

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL RC Nos.295 to 300, 307 to 312 & 354 to 359 of 2017
and

CRL.M.P.Nos. 2966 to 2971, 3167 to 3172 and
3370 to 3381 of 2017

Crl.R.C.Nos.295 to 300 of 2017:
A.R.Tamil Oviyam Petitioner/1st Appellant/2nd Accused

Vs.

1.N.Krishnamoorthy ... 1st Respondent/1st Respondent/Complainant

2.The Cuddalore Taluk Co-operative
Housing Society Ltd., Rep by
Special Officer at No.23,
1st Cross street, Seetham Nagar,
Pudhupalayam, Cuddalore-1.

3.E.Venkatesalu, Ex-Secretary
in-Charge), The Cuddalore Taluk
Co-operative Housing Society Ltd.,
Presently Accountant, Titagudi Taluk
Co-operative Housing Society Ltd.,
Titagudi, Cuddalore.

.... 2nd & 3rd Respondents/1st and 2nd Respondent /
1st and 3rd Accused

4.S.Thirunavukarasu
Special Officer/Registrar
Of Co-operatives,
The Cuddalore Taluk Co-operatives
Housing Society Ltd.,
No.23 1st Cross street Seetham Nagar
Pudhupalayam, Cuddalore.

.... Respondents/3rd Appellant/4th Accused

PRAYER: Criminal Revision petition filed under Sections 397 r/w
401 of the Code of Criminal Procedure, to set aside the judgment
passed by the Sessions Judge, Cuddalore in C.A.No.29, 30,31,
32, 33, 34 of 2014 dated 02.01.2017 confirming the judgment
passed by the Judicial Magistrate No.II, Cuddalore in
C.C.No.161, 162, 163, 164, 165, 166 of 2009 dated 06.08.2014 and
acquit the petitioner/accused.

For Petitioner : B.Singaravelu

For Respondents : Mr.K.M.Krishnamoorthy
for M/s.P.Palaninathan
Mr.R.Ravichandran
Public Prosecutor (R2)

Crl.RC.Nos.307 to 312 of 2017:

S.Thirunavukarasu ... Petitioner/3rd Appellant/4th Accused

Vs.

N.Krishnamoorthy ... Respondent/1st Respondent/Complainant

PRAYER : Criminal Revision petition filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment in Crl.A.No.29, 30, 31, 32, 33, 34 of 2014 dated 02.01.2017 on the file of the Sessions Judge, Cuddalore confirming the judgment in C.C.No.161, 162, 163, 164, 165, 166 of 2009 on the file of Judicial Magistrate-II, Cuddalore dated 06.08.2014.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.K.M.Krishnamoorthy
for M/s.P.Palaninathan

Crl.RC.Nos.354 to 359 of 2017:

E.Venkatesalu ... Petitioner/Appellant/Accused No.3

Vs.

1.N.Krishnamoorthy ... Respondent/Respondent/Complainant

2.The Cuddalore Taluk Co-Operative,
Housing Society Limited,
No.134, M.R.K.Salai,
Indira Nagar, Neiveli,
Cuddalore District. ... Respondent/Respondent/Accused-1

PRAYER: Criminal Revision petition filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the case and set aside the conviction and sentences passed by the learned Judicial Magistrate No.II, Cuddalore in C.C.No.161, 162, 163, 164, 165, 166 of 2009, dated 06.08.2014 which was confirmed by the learned Sessions Judge, Cuddalore in C.A.No.29, 30, 31, 32, 33, 34 of 2014 by Judgment dated 02.01.2017.

For Petitioner : Mr.P.Senthil Murugan

For Respondents: Mr.K.M.Krishnamoorthy
for M/s.P.Palaninathan

O R D E R

The petitioners filed these criminal revision petitions seeking to quash the conviction and sentence passed by the learned Judicial Magistrate No.II, Cuddalore in C.C.No.161, 162, 163, 164, 165, 166 of 2009, dated 06.08.2014, which was confirmed by the learned Sessions Judge, Cuddalore in C.A.No.29, 30, 31, 32, 33, 34 of 2014 by Judgment dated 02.01.2017.

2.The first respondent N.Krishnamoorthy is the complainant in the proceedings initiated under Section 138 of Negotiable Instruments Act. He was working as Secretary of the appellant-Society namely Cuddalore Taluk Co-operative Society, Cuddalore. It is alleged by the 1st respondent that even after his attaining superannuation, the retirement benefits were not settled in favour of the first respondent. However, in order to settle retirement benefits, the appellant management issued six cheques for settlement of the retirement benefits to the tune of Rs.4,58,000/-. But, when the said cheques were presented for collection, they were returned with endorsement 'insufficient funds'. Aggrieved by the same, the first respondent filed the complaint under Section 138 of Negotiable Instruments Act before the lower Court. The Lower Court, after elaborate the trial, convicted the accused and sentenced to undergo three months simple imprisonment, against which the Special Officer and the Secretary filed six appeals before the lower appellate Court. The lower appellate Court also confirmed the order passed by the lower Court, against which the above revision petitions have been filed before this Court.

3.The learned counsel for the appellants would submit that in order to give quietus to the 138 proceedings, the revision petitioners have already settled Rs.2,00,000/- in favour of the first respondent and now, the balance amount of Rs.3,00,000/- is paid by way of two demand drafts bearing Nos. 543234 & 543235 (for sum of Rs.1,25,000/- and Rs.1,75,000/- respectively). On instruction from his client, the learned counsel for the 1st respondent/complainant has also accepted and received the balance amount and made an endorsement to that effect.

4.In view of the above, the conviction and sentence passed by the Courts below could be set aside. In this regard, a reference could be placed in the decision in the case of Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663] wherein 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. The relevant portions in paragraphs 16 and 17 of the said decision are extracted hereunder:-

''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 sees the present case, it is only a money transaction and the complainant also already received the amount from the accused. 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, this Court is of the view that the Judgment and decree passed by the Trial Court, which was confirmed by the first appellate Court are liable to be set aside.

7. Accordingly, the conviction and sentence imposed on the revision petitioners/accused by the trial Court, which was confirmed by the first appellate Court are set aside and the revision petitioners/accused are acquitted from all charges levelled against them. The petitioners are entitled to withdraw the fine amount, already paid by them. Hence, these revision petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsg1/gmd

To:

1. The Sessions Judge, Cuddalore.
2. The Judicial Magistrate No.II, Cuddalore.

+1cc to Mr.M.S.Palaniswamy, Advocate SR.No.57626

+1cc to Mr.P.Palaninathan, Advocate SR.No.57790

CRL RC Nos.295 to 300, 307 to 312 & 354 to 359 of 2017
and

CRL.M.P.Nos. 2904 to 2913, 2966 to 2971, 3167 to 3172 and
3370 to 3381 of 2017

GMV (24/10/2018)