

**IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THIRUVALLUR @ POONAMALLEE**

**Present : Thiru. C.Vijayakumar, B.A., B.L.,
II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

On this Thursday, the 21st day of November 2024

Memo in C.M.P. No.3993/2023 in C.A. No.190 of 2023

Jayachandran ... Petitioner in Memo /Respondent / Complainant

- Vs -

Sudheer ... Respondent in Memo / Appellant /Accused

This memo was coming up for final hearing before me on 24.10.2024 in the presence of M/s. S. Sakthivel and V.G. Balakrishnan, learned counsel for Respondent and M/s. M. Tamil Selvan, D. Ranesh and K.Prasathkumar learned counsel for the Appellant and No representation for the Appellant , on perusal of entire material records and upon hearing the arguments on Respondent side and having stood over till this day for consideration this Court passed the following :

ORDER

This memo filed by the the learned counsel for Respondent / Complainant prays to cancel the suspension of sentence order passed in CrI.M.P.No.3993 of 2023 dated 02.09.2023 and record the same.

2) The Crux of the memo filed by the Counsel for the Respondent / Complainant are as follows :-

The Petitioner/Appellant filed the above said appeal against the order passed in S.T.C. No.664 of 2019 on the file of the Fast Track- Judicial Magistrate at Poonamallee. The Petitioner/Appellant filed a petition in CrI.M.P.No.3993 of 2023 for suspension of sentence before the Hon'ble Principal District and Sessions Judge at Triuvallur and the same was allowed on condition to deposit the 20% of Compensation amount before the trial Court. However, the Petitioner/Appellant has not deposited the 20% of Compensation amount as directed by the Hon'ble Principal District and Sessions Judge at Triuvallur. Hence, the Petitioner/Appellant is not complied the order passed in CrI.M.P.No.3993 of 2023 by the Hon'ble Principal District and Sessions Judge at Tiruvallur. Hence, the Respondent/Complainant prays to cancel the suspension of sentence ordered in CrI.M.P.No.3993 of 2023 dated 02.09.2023.

3) On the date of filing this memo the Appellant/Respondent not appeared and No representation on behalf of the Appellant. The submissions of the Respondent/Complainant heard.

4) Now, the point for consideration before this court is whether the memo filed by the Respondent / Complainant has to be allowed or not ?

5) **POINT** : The main appeal has been preferred by the Appellant /Accused against the conviction and sentence passed in S.T.C. No.664 of 2019 on the file of the Fast Track- Judicial Magistrate at Poonamallee. The Trial court found the accused guilty of offence u/s 138 Negotiable Instruments Act, convicted the appellant u/s 255(2) Cr.P.C, and sentenced him to undergo 1 month simple imprisonment and directed to pay Rs.2,75,000/- as compensation within a period of one month u/s 357(3) Cr.P.C in default to undergo further 2 weeks of simple imprisonment. Aggrieved against the conviction and the sentence, the Appellant / Accused has been preferred the main appeal and along with the appeal the Appellant / Accused filed a petition u/s 389(1) Cr.P.C. praying to suspend the sentence imposed by the learned Judicial Magistrate , Fast Track Court at Magisterial Level, Poonamallee in STC No. 664/2019 dated 19.07.2023.

6) The Hon'ble Principal District Judge, Thiruvallur passed a order in Crl.M.P.No. 3993/2023 dated 02.09.2023, suspend the sentence of imprisonment imposed by the learned Judicial Magistrate, Fast Track Court, Poonamallee in S.T.C. No.664/2019 on 19.07.2023 with a condition that the appellant has to deposit 20% amount out of cheque amount Rs.2,75,000/- within Sixty days from the date of order. On perusal of records when the Crl.M.P.No.3993/2023 came before this Court, on 24.10.2023 this Court found that the Appellant/Accused not

paid the 20% of compensation amount. During the hearing of appeal on 01.10.2024 and 24.10.2024 the appellant or his counsel also not appeared .

7) In these circumstances the Respondent / Complainant filed this memo seeking vacate the suspension of sentence of Appellant. Admittedly the Appellant did not comply with the conditional orders passed in CrI.M.P.No 3993/2023 dated 02.09.2023 to deposit the 20% of the compensation amount within the period of 60 days. The Hon'ble Principal District Court, Thiruvallur passed the conditional order that in default of deposit of the compensation amount, the suspension of sentence order passed will stand cancelled automatically. In this circumstances the Hon'ble Supreme court in the case reported in **2020 (1) MWN (Cr.) DCC 1 SC** in a case of **Surinder Sing Dewal @ Col.S.S.Deswa Vs. Virender Gandhi and another** observed that

Para19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. **However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.**

As per the above observation of the Hon'ble Supreme Court the counsel for the respondent rightly claimed that this court has to declare suspension of sentence as having been vacated.

8) The learned Judicial Magistrate, Fast Track Court, Poonamalle in his letter in D.No.3587/2024 dated 20.11.2024 submitted that the Accused in STC No.664/2019 has not complied the order of the Hon'ble Principal District and Sessions Judge, Thiruvallur in CrI.M.P. No.3993/2023 dated 02.09.2023 till date. Hence in these circumstances, this Court declared that "the suspension of sentence granted in CrI.M.P. No.3993/2023 dated 02.09.2023 stands vacated. The Trial Court is hereby directed to proceed further in this regard. Memo is ordered accordingly.

This Order is dictated to steno-typist, directly typed by him in computer, after making necessary corrections and pronounced by me in the Open court, today this the 21st day of November 2024.

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Order

**Memo in CMP. No. 3993/2023 in
C.A. No.190 of 2023**

Date : 21.11.2024.

II A.D.S.C., Poonamallee.