

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.681 & 682 of 2017
and

Crl.M.P.Nos.6520 of 2017 & 4858 of 2019

1. M/s.Fridgehouse, a partnership firm,
Represented by its Managing Partner
Mr.S.Giridharan,
Near Vinayaga Gaterers Auditorium,
Kadavanthara (Post)
Ernakulam - 682020

2. Mr.S.Giridharan
Managing Partner,
M/s Fridgehouse,
S/o D.Shenbagamoorthy,
"Varsha", Shanthinagar,
Kadavanthara P.O.
Ernakulam - 682020

...Petitioners in both
Criminal Revision petitions

-Vs-

G.Jaganathan

...Respondent in both
Criminal Revision petitions

PRAYER in Crl.M.P.No.4858 of 2019: This Criminal Miscellaneous Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to compound the offence as made out in CC No.41 of 2012 before the Honourable Trial Court, Coimbatore and in CA No.172 of 2015 before the Honourable Trial Court, Coimbatore.

PRAYER in Crl.R.C.No.681 of 2017: This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment of Learned Judicial Magistrate, Fast Track Court at Magistrate Level II in C.C.No. 399 of 2014 in convicting the 1st petitioner under section 138 of the Negotiable Instruments Act ordering it to pay Rs. 10,000/-

as compensation and sentencing 2nd petitioner to undergo 2 years simple imprisonment and to pay a compensation of Rs.10,000/- by its judgment dated 09.07.2015 and affirmed by the 5th Additional District and Sessions Judge, Coimbatore in C.A.No.172 of 2015 dated 05.11.2016 confirming the judgment of the lower Court and acquit the petitioner herein.

PRAYER in Crl.R.C.No.682 of 2017: This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment of the 5th Additional District and Sessions Judge, Coimbatore in Crl.MP.No. 38 of 2016 in C.A.No. 172 of 2015 dated 05.11.2016 and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners: Mr.P.S.Raman
Senior Counsel for
Mr.P.Ananthakrishnan
(in both Crl.R.C. Petitions)

For Respondent : Mr.R.Shanmuga sundaram
Senior Counsel for
Mr.S.Saravanakumar
(in both Crl.R.C.Petitions)

C O M M O N O R D E R

The petitioners are accused and respondent is the complainant. The respondent has filed a private complaint against the petitioners before the learned Judicial Magistrate, Fast Track Court at Magistrate Level II, Coimbatore, for an offence under Section 138 of Negotiable Instruments Act. After contest, the petitioners were found guilty for the offence under Section 138 of Negotiable Instruments Act and were convicted and sentenced to undergo 2 years simple imprisonment and to pay a compensation of Rs.10,000/-, by the judgment dated 09.07.2015 and the same was confirmed by the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.172 of 2015 by Judgment dated 05.11.2016, by dismissing the appeal and also dismissed the Crl.M.P.No.38 of 2016, filed by the Revision petitioners.

2. Challenging the same, the Accused/Revision petitioners herein filed the present revision cases before this Court in Crl.R.C.Nos. 681 & 682 of 2017. During the pendency of the present Criminal Revision cases, the Petitioners have filed the present petition in Crl.M.P.No. 4858 of 2019 in Crl.R.C.No. 681 of 2017, for compounding the offence and to pay the cheque amount, by citing the guidelines issued by the Honourable

Supreme Court, in the case of Damodar S. Prabhu Vs. Sayed Babalal H. reported on (2010) 5 SCC 663. In the event of offence under Section 138 of Negotiable Instrument Act, the offence can be compounded even during the pendency of the appeal or at the stage of revision. In case the parties are ready to compound the offence, they should approach the Court and they have to pay a sum equal to 15 % of the Cheque amount. In this case, the petitioners have deposited the amount equal to 15% of cheque amount by way of Demand Draft drawn from Dhanalakshmi Bank bearing No. 109760 dated 28.03.2019 for Rs. 18,00,000/- (Rupees eighteen lakhs only) in favour of " The Registrar General, High Court of Madras". Further, the petitioners have given undertaking to deposit the compensation to be ordered by this Court within 12 weeks from the date of the order.

3. The learned counsel for the respondent, though has no serious objections regarding the compounding the offence, only insists to pay the compensation equal to the cheque amount with interest. Now, the petitioners are ready to pay the compensation of the cheque amount. The offence under Section 138 of Negotiable Instrument Act is compoundable offence. Therefore, this Court is inclined to grant the relief sought for by the petitioners and the compounding petition is allowed and the petitioners are directed to pay a sum of Rs.1,55,00,000/- (Rupees one crore fifty five lakhs only). Since the petitioners have already deposited Rs.35,000,00/- (Rupees Thrity Five Lakhs only) as per the order of this Court dated 06.12.2018, the petitioners are directed to deposit the balance amount of RS.1,20,00,000/- (Rupees one crore twenty lakhs only) before the learned Judicial Magistrate, Fast Track Court at Magistrate Level II, Coimbatore, within a period of 12 weeks from the date of receipt of a copy of this order failing which, the petitioners / accused shall undergo the period of imprisonment imposed by the trial Court.

4. With the above directions, this petition is allowed. In the meanwhile, the respondent herein is permitted to withdraw the amount of Rs.35,00,000/- (Rupees thirty five lakhs only) which was already deposited before the learned Judicial Magistrate, Fast Track Court at Magistrate Level II, Coimbatore. On such deposit of the balance amount within a period of 12 weeks from the date of receipt of a copy of this order, the respondent is permitted to withdraw the said amount also. Hence, the Compound petition in CrI.M.P.No.4858 of 2019 in CrI.R.C.No.681 of 2017 is allowed and the Revision cases stands allowed and petitions here in are acquitted. Consequently, connected miscellaneous petition is closed.

5. Registry is directed to remit 15% of the cheque amount deposited by the petitioner to the credit of Tamil Nadu State Legal Authority, Chennai.

kmm

Sd/-
Assistant Registrar

//True Copy//

To Sub Assistant Registrar

1. The learned Judicial Magistrate,
Fast Track Court at Magistrate Level II,
Coimbatore
2. The V Additional District and Sessions Judge,
Coimbatore
3. The Member Secretary,
Tamil Nadu State Legal Authority
Chennai.
4. The Section Officer,
Accounts Section,
High Court, Chennai.

+1cc to Mr.S.Saravana Kumar, Advocate, SR.No.39451

+2cc to Mr.Abishek Jenasenan, Advocate, SR.No.38427(14/08/2019)

Ctrl.R.C.Nos.681 & 682 of 2017
and
Ctrl.M.P.Nos.6520 of 2017 & 4858 of 2019

Kak(30/04/2019)

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