

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.R.C.No.1014 of 2018

1. M/s.Padma Textiles
Represented by Proprietor
A.Palanisamy,
Agaraharam Post,
Pallipalayam, Erode - 06.
2. A.Palanisamy
3. P.Balasubramani ... Petitioners/Accused 1 to 3

Vs

1. Lalith Kumar Jain
2. The Public Prosecutor,
Erode. ... Respondents/Complainant

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C., to set aside the conviction imposed in the judgement dated 05.07.2006 made in C.A.No.365 of 2005 on the file of the learned Additional District Court, FTC-I, Erode confirming the conviction imposed in judgment dated 19.05.2005 made in C.C.No.281 of 2002 on the file of the learned Judicial Magistrate No.I, Erode by allowing this Criminal Revision Petition.

For Petitioners : Mr.D.Lakshmipathy

For Respondents : Ms.S.Thankira

Government Advocate(Crl.Side)- R.2

O R D E R

This revision petition has been filed to set aside the conviction and sentence imposed in the judgement dated 05.07.2006 made in C.A.No.365 of 2005 on the file of the learned Additional District Court, FTC-I, Erode confirming the conviction and sentence imposed in judgment dated 19.05.2005 made in C.C.No.281 of 2002 on the file of the learned Judicial Magistrate No.I, Erode by allowing this Criminal Revision Petition.

2. For the sake of convenience, the parties will be referred to the complainant and the accused. The accused borrowed a sum of Rs.one lakh for their business purpose on 28.03.2002 and issued a cheque dated 25.04.2012 drawn on Danalakshmi Bank, Erode Branch. The complainant presented the cheque for collection on 25.04.2002 through the Karnataka Bank, Erode Branch and the same was dishonoured for the reason 'Not Arrangement for'. Thereafter, the complainant caused legal notice to the accused on 07.05.2002. After receipt of the said notice, the accused neither replied nor repaid the amount for which the complainant filed a complaint before the learned Judicial Magistrate No.I, Erode and the same was taken on file in C.C.No.281 of 2002 under section 138 of the Negotiable Instruments Act. Thereafter, the Lower Court after elaborate trial convicted the accused to undergo simple imprisonment for a period of one year and imposed a fine of Rs.3000/- each in default to undergo one month simple imprisonment against which an appeal has been preferred in C.A.No.365 of 2005 before the learned Additional District Judge, FTC-1, Erode. The lower Appellate Court also confirmed the conviction and sentence passed by the trial Court against which the present revision has been filed.

3. The learned counsel for the revision petitioner submitted that the instrument amount involved in 138 Negotiable Instruments Act proceedings were settled in favour of the defacto complainants and to that extent compounding affidavit has also been filed and paragraph 3 of the affidavit reads as follows :

"I state that aggrieved against the Order of the trial Court, the petitioners preferred an appeal in C.A.No.365 of 2005 on the file of the learned District Fastract Court - I, Erode. The Appellate Court was pleased to confirm the Order of the trial Court. I respectfully state that the petitioners had come forward to settle the matter amicably. On the strength of the same the cheque amount to the tune of Rs.1,00,000/- was handed over to me and to that effect I also executed a receipt in favour of the petitioners 09.05.2018. I have no other claims from the petitioners herein."

and the first respondent, who appeared in the Court has confirmed the affidavit.

4. In the case of Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663], the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code

considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17 :

'16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

'17.2. Compounding of offences.-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court.'

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act - Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

'...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.'

5. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant also already received the amount from the accused and this regard an affidavit has also been filed by the complainant. Therefore, the complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. Further Section 147 of the Negotiable Instruments Act also empowers this Court to compound the offence under section 138 of the Negotiable Instruments Act.

6. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the affidavit filed by the complainant, this Court is of the view that the Judgment in C.C.No.281 of 2002 on the file of the Judicial Magistrate, Fast Track Court -I, Erode is liable to be set aside.

7. Accordingly, the conviction and sentence imposed in C.C.No.281 of 2002 on the file of the Judicial Magistrate No.I, Erode and confirmed in C.A.No.365 of 2005 on the file of the learned Additional District Judge, FTC-1, Erode are set aside and this revision is closed. The revision petitioners/accused are acquitted from all charges levelled against them. As it is represented by the learned counsel for the petitioners that the second petitioner is in prison, he is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Additional District Judge, FTC-I, Erode.

2. The Judicial Magistrate No.I, Erode.

3.Do thro The chief Judicial Magistrate Erode

4. The Superintendent of Central Prison,Coimbatore.

5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.D.Lakshmipathy, Advocate, S.R.No.61850

Cr1.R.C.No.1014 of 2018

VR(co)

rrs 07/09/2018

ASK(11/09/2018)