

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.402 of 2016

M/s.Sunmart Logistics Solutions
Rep.by its Partner C.Sunilkumar
1, B.T.R.Nagar, 15 Velampalayam,
Tiruppur.

... Appellant

versus

1.M/s.Universal Overseas
Rep.by its Managing Partner V.Surendran
Shed 38, SIDCO, TEKIC Tea Nagar,
Nudhalipalayam, Tiruppur.

2.V.Surendran
Partner M/s.Universal Overseas,
5/240, Palankarai Post,
Devampalayam, Avinashi,
Tiruppur.

3.V.Vijay Anand
Partner M/s.Universal Overseas,
5/240, Palankarai Post,
Devampalayam, Avinashi,
Tiruppur.

4.Kokilambal
Partner M/s.Universal Overseas,
5/240, Palankarai Post,
Devampalayam, Avinashi,
Tiruppur.

5.A.Premjith,
 Partner M/s.Universal Overseas,
 6, Cheran Manager,
 Vijayapuram Post,
 Nachipalayam, Tiruppur.

... Respondents

Prayer: Criminal Appeal filed under Section 378(1) of the Code of Criminal Procedure, to set aside the order dated 24.02.2016 [wrongly shown as 23.09.2015] passed in C.C.No.809 of 2013, on the file of the learned Judicial Magistrate No.I, Tiruppur and direct the Trial Court to proceed the case where it is stand.

For Appellant : Mr.S.Pushpakaran

For Respondents : Mr.K.Balakrsihnan

J U D G M E N T

The complainant in C.C.No.809 of 2013 is the appellant herein, is a firm. It is represented by one of its Partners. It is a private complaint filed under Section 138 of the Negotiable Instruments Act. Pending disposal of the complaint, the learned counsel appearing for the appellant has filed a petition under Section 257 Cr.P.C. requesting the Court to record a compromise between the parties and dismiss the complaint as withdrawn. The learned Magistrate allowed the petition and the accused was acquitted. Aggrieved by the order of acquittal, the appellant filed the present appeal after obtaining leave.

2. The learned counsel appearing for the appellant would submit that the Trial Court failed to note that, in the petition filed under Section 257 Cr.P.C., the complainant has not signed and he was also not examined by the learned Magistrate before granting permission to withdraw the complaint. According to him, the learned Magistrate has erred in acting upon the petition and allowing the petition under Section 257 Cr.P.C. without examining the complainant.

3. The learned counsel appearing for the respondents would submit that the Trial Court taking note of the settlement between the parties, granted permission to withdraw the case and thereupon acquitted the accused and that, therefore there is no ground to interfere with the order to acquittal.

4. I have heard the learned counsel on either side and perused the grounds of appeal and the judgment of the Trial Court.

5. It is seen from the records that on 11.08.2015, the case was taken up by the Trial Court. The complainant was present. Of the five accused, four accused were present. It was indicated that Bailable Warrants were pending against A-2 to A-4. The case was directed to be called on 24.02.2016. The petition under Section 257 Cr.P.C. came to be filed on 07.09.2015.

Admittedly, the Partner, who represented the firm, has not filed any affidavit in support of the petition and it was signed by the Advocate alone. It is averred in the petition that pending disposal of the complaint, the matter had been settled between the parties. It is further stated that the complainant had entered into a compromise with the respondent. The Magistrate passed the following order on 24.02.2016 in the docket itself: *"Heard and allowed".* The order in the docket in the main case reads thus: *"Suo motu taken up today. Already 257 Cr.P.C. petition filed and pending. Today 257 Cr.P.C. petition allowed as a result this complaint is dismissed as withdrawn. Accused is acquitted."*

6. In the appeal memo, the complainant has stated that both the parties have mutually agreed for settlement of the dispute on payment of Rs.4,10,000/- to be made by the respondents to the appellant. In pursuance of the said accord, the respondents had paid Rs.2,66,750/- to the appellant on various dates and for the balance of Rs.1,43,250/-, a cheque was given by the respondents. However, the complainant could not present the cheque for collection, as there was overwriting in the cheque. Thereafter, the appellant insisted on cash payment. The status of the case has not been informed to the complainant by their counsel. According to him, the petition under Section 257 Cr.P.C. has been filed without their knowledge and consent.

7. The learned counsel appearing for the respondents would submit that even as per the statement made in the appeal memo, there was a compromise between the parties and it was brought to the notice of the Trial Court and that, therefore the Trial Court granted permission to withdraw the case and then acquitted the accused in terms of Section 257 Cr.P.C. According to him, the Trial Court was justified in acquitting the accused. His contention is that at this stage, the complainant cannot change his mind and submit that, the Trial Court ought not to have acted upon the petition under Section 257 Cr.P.C. In this connection, the learned counsel relied on the decision in ***HARICHANDRAN PAGADAI vs. THANGASWAMI NADAR [AIR 1949 MADRAS 501]*** wherein, it has been observed that the complainant after filing a petition under Section 257 Cr.P.C. cannot change his mind and plead that the Court should not act upon his petition for withdrawal.

8. Under Section 257 Cr.P.C., Magistrate can grant permission to withdraw the complaint if sufficient cause is shown. In ***PROVIDENT FUND INSPECTOR vs. MADHUSUDANA CHAUDHURY [(2000) 9 SCC 506]***, it has been pointed out that there must be an existence of a request from the complainant indicating good grounds as to why the complainant wishes to withdraw and the Magistrate after applying his mind to the said request must be satisfied that, good grounds exist for withdrawal.

9. In the case at hand, as already noticed the counsel alone has filed the petition. No affidavit has been filed in support of the petition. Invariably the signature of the complainant is obtained in such cases. In this case, the Partner, who represented the firm has not signed the petition. Prudence and diligence require that in cases of this kind, the signature of the complainant is also obtained and this would only be a safe procedure in such cases.

10. The Magistrate has passed a cryptic and non speaking order in the petition under Section 257 Cr.P.C. The Magistrate on the basis of the petition filed by the counsel proceeded to pass an order in the docket itself. There is nothing on record to indicate that the Magistrate was satisfied as to the existence of sufficient grounds for withdrawal of the complaint.

11. Having regard to the above mentioned circumstances, I am of the considered view that the order of granting permission for withdrawal and consequential order of acquittal are liable to be set aside. The petition under Section 257 Cr.P.C. shall stand dismissed.

12. For the reasons stated above, the Criminal Appeal is allowed and the judgment passed in C.C.No.809 of 2013 on the file of the learned Judicial Magistrate No.I, Tiruppur, dated 24.02.2016 is set aside and the matter is remitted to the Court below for further proceedings in accordance with law. The parties are directed to appear before the Court below on 06.10.2017.

06.09.2017

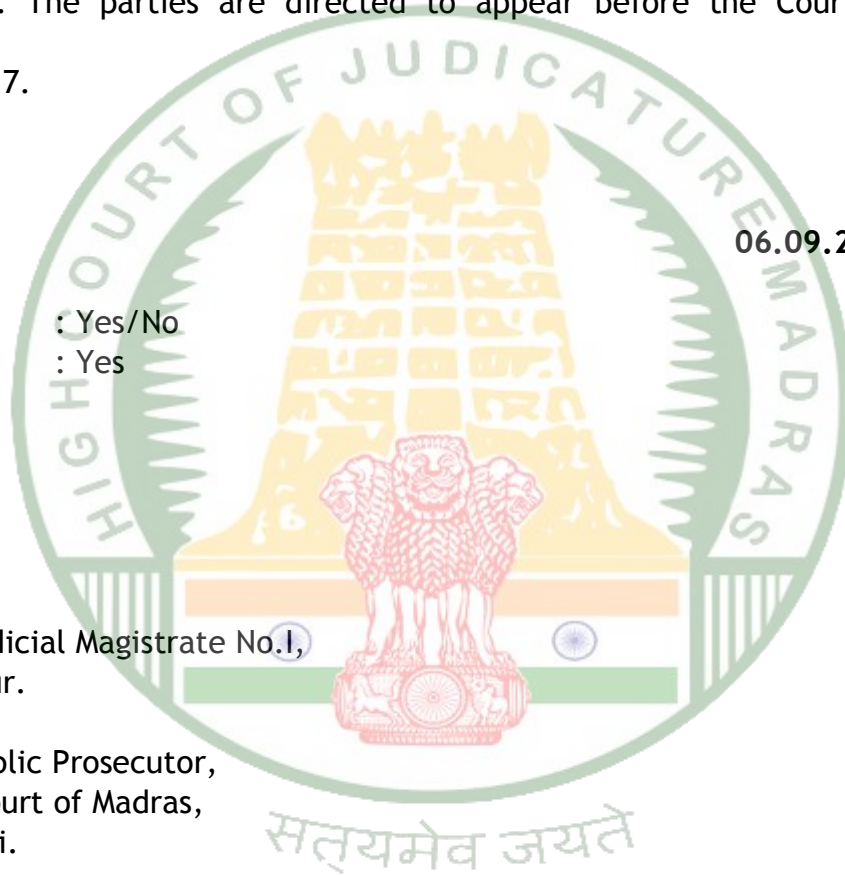
Index : Yes/No
Internet : Yes

sri

To

1.The Judicial Magistrate No.I,
Tiruppur.

2.The Public Prosecutor,
High Court of Madras,
Chennai.



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N.AUTHINATHAN, J.,

sri



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