

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.10.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1044 of 2018 &
Crl.M.P.Nos.13032 &12231 of 2018

A.M.S.Akbar ... Petitioner

Vs.

M.Loganathan ... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the judgment and conviction dated 10.11.2017 made in C.A.No.196 of 2017 on the file of the II Additional Sessions Judge, Erode, confirming the judgment dated 14.06.2017 made in S.T.C.No.158 of 2015 dated 14.06.2017 on the file of Judicial Magistrate(FTC No.2), Erode.

For Petitioner : Mr.C.S.Saravanan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and conviction dated 10.11.2017 made in C.A.No.196 of 2017 on the file of the II Additional Sessions judge, Erode, confirming the judgment dated 14.06.2017 made in S.T.C.No.158 of 2015 dated 14.06.2017 on the file of Judicial Magistrate(FTC No.2), Erode.

2.The petitioner is the accused and the respondent is the complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3.The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in S.T.C.No.158 of 2015 before the learned Judicial Magistrate/FTC No.2, Erode, against the accused stating that on 10.12.2014, the accused borrowed a sum of Rs.5,00,000/- as hand loan from the complainant and agreed to repay the same within one month. In order to discharge his liability, the accused issued a cheque bearing number '918308' dated 10.01.2015 of Indian Overseas Bank, Thiru Nagar Branch, Erode, for a sum of Rs.5,00,000/-. When the said Cheque was presented on 24.01.2015 for collection, the same were returned on 27.01.2015 as 'Funds Insufficient'. Thereafter, the complainant issued legal notice to the accused on 21.02.2015, calling upon the accused to pay the cheque amount to the complainant and the same was received by the accused on 23.02.2015, however, the accused neither gave any reply nor repaid the amount.

4.After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- in default, to undergo three months simple imprisonment. Challenging the same, the petitioner filed appeal in C.A.No.196 of 2017 before the learned II Additional Sessions Judge, Erode and the learned II Additional Sessions Judge, Erode, vide judgment dated 10.11.2017, dismissed the appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate/FTC II, Erode. Aggrieved by the same, the present revision is filed.

5.Though this Court granted interim order dated 12.09.2018 by suspending the sentence imposed on the petitioner by the lower Court on condition that the petitioner is directed to deposit a sum of Rs.1,50,000/- to the credit of S.T.C.No.158 of 2015 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode, within a period of two weeks from the date of receipt of the said order, the petitioner has not complied with the direction passed by this Court.

6.Today when the matter is taken up for hearing, learned counsel for the petitioner would submit that the petitioner is in prison for the past three months and therefore, he is not in a position to deposit the conditional amount. During the pendency of this revision, the petitioner and the respondent arrived at a compromise and the petitioner paid the entire cheque amount to the respondent. The respondent/ complainant accepted and received the payment and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.

7.To that extent, Compromise Memo dated 24.10.2018 duly signed by the petitioner and the respondent as well as by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent has also been filed by the parties and the affidavit of the complainant dated 24.10.2018 and signed by the petitioner before the Additional Superintendent of Central Prison, Coimbatore and the respondent signed the compounding affidavit and also presented before this Court. The relevant portion of the same reads as follows :

□1.The petitioner above named has been charged for an offence under section 138 of Negotiable Instrument Act by the respondent herein and the same was taken on file in S.T.C.No.158 of 2015 on the file of Judicial Magistrate, FTC No.2, Erode.

2.The petitioner submits that the trial court convicted the petitioner and imposed sentence of imprisonment for one year simple imprisonment and to pay a fine of Rs.5,000/- in default 3 months simple imprisonment on 14.06.2017 against which he preferred appeal in C.A.No.196 of 2017 on the file of IIInd Additional District & Sessions Judge, Erode and in the same the Learned Judge confirmed the sentence imposed by Learned Judicial Magistrate vide judgment dated 10.11.2017 against which he preferred the present Criminal Revision and in the same was pending to day.

3.The petitioner submits that in the mean time was arrived for compromise and in the same the respondent received the amount from the petitioner and hence he has no objection to allow this CrI.R.C.□

8.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."

9. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant has also received the amount from the petitioner/ accused and in this regard a memo of compromise has also been jointly filed by the petitioner and 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.

10. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the memo of compromise filed by the parties, this Court is of the view that the Judgment in S.T.C.No.87 of 2016 on the file of the learned Judicial Magistrate/FTC, Tiruchengode, Namakkal District, is liable to be set aside.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.158 of 2015 on the file of the learned Judicial Magistrate/FTC II, Erode and confirmed in C.A.No.196 of 2017 by the learned II Additional Sessions Judge, Erode, are set aside and this criminal revision is disposed of. The revision petitioner/ accused is acquitted from all the charges levelled against him.

12. This criminal revision is accordingly disposed of. Consequently, connected miscellaneous petitions are closed.

25.10.2018

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

Note: Issue Order copy on 26.10.2018

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To

1. The II Additional Sessions Judge,
Erode.

2. The Judicial Magistrate, (FTC No.2),
Erode. Principal Sessions Judge, Namakkal.

3.The Additional Superintendent,
Central Prison,
Coimbatore.

M.DHANDAPANI, J

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