



WEB COPY

CRL OP No. 14463 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-06-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 14463 of 2026

and

CrL.MP.No.9272 of 2026

E.Yuvaraj
S/o.Late V.Ekambaram,
No.3/4A, Ganapathy Nagar,
Ambattur, Oragadam,
Chennai - 600 053.

..Petitioner(s)

Vs

K.Arumugam
S/o.Kuppusamy,
93/211, Saminaicken Street,
Chindadripet, Chennai - 600 002.

..Respondent(s)

PRAYER: This criminal original petition filed under Sections 438 & 442 of BNSS, 2023 to allow the CrI.O.P. by setting aside the order dated 10.04.2026 in CrI.M.P.No.15608 of 2019 in CrI.A.No.278 of 2019 passed by the learned VI Additional Judge City Civil Court, Chennai was revoking suspension of sentence order dated 08.08.2019 in CrI.M.P.No.15608 of 2019 in CrI.A.No.278 of 2019 passed by the Principal Sessions Judge, City Civil Court and render Justice.

For Petitioner(s):

Mr.B.Hari Krishnan



ORDER

The petitioner /accused in a case under section 138 of the Negotiable Instruments Act was convicted by the trial Court in C.C.No.5326 of 2017, against the conviction, the petitioner preferred an appeal in Crl.A.No.278 of 2019. Now, by the impugned order dated 10.04.2026, finding that the appellant was absent and that NBW is pending for quite sometime, the lower appellate court revoked the order suspending the sentence and directed the trial Court to issue non bailable warrant and secure the petitioner, against which, the present petition has been filed.

2.The learned counsel for the petitioner submitted that the petitioner was convicted by the trial Court and thereafter, appeal was filed before the Sessions Court and the same was admitted and the petitioner filed a petition in Crl.MP.No.15608 of 2019 for suspension of sentence. The Sessions Court, by order 08.08.2019 suspended the sentence on condition that the petitioner to execute sureties and one of the conditions is that the petitioner to pay 20% of the cheque amount of Rs.5 lakhs. Thereafter, the amount was deposited before the trial Court, hence, the sentence was suspended. In the meanwhile, for non appearance of the petitioner, NBW was issued. The petitioner was unable to appear before the trial Court in - person, since he had fracture in both legs and he became immobilized. Thereafter, a petition to recall NBW was filed without the appearance of the appellant but the same was not entertained and dismissed on 15.03.2026.



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3. Further, the learned counsel for the petitioner submitted that the appellate court was pre-determined mind to punish the appellant, hence, he filed a transfer application, which was dismissed, against which, a revision petition filed before this Court and the same is pending. He fairly submitted that now after the annual transfer, the erstwhile presiding officer has been transferred. Hence, a revision petition would be withdrawn. Hence, due to medical grounds, he was unable to appear and the counsel is ready to advance his argument. Due to pendency of the NBW, the lower appellate Court is not taking up the appeal for hearing.

4. In view of the above, this Court directs the petitioner to file a fresh recall petition. This Court finds that the order revoking the suspension of sentence is not proper and the same is set aside. The lower appellate court to recall the non-bailable warrant, even in the absence of the appellant and to hear the appeal on merits. It is reminded that the 138 of NI Act case is a bailable offence. Hence, even if the appellant is produced by executing NBW, the court concerned is to necessarily grant bail. In such circumstances, undue importance not to be given for non appearance of the appellant.



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5. Accordingly, the criminal original petition is disposed of .

Consequently, connected miscellaneous petition is closed.

09-06-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

sms

To

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

2. The Principal Sessions Judge, City Civil Court,
Chennai.



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M.NIRMAL KUMAR, J.

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