

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.Nos.932 & 933/2019 and
Crl.MP.Nos.13289 & 13293/2019

1.M/s. Benson Tranquillity Owners Association
Rep. by its President & Treasurer

2.C.V.Tarun Raj Barnham

... Petitioners/Respondents/Appellants
in both revisions

Vs

T.Md.Moin ... Respondent/Petitioner/
Respondent in Crl.RC.932/2019

T.Md.Irfan ... Respondent/Petitioner/
Respondent in Crl.RC.933/2019

Prayer in both criminal revisions:- These Criminal Revision petitions have been filed under Section 397 r/w 401 of Cr.P.C., to set aside the orders, dated 19.07.2019, made in Crl.MP.Nos.2922 & 2323 of 2019, in C.A.No.524 & 523 of 2018, passed by the VI Additional Sessions Judge, Chennai.

For Petitioners in both revisions: Mr.D.Ferdinand
for M/S.Joe Anand

For Respondent in both revisions: Mr.P.Sidharthan

COMMON ORDER

1.These revisions have been filed seeing to set aside the orders 19.07.2019, made in Crl.MP.Nos.2922 & 2923 of 2019, in C.A.Nos.524 & 523 of 2018, passed by the VI Additional Sessions Judge, Chennai, under Sections 143(A)(1) of the Negotiable Instruments Act, directing the petitioners/appellants/accused to pay 25% of the respective fine/ compensation awarded by the Lower Court in the C.C.Nos.3905/2017 and 3906/2017.

2. For the sake of convenience the petitioners and respondent are referred herein as accused and complainant respectively.
3. The complainant had filed a case against the petitioners in C.C.Nos.3905/2017 and 3906/2017 on the file of the IV Fast Track Court, George Town, Chennai, for the offence under Section 138 of the Negotiable Instruments Act. The trial Court found the accused guilty in both cases and in C.C.No.3905/2017, the appellants/accused were convicted and sentenced to undergo simple imprisonment for ten months and to pay a sum of Rs.30,00,000/- as compensation and in C.C.No.3906/2017, the accused were convicted and sentenced to undergo simple imprisonment for ten months and ordered to pay Rs.65,00,000/- as compensation. As against the judgements of the conviction in both the above mentioned C.Cs., the accused had filed C.A.Nos.524/2018 and 523/2018 respectively. The sentences were suspended without any direction to pre-deposit the compensation amount. During the pendency of the appeals, the respondent had filed the present petitions under Section 143 A(1) of Negotiable Instruments Act, seeking for a direction to the accused to pay 25% of the respective fine or compensation amount awarded by the Lower Court in the above mentioned C.Cs.
4. The Appellate Court by order dated 19.07.2019 had directed the accused to deposit 25% of the respective compensation amounts to the account of C.C.Nos.3905 and 3906/2019 before the trial Court, on or before 19.08.2019. As against the orders directing the accused to pay 25% of the fine /compensation amounts, the present revisions have been filed.
5. The learned counsel appearing for the Revision Petitioner/Accused would submit that Section 143 A was inserted in the Negotiable Instruments Act by Amendment Act 20 of 2018 which has come into effect from 01.09.2018 onwards. The complaint had been filed during the year 2017 in respect of cheques issued during the year 2017, which was prior to the insertion of Section 143 A in the Act and that when the offence is alleged to have been committed prior to the insertion of the Section 143 A, the Appellate Court erred in giving retrospective effect to Section 143 A of the Negotiable Instruments Act. He would thereby submit the order of the Appellate Judge, cannot be sustained. In support of his contention he relied on the judgement of the Hon'ble Supreme Court reported in 2019 SCC Online SC 989 [G.J.Raja V. Tejraj Surana] .
6. The learned counsel for the respondent/ complainant would submit that the cheques were dated 25.08.2017 and they have been given prior to the insertion of the Section 143 A and the complaints have been filed during the year 2017.

7. Admittedly the cheques are alleged to have been issued on 25.08.2017 and dishonoured during 2017 and the complaint has been filed prior to insertion and coming into effect of Section 143 A of the Negotiable Instruments (Amendment) Act on 01.09.2018.

8. In the Judgement cited referred supra the Apex Court has held that as follows:

"25. In the ultimate analysis, we hold Section 143 A to be prospective in operation and that the provisions of said Section 143 A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order."

9. Having regard to the above, these Criminal Revisions stand allowed and the orders dated 19.07.2019, made in Crl.MP.Nos.2922 & 2923 of 2019, in C.A.No.524 & 523 of 2018, passed by the VI Additional Sessions Judge, Chennai, are hereby set aside. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The VI Additional Sessions Judge, Chennai

2. The Metropolitan Magistrate,
Fast Track Court No. IV, George Town
Chennai

+2 Ccs to M/s. Joe Anand, Advocate sr 89494 & 89495

+2 Ccs to Mr. P. Sidharthan, Advocate sr 88434 & 88435.

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SJ(CO)
SP(26/11/2019)