IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.10.2018
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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.739 of 2018

T.Sathishkumar ... Petitioner

Vs.

R.Selvaraj ... Respondent

Prayer:
Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to call for the entire records in so far relates to order passed by Principal Sessions Judge, Namakkal in C.A.No.20 of 2016 dated 26.04.2018 whereby confirming the order passed in S.T.C.No.87 of 2016 dated 07.09.2016 on the file of Judicial Magistrate/FTC, Tiruchengode, Namakkal District and set aside the same.

For Petitioner : Mr.C.Prakasam
For Respondent : Mr.S.Viswanathan
for M/s.Dass and Viswa Associates

O R D E R
This criminal revision has been filed seeking to call for the entire records relating to the order passed by the learned Principal Sessions Judge, Namakkal in C.A.No.20 of 2016 dated 26.04.2018 confirming

the order passed in S.T.C.No.87 of 2016 dated 07.09.2016 by the learned Judicial Magistrate/FTC, Tiruchengode, Namakkal District and to set aside the same.

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.87 of 2016 before the learned Judicial Magistrate/FTC, Tiruchengode, Namakkal District, against the accused stating that the accused borrowed a sum of Rs.2,50,000/- for family expenses and agreed to pay interest at the rate of 1.50% per month for the same and executed a pro note in favour of the complainant on 24.04.2015 and the accused also issued Cheque bearing number '062288' dated 05.05.2015 of Axis Bank, Trichengode Branch for a sum of Rs.2,50,000/-. When the said Cheque was presented on 09.05.2015 for collection, the same were returned on 19.05.2015 as 'No account/ account closed on advice'. Thereafter the complainant issued legal notice to the accused on 23.05.2015 and the

same was received by the accused on 26.05.2015, 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 six months and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment. Challenging the same, the petitioner filed appeal in C.A.No.20 of 2016 before the learned Principal Sessions Judge, Namakkal and the learned Principal Sessions Judge, Namakkal, vide judgment dated 26.04.2018, dismissed the appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate/FTC, Tiruchengode. Aggrieved by the same, the present revision is filed.

5.The learned counsel for the petitioner submitted that during the pendancy 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.

6.To that extent, Compromise Memo dated 14.09.2018 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 relevant portion of the same reads as follows :
The above Criminal Revision Petition filed by the Petitioner for challenging the order passed by Principal Sessions Judge, Namakkal is C.A.No.20/2016, dated 26/04/2018 whereby confirming the order passed is S.T.C.No.87/2016, dated 07.09.2016 on the file of Judicial Magistrate/FTC, Tiruchengode, Namakkal District imposing sentence on the petitioner to undergo six months imprisonment and imposed fine amount of Rs.5,000/- in default one month simple imprisonment for the alleged offence U/s 138 of Negotiable Instrument Act, pending the said Criminal Revision Petition before this Hon'ble Court the petitioner and the respondent arrived compromise and the petitioner paid entire cheque amount to the respondent is turn the respondent received the entire cheque amount from the petitioner and settled the matter.

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 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 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.

9.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.

10.Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.87 of 2016 on the file of the learned Judicial Magistrate/FTC, Tiruchengode, Namakkal District and confirmed in C.A.No.20 of 2016 by the learned Principal Sessions Judge, Namakkal, are set aside and this criminal revision is disposed

M.DHANDAPANI,J.

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of. The revision petitioner/ accused is acquitted from all the charges levelled against him.

11.This criminal revision is accordingly disposed of.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Principal Sessions Judge, Namakkal.

2.The Judicial Magistrate/FTC,
Tiruchengode, Namakkal District.