

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATE : 05.12.2018****CORAM:****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****Criminal Appeal No.339 of 2005**

K.Jeganathan .. Appellant

.. Vs ..

C.Anbalagan .. Respondent

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment dated 17.01.2005 made in C.A.No.249 of 2004 on the file of the Hon'ble Additional District Sessions Court Cum Fast Track Court No.V, Coimbatore at Tiruppur, which reversed the judgment dated 20.05.2004 made in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate No.II, Tiruppur.

For Appellant : Mr.P.M.Duraiswamy

For Respondent : Mr.V.Nicholas

JUDGMENT

The Criminal Appeal has been filed by the appellant to set aside the judgment dated 17.01.2005 made in C.A.No.249 of 2004 on the file of the learned Additional District Sessions Court Cum Fast Track Court No.V, Coimbatore at Tiruppur, which reversed the judgment dated 20.05.2004 made in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate No.II, Tiruppur.

2.The learned counsel for the appellant would submit that since the respondent has agreed to pay the cheque amount of Rs.8,10,000/- (Rupees Eight Lakhs and Ten Thousand Only) and the appellant is willing to receive the same.

3.The learned counsel appearing for the respondent would submit that the respondent undertakes to pay a sum of Rs.8,10,000/- within a period of six months, in support of which, he filed a joint memo of compromise held between the appellant and respondent.

4.To that extent joint memo of compromise dated 05.12.2018, duly signed by the appellant and the respondent as well as by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent has been filed before this Court and both the parties were present and confirmed their signature in the joint memo of compromise. Relevant portion of the same is given below:-

"The appellant herein is the complainant in C.C.No.264 of 2003 filed under Section 138 of Negotiable Instruments Act against the respondent herein on the file of Judicial Magistrate No.2, Tirupur. The trial Court convicted the respondent and imposed

rigorous imprisonment for a period of one year and fine of Rs.2,000/- (Rupees Two Thousand Only). Challenging the Judgment of trial Court, the respondent filed appeal in C.A.No.249 of 2004 on the file of V Additional District and Sessions Judge, Coimbatore at Tirupur. The lower appellate Court allowed the appeal and set aside the judgment of the lower appellate Court. At the time of final hearing of the appeal the matter was referred to mediation, though the mediation failed the parties are willing settle to dispute among them. The respondent is undertaking to settle the cheque amount Rs.8,10,000/- (Rupees Eight Lakhs and Ten Thousand Only) and the appellant herein is willing to receive the cheque amount and settle the issue. The respondent undertakes to pay the said amount within a period of 6 months from today i.e. On or before 04.06.2019 and appellant is also willing to grant the required 6 months time to the respondent to put quietus to the issue. Hence both the parties file the present joint memo of compromise and are willing to abide by the above said terms. This Hon'ble Court may be pleased to record this memo of compromise filed by both the parties together and thus render justice."

5.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 recognize 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."

6. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant/appellant has also ready to receive the amount from the accused/respondent within a period of six months, and in this

regard a memo of compromise has also been jointly filed by the appellant and respondent. Therefore, the appellant'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.

7. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the joint memo of compromise filed by the parties, this Court is of the view that the Judgment in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate No.II, Tirupur, is liable to be set aside.

8. Accordingly, the conviction and sentence imposed on the respondent/accused in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate No.II, Tirupur, is set aside, provided if the respondent settle the entire cheque amount of Rs.8,10,000/- within a period of six months i.e., on or before 04.06.2019. If the respondent fails to repay the said cheque amount within the time period stipulated above, the conviction and sentence imposed in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate No.II, Tirupur, will automatically be restored.

9. With the above terms, the Criminal Appeal is dismissed.

05.12.2018

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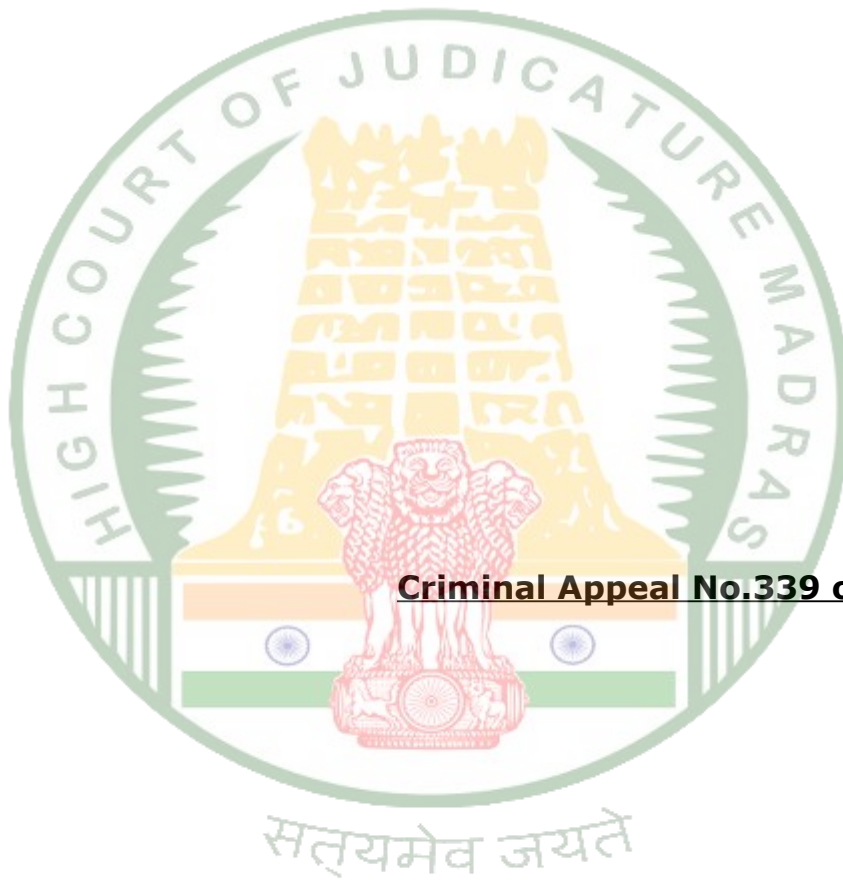
1. The Additional District Sessions Court Cum Fast Track Court No.V, Coimbatore at Tiruppur.
2. The Judicial Magistrate No.II, Tiruppur.
3. The Section Officer, Criminal Section
High Court of Madras.



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M.DHANDAPANI., J

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