



Crl.R.C.(MD)No.1397 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.04.2025

Delivered on : 03.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1397 of 2024
and
Crl.M.P(MD)No.14150 of 2024

S.Kannan

... Petitioner

Vs.

R.Edwin Joswa

... Respondent

PRAYER : Criminal Revision Petition filed under Section 438 r/w 442 BNSS, to call for the records relating to the order passed in Crl.M.P.No.6225 of 2024 in C.A.No.207 of 2024, on the file of the learned Principal Sessions Judge, Madurai and set aside and modify the conditional order, dated 13.11.2024.

For Petitioner : Mr.N.Anantha Padmanabhan, Senior Counsel,
for Mr.D.R.Ragunath.

For Respondent : Mrs.A.S.Shangeetha



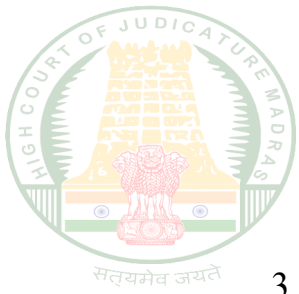
Crl.R.C.(MD)No.1397 of 2024

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ORDER

The Criminal Revision is directed against the conditional order passed in Crl.M.P.No.6225 of 2024 in C.A.No.207 of 2024, dated 13.11.2024 on the file of the Principal Sessions Court, Madurai.

2. The petitioner is the accused and the respondent as complainant filed a private complaint under Section 200 of Cr.P.C., against the petitioner for the offence under Section 138 r/w 124 of Negotiable Instruments Act. The learned Judicial Magistrate, after trial, has passed judgment in S.T.C.No.113 of 2021, dated 04.06.2024 finding the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act, convicted and sentenced him to undergo one year simple imprisonment and to pay compensation of Rs.90,75,000/- to the complainant under Section 357(3) of Cr.P.C., within two months, in default to undergo six months simple imprisonment. Challenging the impugned judgment of conviction, the accused has preferred an appeal in Crl.A.No.207 of 2024 and moved an application in Crl.M.P. No.6225 of 2024, seeking suspension of sentence.



Crl.R.C.(MD)No.1397 of 2024

WEB COPY

3.The learned Principal Sessions Judge has passed an order, dated 13.11.2024, suspending the sentence, imposing a condition, directing the petitioner to deposit 20% of the compensation amount before the trial Court within a month. Challenging the impugned condition, the present revision came to be filed.

4.The learned Senior Counsel appearing for the petitioner would submit that the learned Magistrate while convicting the petitioner, suspended the sentence till the disposal of the appeal; that the learned Principal Sessions Judge ought to have considered that whether the circumstances of the case warrants grant of suspension of sentence without imposing a condition to deposit 20% of the compensation amount and such failure to consider has caused serious injustice to the petitioner; that the learned Principal Sessions Judge has failed to consider the principle laid down by the Hon'ble Supreme Court in ***Jamboo Bhandari vs M.P. State Industrial Development*** reported in **2023 (10) SCC 446**, that the condition of deposit of 20% will be unjust as the same will amount to deprivation of the right of appeal ; that the learned Principal Sessions Judge has failed to take note of the provisions of Section 148 of Negotiable Instruments Act, wherein the time period stipulated to

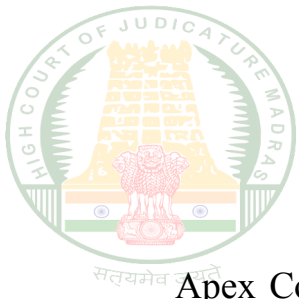


Crl.R.C.(MD)No.1397 of 2024

deposit the conditional amount is 60 days from the date of receipt of order, but the learned Principal Sessions Judge has granted only a month time and that since the condition imposed is onerous, the petitioner is constrained to file the present revision seeking modification.

5.The learned counsel appearing for the respondent would submit that the learned appellate Judge, by considering the records available on record and also on perusing the judgment of the trial Court, has rightly imposed the impugned condition, directing the petitioner to deposit 20% of the compensation amount; that the learned Principal Sessions Judge has only directed to deposit the minimum amount as contemplated under Section 148 of Negotiable Instruments Act; that though the impugned order came to be passed on 13.11.2024, the petitioner without complying with the same has filed the present revision and is protracting the proceedings.

6. Before entering into further discussion, it is necessary to refer the decision of Hon'ble Supreme Court in ***Jamboo Bhandari vs M.P. State Industrial Development*** reported in ***2023 (10) SCC 446***, relied on by the learned Senior Counsel appearing for the petitioner, wherein the Hon'ble



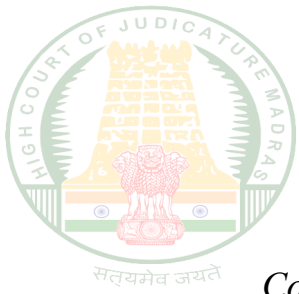
Crl.R.C.(MD)No.1397 of 2024

WEB COPY

Apex Court has specifically observed that the appellate Court normally will be justified in imposing condition to deposit as provided under Section 148 of NI Act. But at the same time, 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, exemption can be made for the reasons specifically recorded and the relevant passages are extracted hereunder :

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



Crl.R.C.(MD)No.1397 of 2024

WEB COPY

Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.

7.The learned counsel for the respondent would rely on the decision of the Hon'ble Supreme Court in ***Rakesh Ranjan Shrivastava Vs. State of Jharkand and another*** reported in **2024 (1) MWN (Cr.) DCC 97 (SC)** and the relevant passages are extracted under :



Crl.R.C.(MD)No.1397 of 2024

WEB COPY

8. We may note here that by the same Act No.20 of 2018, Section 148 was brought on the statute book, which provides that in an appeal preferred by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such a sum which shall be a minimum 20 per cent of the fine or compensation awarded by the Trial Court. The proviso to sub-section (1) of Section 148 clarifies that the amount payable under sub-section (1) of Section 148 is in addition to interim compensation paid by the appellant/accused under Section 143A. There are no separate objects and reasons set out for the addition of Section 148.

...

13. At this stage, we may note sub-section (1) of Section 148. Section 148 reads thus:-

“148. Power of Appellate Court to order payment pending appeal against conviction. (1) 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.



Crl.R.C.(MD)No.1397 of 2024

WEB COPY

(2) The amount referred to in sub- section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

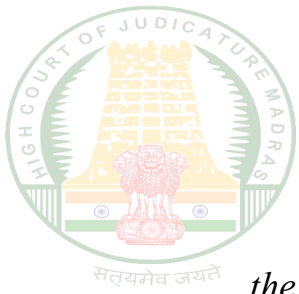
(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”

Sub-section (1) of Section 148 confers on the Appellate Court a power to direct the appellant/accused to deposit 20 per cent of the compensation amount. It operates at a different level as the power thereunder can be exercised only after the appellant/accused is convicted after a full trial.

....

*15. Even sub-section (1) of Section 148 uses the word “may”. In the case of **Surinder Singh Deswal v. Virender Gandhi**, this Court, after considering the provisions of Section 148, held that the word “may” used therein will have to be generally construed as “rule” or “shall”. It was further observed that when*



Crl.R.C.(MD)No.1397 of 2024

WEB COPY

*the Appellate Court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in the case of **Surinder Singh Deswal**, this Court, in the case of **Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors.**, in paragraph 6, held thus:*

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the 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.”

15.1. As held earlier, Section 143A can be invoked before the conviction of the accused, and therefore, the word “may” used therein can never be construed as “shall”. The tests applicable for the exercise of jurisdiction under sub-section (1) of Section 148 can never apply to the exercise of jurisdiction under sub-section (1) of Section 143-A of the NI Act.

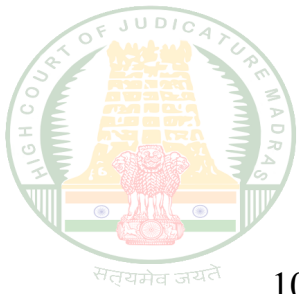


Crl.R.C.(MD)No.1397 of 2024

WEB COPY

8.The learned counsel for the respondent would also rely on the decision of this Court in *M.Mohammed Vs. D.Srinivasan* reported in **2024 (2) T.N.L.R. 165 (MAD)**, wherein a learned Judge of this Court, after referring to the decision of the Hon'ble Supreme Court in *Jamboo Bhandari's* case above referred, has observed that perusal of records and consideration of the submission made by both the sides would only reveal that except the claim of innocence and hope of succeeding in the appeal, there is no other acceptable reason for the petitioner/accused to claim exemption from Section 148 of N.I. Act and taking note of the interest portion, directed the appellant therein to deposit 20% of the cheque amount.

9. No doubt, as rightly pointed out by the learned Senior counsel, the Hon'ble Supreme Court though observed that the appellate Court will be justified in imposing condition to deposit as contemplated under Section 148 of NI Act, but clarified that exception can be made for the reasons specifically recorded therefor.

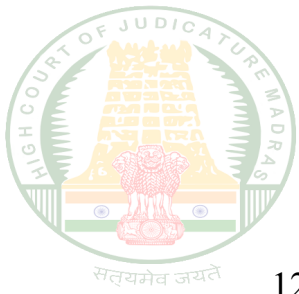


Crl.R.C.(MD)No.1397 of 2024

WEB COPY

10. In the case on hand, the petitioner has not specifically disputed the signature found in the cheque in dispute. Though he filed an application under Section 45 of Indian Evidence Act disputing the signature found in the cheque, later withdrew the said petition and the learned trial Judge has observed that the petitioner did not deny his signature specifically while he was questioned under Section 313(1)(b) of Cr.P.C. Considering the above aspects, as rightly pointed out by the learned counsel for the respondent, the learned Magistrate has rightly invoked presumption under Sections 118 and 139 of Indian Evidence Act in favour of the respondent/complainant. Though the petitioner has taken a stand of alibi as he was not in station on the date of alleged transaction, as rightly observed by the learned trial Judge, he has not produced any iota of evidence to substantiate the same.

11.As rightly contended by the learned counsel for the respondent, the learned trial Judge considering the materials available on record has observed that the accused has admitted that he was running a quarry business in the name and style of 'Aathithya Blue Metals' along with complainant, though the partnership deed was between the complainant and the wife of the petitioner.



Crl.R.C.(MD)No.1397 of 2024

WEB COPY

12.As rightly contended by the learned counsel for the respondent, the petitioner has miserably failed to rebut the presumption. Moreover, even at the enquiry, the petitioner has not shown any reason or ground claiming exemption from depositing any amount as contemplated under Section 148 of NI Act. The learned Sessions Judge, upon perusing the materials available on record and also the judgment of the learned Judicial Magistrate, has rightly come to a decision that imposing of a condition to deposit 20% is very much warranted and as such the same cannot be found fault with. Hence, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed. While deciding the appeal, the learned Appellate Judge is directed to decide the appeal uninfluenced by any observation made in this order.

03.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Crl.R.C.(MD)No.1397 of 2024

K.MURALI SHANKAR,J.

das

To

- 1.The Principal Sessions Judge, Madurai.
- 2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.R.C.(MD)No.1397 of 2024
and
CrI.M.P(MD)No.14150 of 2024

Dated: 03.06.2025