) imposed by the learned Principal District and Sessions Judge, Virudhunagr District at Srivilliputhur in Crl.M.P.No.4233 of 2024 in



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Crl.ANo.139 of 2024, dated 13.11.2024 within a period of one month from the date of receipt of a copy of this order. The other conditions imposed by the learned Principal District and Sessions Judge, Virudhunagr District at Srivilliputhur shall remain as such.

07.02.2025

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

To

- 1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre- Delivery Order made in
Crl.R.C(MD)No.1288 of 2024**

07.02.2025