



Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

and Crl.MP.Nos.15971, 15967, 15968 & 15966 of 2022

1. M/s.ICE DREAMS

Rep.by its Partner

Mr.Navin Daga,

No.154, Burma Colony, 2nd Main road,

Industrial Estate, Perungudi,

Chennai 600 096.

2. Navin Daga

Managing Partner & Authorised Signatory

ICE DREAMS

No.154, Burma Colony, 2nd main road,

Industrial Estate, Perungudi,

Chennai 600 096.

3. Rishi Kumar Chordia

Partner

ICE DREAMS

No.154, Burma Colony, 2nd main road,

Industrial Estate, Perungudi

Chennai 600 096.

...Petitioners in all
petitions



Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

Vs.

WEB COPY

M/s.Kreem Foods Pvt.Ltd.,
Rep.by its Directors and Authorised Signatory
Mr.K.Dinesh Babu
Working as Accounts Officer
At Senthamangalam Village,
S.V.Chatram Post,
Sriperumbudur Taluk,
Kanchipuram District.

Having Head Office at
No.28/3030 Cheruparambath Road,
Kadavanthra, Ernakulam,
Kerala 682 020.

... Respondent in
all Petitions

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 Cr.P.C. praying to call for the records in S.T.C.Nos.1114, 1113, 1115 and 1116 of 2019 pending on the file of the learned Judicial Magistrate at Sriperumbudur and quash all further proceedings in the said case in STC.Nos.1113, 1114, 1115 and 1116 of 2019

For Petitioners : Mr.G.Sudhagar
in all Petitions

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records in S.T.C.Nos.1113, 1114, 1115 and 1116 of 2019 pending on the



Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

WEB COPY

file of the learned Judicial Magistrate at Sriperumbudur and quash the same.

2. The learned counsel for the petitioners submitted that the petitioners are facing trial in S.T.C.Nos.1113, 1114, 1115 and 1116 of 2019 before the learned Judicial Magistrate, Sriperumbudur. The complainant filed a private complaint against the petitioners under Section 138 of Negotiable Instruments Act for dishonour of cheques amounting Rs.3,55,600/-. At this stage the petitioners are ready to settle the matter and repay the cheque amount. This amount was already offered to the respondent during the Lok Adalat settlement period but the complainant refused to receive the cheque amount and the complainant is only particular in prosecuting the case. Under these circumstances, the petitioners have filed these original petitions to quash the proceedings against them. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in the case of *M/s.Meters and Instruments Private Limited and another Vs. Kanchan Mehta* and the relevant paragraphs are extracted as below:-



WEB COPY

"18. From the above discussion following aspects emerge:

i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is preponderance of probabilities. The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

iii) Though compounding requires consent of both parties, even in absence of such consent, the Court in the interest of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more



WEB COPY

than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. with this approach, prison sentence of more than one year may not be required in all cases.

v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the banks slip prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque the financial capacity and the conduct of the accused or any other circumstances".

3. Heard the learned counsel for the petitioner and perused the materials available on record.



Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

WEB COPY

4. On a perusal of the records, it is seen that the petitioners are accused in STC.Nos.1113, 1114, 1115 and 1116 of 2019 on the file of learned Judicial Magistrate, Sriperumbudur and it is now prosecuted by the respondent complainant for having committed offence under Section 138 of Negotiable Instruments Act. Now the petitioners/accused are ready to settle the matter by paying the cheque amount but the complainant refused to receive the same and he wanted to prosecute the case.

5. Considering the facts and circumstances of the case and in view of the above said Hon'ble Supreme Court decision, the petitioners may approach the trial Court and file an application to consider their case. In the absence of consent from the complainant the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

6. With the above observation, these criminal original petitions are closed and the learned Judicial Magistrate, Sriperumbudur is directed to



Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

WEB COPY

receive application if any filed by the petitioners to discharge them from the case on repaying the cheque amount and dispose the same as expeditiously as possible. Consequently connected miscellaneous petitions are also closed.

27.10.2022

Index: Yes/No

Speaking/Non speaking order

dpq

Issue order copy on 31.10.2022



WEB COPY



Crl.O.P.Nos.25789, 25792, 25796 & 25869 of 2022

V. SIVAGNANAM, J.

dpq

To

1. The learned Judicial Magistrate
Sriperumbudur.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.25789, 25792,
25796 & 25869 of 2022

Issue order copy
on 31.10.2022

27.10.2022