IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.09.2018

CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1074 of 2018
And
Crl.M.P.Nos.12478 and 12479 of 2018

Arumugam ... Petitioner/Appellant/Accused

Vs.

Muthukumar ...Respondent/Respondent/Complainant

Prayer:
Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code seeking to set aside the conviction imposed the judgment dated 02.08.2018 made in C.A.No.89 of 2018 on the file of the II Additional District and Sessions Judge, Erode confirming the conviction imposed the judgment dated 09.03.2018 made in S.T.C.No.349 of 2014 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode and the same was confirmed in the by allowing this criminal revision petition.

For Petitioner : Mr.M.Guruprasad

O R D E R

This criminal revision has been filed seeking to set aside the judgment dated 02.08.2018 made in C.A.No.89 of 2018 on the file of the learned II Additional District and Sessions Judge, Erode, confirming

the conviction imposed in the judgment dated 09.03.2018 made in S.T.C.No.349 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode.

2.The petitioner is the accused and the respondent is the defacto 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.349 of 2017 before the learned Judicial Magistrate, Fast Track Court No.1, Erode, against the accused stating that the accused borrowed a sum of Rs.3 lakhs on 15.02.2017 for his expenses and gave a Cheque bearing No.731643, dated 15.03.2017, drawn on South Indian Bank, Gandhi Road, Erode Branch, for the same. When the said Cheque

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was presented for collection on 17.05.2017, the same was returned on 18.05.2017 as 'funds insufficient'. Hence, the complainant sent a legal notice to the accused on 12.06.2017 and the same was received by the accused on 13.06.2017. The accused sent his reply for the legal notice on 25.06.2017. Thereafter, the complainant filed the petition.

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 six months and to pay a sum of Rs.3 Lakhs as compensation to the complainant in default to undergo one month simple imprisonment. Challenging the same, the petitioner filed appeal in C.A.No.89 of 2018 before the learned II Additional District and Sessions Judge, Erode and the learned II Additional District and Sessions Judge, Erode, vide order dated 02.08.2018, dismissed the appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.1, Erode. Aggrieved by the same, the present revision is filed.

5.The learned counsel for the petitioner submitted that the petitioner has paid a sum of Rs.1,45,000/- to the respondent as full and final settlement towards the Cheque amount. He would further submit that the respondent/ complainant accepted and received the payment and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.

6.Both the parties are present before this Court today and they also produced copy of the Aadhar Card for their identification. Copy

of the compromise agreement entered into between the petitioner and the respondent on 20.09.2018 has also been produced before this Court. Compounding affidavit of S.Muthukumar dated 27.09.2018 duly signed by S.Muthukumar has also been filed and the relevant portion of the same reads as follows :

> "8.I submit that aggrieved against the orders of the Court below the petitioner has preferred the above said Criminal Crl.R.C.No.1074 of 2018 before this Hon'ble Court. Before filing of the Criminal Revision Petition I and the petitioner/accused herein had amicably settled the matter through negotiations. I received a sum of Rs.1,45,000/- (One Lakh and Forty Five Thousand Only) as full and final settlement towards the cheque amount and I have no other claim from the petitioner herein.

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It is therefore prayed that this Hon'ble Court may be pleased to record my compounding affidavit and pass suitable orders by appreciating the facts and circumstances of the above case and thus render justice."

7.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 offencs 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

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> interest likes 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.''

8.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 copy of the compromise agreement entered into between the petitioner and the respondent on 20.09.2018 has also been produced before this Court. Compounding affidavit of S.Muthukumar dated 27.09.2018 duly signed by S.Muthukumar has also been filed. 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.

9.In view of the ratio laid down by the Honourable Supreme Court of India and also considering the compromise agreement entered into between the petitioner and the respondent on 20.09.2018 and the compounding affidavit of S.Muthukumar, this Court is of the view that the Judgment in S.T.C.No.349 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode, is liable to be set aside.

10.Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.349 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode and confirmed in C.A.No.89 of 2018 on the file of the learned II Additional District and 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. The copy of the compromise agreement entered into between the petitioner and the respondent on 20.09.2018 and the compounding affidavit of S.Muthukumar dated 27.09.2018 are taken on record.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District and Sessions Judge,
  Erode.

2.The Judicial Magistrate, Fast Track Court No.1,
  Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.67604

Crl.R.C.No.1074 of 2018
And
Crl.M.P.Nos.12478 and 12479 of 2018

VGI(CO)

rrs 24/10/2018

27.09.2018

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