



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.16624 of 2017
and Crl.M.P.No.10218 of 2017

1.M/s.Yogam Enterprise,
Partnership Firm,
Rep. by its Managing Partner Elangovan,
No.29, 1 Floor, Nanamitharuvar Koil,
Arisikara Street, Madurai - 625 001.

2.Elangovan
Managing Partner,
M/s. Yogam Enterprises,
No.29, 1 Floor, Nanamitharuvar Koil,
Arisikara Street, Madurai-625 001. ... Petitioners

Vs.

M/s. Fomra Electricals,
Partnership Firm,
Rep. By its Power of Attonery Holder S.Chari,
New No.250, Old No.123,
Govindappa naicken Street,
Chennai-1. ... Respondent

Prayer: Criminal Original Petition is filed under Section 389(2) r/w 482 of Criminal Procedure Code, to set aside the order dated 14.07.2017 in Crl.M.P.No.10182 of 2017 in C.A.No.170 of 2017 on the file of the Principal Sessions Judge, Chennai as far as to deposit a sum of Rs.71,827/- within one month from the date of order.

For Petitioners : Mr.K.Bommuraj
For Respondent : Mr.K.Bakthavachalu

ORDER

This petition has been filed challenging the condition imposed by the appellate Court while allowing the petition filed by the petitioner for suspension of sentence.

2.The petitioner faced trial for an offence under Section 138 of the Negotiable Instrument Act. The petitioner was convicted by judgment dated 17.06.2017 passed by the



Metropolitan Magistrate, Fast Track Court - IV, George Town, Chennai. The petitioner filed an appeal before the Principal Sessions Court, Chennai in CrI.A.No.170 of 2017 and along with the appeal, the petitioner also filed a petition for suspension of sentence.

3.The Appellate Court allowed the suspension of sentence petition filed by the petitioner by imposing certain conditions. One of the condition imposed by the trial Court was that the 2nd petitioner should deposit a sum of Rs.71,827/- before the trial Court within a period of one month. This condition has been put to challenge before this Court.

4.The learned Counsel for the petitioner submitted that the condition imposed by the Court below is onerous and the Court below ought not to have imposed such a condition. The learned counsel further submitted that by imposing such conditions, the right of the petitioner to prosecute the statutory appeal is being restricted.

5.The learned counsel for the respondent submitted that the Court below taking into consideration the facts and circumstances of the case, has imposed the conditions and there is no ground to interfere with the same.

6.It is seen from the records that the total cheque amount was a sum of Rs.1,43,654/-. Taking into consideration the facts and circumstances of the case, the condition imposed by the Court below is modified to the effect that the petitioner shall deposit a sum of Rs.35,000/- within a period of four weeks from the date of receipt of copy of this order.

7.This Criminal Original Petition is partly allowed with the following conditions:

(a) The 2nd petitioner is directed to surrender before the court below within a period of 15 days from the date of receipt of copy of this order and he shall execute a bail bond for a sum of Rs.5,000/- with one surety for a likesum.



(b) The 2nd petitioner shall deposit a sum of Rs.35,000/- within a period of four weeks from the date of receipt of copy of this order in C.C.No.606 of 2016, on the file of the Metropolitan Magistrate, Fast Track Court - IV, George Town, Chennai.

(c) If the 2nd petitioner fails to comply with any one of the conditions, the suspension of sentence granted in favour of the petitioner shall stand revoked automatically without any further reference to this court.

(d) The appellate Court is directed to complete the proceedings in Crl.A.No.170 of 2017 within a period of three months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Chennai.

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

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AKM/ 28.08.19/ 3P- 3C/