

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.08.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6413 of 2020

1. Sri Angalamman Traders,
Represented by Proprietrix,
Mrs.Kalaiselvi,
No.414, Nehru Street,
Tindivanam,
Villupuram District.
 2. S.Kalaiselvi,
W/o.Sivakumar,
Proprietrix,
No.414, Nehru Street,
Tindivanam,
Villupuram District.
- Petitioners

Vs.

M/s. Abijith Traders,
Rep by its Proprietor,
B.Balasubramanian,
57, Varadhamuthiappan Street,
Chennai - 600 001. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to compound the offence under Section 138 of Negotiable Instruments Act, 1881, arising out of the judgment of conviction and sentence dated 24.02.2017 passed by the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai in C.C.No.39 of 2016 and confirmed by the IV Additional Sessions Judge, City Civil Court, Chennai, vide order dated 29.08.2018 passed in C.A.No.59 of 2017 as modified by this Court vide order dated 06.09.2019 passed in Crl.R.C.No.1047 of 2018, by invoking Section 147 of the Negotiable Instruments Act, 1881.

For Petitioners: Mr.K.Sharath Chandran

For Respondent : Mr.W.M.Abdul Azeez

ORDER

This petition has been filed to permit the petitioner to compound the offence under Section 138 of Negotiable Instruments Act (herein after referred to as NI Act) arising out of the judgment of conviction and sentence dated 24.02.2017 passed by the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai in C.C.No.39 of 2016 and confirmed by the IV Additional Sessions Judge, City Civil Court vide order dated 29.08.2018 passed in C.A.No.59 of 2017 as modified by this Court vide order dated 06.09.2019 passed in Crl.R.C.No.1047 of 2018, by invoking Section 147 of the NI Act.

2. The petitioners are the accused in the complaint lodged by the respondent herein for the offence under Section 138 of NI Act in C.C.No.39 of 2016. The trial Court by judgment dated 24.02.2017, convicted the petitioners and sentenced them to undergo six months simple imprisonment and also directed them to pay compensation equivalent to the cheque amount under Section 357 of Cr.P.C., in default, the petitioners shall undergo another two months of simple imprisonment. Aggrieved by the same, the petitioners preferred an appeal in Crl.A.No.59 of 2017 and same was dismissed by the judgment dated 29.08.2018 by the learned IV Assistance Sessions Judge, City Civil Court, Chennai. Again the petitioners preferred a Criminal Revision case in Crl.R.C.No.1047 of 2018 before this Court against the conviction for the offence punishable under Section 138 of NI Act. This Court by an order dated 06.09.2019 confirmed the conviction and modified the sentence along to three months of simple imprisonment.

3. The learned counsel appearing for the petitioner submitted that the petitioners have deposited a sum of Rs.1,42,153/- on 15.02.2018, while pending the appeal before the first appellate Court and thereafter a sum of Rs.7,10,768/- was deposited to the credit of C.C.No.39 of 2016. The entire sum have been withdrawn by the respondent herein and remaining sum of Rs.5,68,615/- was also paid by the petitioners by depositing to the credit of C.C.No.39 of 2016. He further submitted that now the petitioners sought permission to compound the offence punishable under Section 138 of NI act by invoking Section 147 of the said Act.

4. In this regard, the learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in (2010) 5 SCC 663 in the case of Damodar Prabhu Vs. Sayed Babalal, which held that if any offence under 138 of NI Act can be ordered to compound by the Court,

even after the dismissal of the revision under Section 397 Cr.P.C., while exercising its power under Section 147 of NI Act. Therefore, he prayed to permit the petitioner for compounding the offence under Section 138 of NI Act.

5. Considering the submission made by the learned counsel appearing for the petitioners, this Court is inclined to permit the petitioners to compound the offence under Section 138 of NI Act. Accordingly, this Criminal Original Petition stands allowed and the conviction and sentence imposed by the Courts below are ordered to be compounded and the conviction and sentence given by the Courts below are set aside. Accordingly, the petitioners are acquitted from all the charges for the offences under Section 138 of NI Act. The respondent is permitted to withdraw the balance amount which is lying in the credit of C.C.No.39 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, on filing proper application along with interest if any.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rts

To

1. The IV Additional Sessions Judge,
City Civil Court, Chennai,
2. The Metropolitan Magistrate,
Fast Track Court-IV,
George Town, Chennai.

+1 cc to Mr.Govind Chandrasekar Advocate sr27990

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