

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.09.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.891 of 2018

C.Balasubramanian ... Petitioner

Vs.

Tamil Selvan
Represented by his Power of Attorney
A.Sekar ... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to call for the records in connection with the judgment dated 07.06.2018 made in C.A.No.160 of 2010 on the file of III Additional Sessions Court, Salem in so far as confirming the judgment dated 12.10.2010 made in C.C.No.292 of 2001 on the file of Judicial Magistrate No.4, Salem and set aside the same.

For Petitioner : Mr.G.Arulmurugan
For Respondent : Mr.S.Kalyanaraman

O R D E R

This criminal revision has been filed seeking to call for the records in connection with the judgment dated 07.06.2018 made in C.A.No.160 of 2010 by the learned III Additional Sessions Judge, Salem, confirming the judgment dated 12.10.2010 made in C.C.No.292 of 2001 on the file of the learned Judicial Magistrate No.4, Salem and to set aside the same.

2.The petitioner is the fifth 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 C.C.No.292 of 2001 before the learned Judicial Magistrate No.4, Salem, against the accused stating that the accused are doing textile import business and for their liability to the complainant they issued Cheques bearing numbers '625395' and '625396', drawn on 30.11.2000 in Indian Overseas Bank, Triplicane Branch. When the said Cheques were presented for collection, the same were returned as 'funds insufficient'.

4.After elaborate discussions, the trial Court convicted the petitioner along with the other accused 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 two months simple imprisonment. Challenging the same, the petitioner filed appeal in C.A.No.160 of 2010 before the learned III Additional Sessions Judge, Salem and the learned III Additional Sessions Judge, Salem, vide order dated 07.06.2018, dismissed the appeal and confirmed the conviction and sentence

passed by the learned Judicial Magistrate No.4, Salem. Aggrieved by the same, the present revision is filed.

5.The learned counsel for the petitioner submitted that the lower Court punished the first accused company and other accused as Directors of that company and fixing the vicarious liability, the petitioner was convicted along with the other accused. He would further submit that the petitioner in order to appropriate his responsibility in the said instruments paid a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) by way of demand draft bearing No.'824659' dated 14.09.2018 drawn on Lakshmi Vilas Bank, Pallipalayam Branch, in favour of 'TEE-YES Textiles' towards full and final settlement of his liability. The respondent/ complainant accepted and received the payment and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act, as against this petitioner alone.

6.To that extent, Memo of Compromise/ Compounding of Offence under Section 147 of the Negotiable Instruments Act dated 26.09.2018 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 and the relevant portion of the same reads as follows :

□3.It is submitted that now compromise has been worked out and the petitioner has paid a sum of Rs.6,00,000/- (Six Lakhs) by way of a Demand Draft No.824659 dated 14.09.2018 in favour of 'TEE-YES Textiles', drawn on Lakshmi Vilas Bank, Pallipalayam Branch, towards full and final settlement of his liability only. The respondent has accepted and received the payment and has consented for compounding the offence under Section 138 of the NI Act, as against the petitioner alone.

4.It is submitted that the respondent has no objection and gives consent to allow the above revision by setting aside the conviction imposed on the petitioner by the trial court by Judgment dated 12.10.2010 in C.C.No.292 of 2001 and confirmed by appellate Court by Judgment dated 07.06.2018 in C.A.No.160 of 2010, in view of the compromise arrived at as the money due to the respondent from the petitioner has been settled and compensated.

5.It is submitted that the respondent assures that he has no further claim or any amount due from the above petitioner and the entire issues has been settled, compensated and compounded with the petitioner alone. As such the offence under Section 138 has been compounded by resorting to Section 147 of the NI Act. In view of the compounding of the offence the conviction against the petitioner shall stand set aside having the effect of acquitting the petitioner as per Section 320(8) of Cr.P.C.

6.It is submitted that the above settlement is only between the petitioner herein and the complainant and it will be in no way applicable to the other accused.□

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 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."

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/ fifth 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 C.C.No.292 of 2001 on the file of the learned Judicial Magistrate No.4, Salem, in respect of this petitioner alone is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/fifth accused alone in C.C.No.292 of 2001 on the file of the learned Judicial Magistrate No.4, Salem and confirmed in C.A.No.160 of 2010 by the learned III Additional Sessions Judge, Salem are set aside and this criminal revision is disposed of. The revision petitioner/ fifth accused is acquitted from all the charges levelled against him.

11. This Court makes it clear that the benefit of the order passed today is applicable to the revision petitioner alone, since the petitioner in order to wipe out his vicarious liability has paid a sum of Rs.6 Lakhs to the respondent/ complainant and the respondent/ complainant has consented to allow the revision by setting aside the conviction imposed on the petitioner alone by the trial Court.

12. This criminal revision is accordingly disposed of.

26.09.2018

pri

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

- 1.The III Additional Sessions Court, Salem.
- 2.The learned Judicial Magistrate No.4, Salem.

M.DHANDAPANI,J.

pri

Crl.R.C.No.891 of 2018

26.09.2018