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CRL OP No. 7186 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-03-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 7186 of 2026

1. M/s.Kaira Enterprises
Proprietor : B.Lakshmanan, (41/M),
S/o.Babu,
Having his office at No.10, TAAS Mahal,
Montieth Road,
Egmore,
Chennai 600 008.
2. B.Lakshmanan
S/o.Babu,
Proprietor M/s. Kaira Enterprises,
Having his office at No.10, TAAS Mahal,
Montieth Road,
Egmore,
Chennai 600 008.

..Petitioner(s)

Vs

M/S.Om Murugan Enterprises
Represented by its POA,
Mr.D.Satheesh,
S/o.Dillibabu,
Having office at No.4, Old No. 181,
Kodambakkam High Road,
Nungambakkam,
Chennai 600 034.

..Respondent(s)

Prayer: This Criminal Original Petition is filed under Section 528 of BNSS, to set aside the order of dismissal dt. 24.02.2026 in Crl.M.P.No.1/2026 in Crl.A.No. 252/2026 passed by the Learned XXI Additional Judge, City Civil Court, Chennai and consequently allow the same and enlarge the petitioner on bail in S.T.C.No. 4373/2025 on the file of the Learned XXXV Metropolitan Magistrate, FTC-II Egmore @ Allikulam, Chennai.



For Petitioner(s): Mr.C.P.Sivamohan

WEB COPY For Respondent(s): Mr.F. John Joseph

ORDER

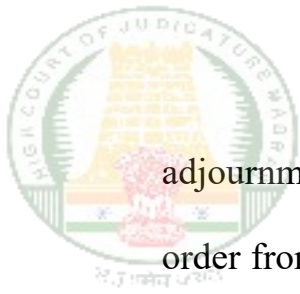
The petitioners/accused in a case filed under Section 138 of the Negotiable Instruments Act filed by the respondent in STC.No.4373 of 2025 was convicted by the trial Court by Judgment dated 02.02.2026 and sentenced to 1 year imprisonment and directed to pay the cheque amount of Rs.20,00,000/- as compensation. Aggrieved against the same, the petitioner had preferred an appeal in CA.No.252 of 2026 before the Sessions Court and also filed a suspension of sentence petition in Cri.M.P.No.1 of 2026. The Sessions Judge by the order dated 24.02.2026 dismissed the suspension of sentence petition for the reason that the petitioner had not appeared before the trial Court on the date of Judgment and that no suspension of sentence order has been granted by the trial Court under Section 389(3) of Cr.P.C., against which, the present petition has been filed.

2.The contention of the petitioners is that the trial Court had passed the impugned order without hearing the arguments of the petitioners and further, the petitioners earlier filed a petition under Section 311 of Cr.P.C., to recall PW1, which was dismissed, against which, the petitioners had filed Crl.OP.No.1078



of 2026 on 07.01.2026 and it is pending, which was informed to the trial Court and the trial Court orally observed that the case has been passed over and no Judgment would be passed and the trial Court would await the outcome of Crl.O.P.No.1078 of 2026. Saying so, in the course of the day, it had rendered the Judgment of conviction. Hence, the petitioner/accused had not appeared before the trial Court to receive the Judgment. Putting all these facts, the petitioner had filed an appeal and a petition seeking suspension of sentence before the appellate Court. However, the appellate Court had not considered the same and directed to the second petitioner to surrender before the trial Court and thereafter, file a suspension of sentence before the appellate Court, which is not appropriate, since after rendering of the Judgment by the trial Court, the trial Court become *functus officio* to pass any order on merits. Hence, the petitioners have filed this petition challenging the order passed by the appellate Court.

3.The learned counsel for the respondent/complainant submits that the petitioners had earlier filed a petition under Section 311 of Cr.P.C., for more than one occasion, which was allowed by the trial Court and PW1 was recalled and cross-examined extensively. Thereafter, the case was posted for arguments and Judgments. The petitioners had failed to advance arguments and citing Crl.O.P.No.1078 of 2026 sought for an adjournment. The trial Court made it clear that unless the petitioners/accused obtain a stay order from the High Court,



adjournment cannot be granted. The petitioners were unable to obtain an interim order from this Court and has also not advanced any arguments. Hence, the trial Court based on the evidence recorded convicted the petitioners for the offence under Section 138 of NI Act.

4.Considered the facts and circumstances of the case and perused the materials available on record.

5.It is seen that the petitioners have been convicted for the offence under Section 138 of the NI Act, which is a bailable offence. The petitioners on the wrong premise that Crl.OP.No.1078 of 2026 is pending before the High Court, has not advanced any arguments and has not appeared before the trial Court. The trial Court found that the petitioners had cross-examined the complainant in detail and therefore, rendered a Judgment convicting the petitioners. The petitioners thereafter, filed an appeal before the appellate Court along with an application seeking suspension of sentence. The appellate Court however, dismissed the petition seeking suspension of sentence, recording that since the petitioners had not obtained an order suspending the sentence imposed on him under Section 389(3) of Cr.P.C., before the trial Court, the suspension of sentence petition under Section 389(1) of Cr.P.C., cannot be entertained, which is not appropriate.



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6. In view of the above facts and circumstances and since the petitioners are charged for a bailable offence, the petitioners are directed to file a fresh petition for suspension of sentence under Section 389(1) of Cr.P.C., before the appellate Court, within a period of two weeks from the date of receipt of a copy of this order and the same may be considered by the Appellate Court/Sessions Court and appropriate orders may be passed in the manner known to law. Till such time, no coercive steps have to be taken against the petitioners.

7. Accordingly, the Criminal Original Petition is disposed of.

24-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

TSG

To

1. The XXI Additional Judge, City Civil Court, Chennai.

2. The XXXV Metropolitan Magistrate,

FTC-II Egmore @ Allikulam, Chennai



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M.NIRMAL KUMAR, J.

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