

Bail Slip

The Petitioner/Accused namely D. Suresh Babu S/o. Durairaj, was directed to be released on bail as per order of this court dated 16.08.2018 and made in Crl.MP.No.10713 of 2018 in Crl.R.C.No.925/18 on the file of the this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.925 of 2018

D.Suresh Babu

... Petitioner

Vs.

M.Dhandapani

... 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 judgment in Crl.A.No.105 of 2017 dated 05.07.2018 on the file of the Additional District Judge (Fast Track Court), Vellore, Vellore District, confirming the order of conviction passed in S.T.C.No.6 of 2017 dated 06.10.2017 on the file of the Judicial Magistrate, (FTC), Vellore, in convicting the petitioner and be pleased to set aside the same as erroneous, illegal, unjust and against the settled principles of law.

For Petitioner : Mr.M.Praveenkumar

For Respondent : Mr.K.Thyagaraja

सत्यमेव जयते
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 Additional District Judge (Fast Track Court), Vellore, Vellore District in Crl.A.No.105 of 2017 dated 05.07.2018 confirming the order passed in S.T.C.No.6 of 2017 dated 06.10.2017 on the file of the Judicial Magistrate, (FTC), Vellore 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.6 of 2017 dated 06.10.2017 on the file of the Judicial Magistrate, (FTC), Vellore, against the accused stating that the accused borrowed a sum of Rs.1,29,000/-, on 28.03.2016 from the respondent on the assurance to re-pay the same within a period of one month. Thereafter, the petitioner has not paid the amount and the accused also issued Cheque bearing number '946920' dated 01.05.2016 drawn on Indian Overseas Bank, Vellore Branch for a sum of Rs.1,29,000/-. When the said Cheque was presented on 12.05.2016 for collection, the same was returned on 18.05.2016 as 'insufficient funds'. Thereafter the complainant issued legal notice to the accused on 21.05.2016 and the same was received by the accused on 25.05.2016, 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 convicted him and sentenced to undergo simple imprisonment for for the period of one year under Section 255(2) of Cr.P.C. and further the accused is directed to pay a cheque amount with 6% interest from the date of filing the case to the complaint under Section 357(3) of Cr.P.C., in default to undergo simple imprisonment for further period of three months. Challenging the same, the petitioner filed appeal in CrI.A.No.105 of 2017 before the Additional District Judge (Fast Track Court), Vellore, Vellore District, vide judgment dated 05.07.2018, dismissed the appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate, (FTC), Vellore. Aggrieved by the same, the present revision is filed.

5. The learned counsel for the petitioner submitted that 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.

6. To that extent, Compromise Memo dated 05.10.2018 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 relevant portion of the same reads as follows :

"3. As per the conditional order of this Court in CrI.M.P.No.10713 of 2018 in the above CrI.R.C.No.925 of 2018, the petitioner/accused herein has deposited a sum of Rs.1,28,000/- (Rupees One Lakh and Twenty Eight Thousand only) before the Judicial Magistrate (Fast Track Court), Vellore."

4. During pendency of the above CrI.R.C., the parties have arrived at amicable settlement as per which the respondent/accused has agreed to pay the cheque amount of Rs.1,29,000/- (Rupees one Lakh and Twenty Nine Thousand only) to the respondent/complainant herein. The sum of Rs.1,28,000/- already deposited in the FTC, Vellore, shall be withdrawn by the respondent/complainant. The remaining sum of Rs.1,000/- has been paid by the petitioner/accused to the respondent/complainant in cash on this day.

5. Both parties have agreed for a compromise on the above terms and the respondent/complainant gives up his claims against the petitioner/accused in all other aspects in the above case.

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/ 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.6 of 2017 on the file of the Judicial Magistrate, (FTC), Vellore, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.6 of 2017 on the file of the Judicial Magistrate, (FTC), Vellore and confirmed in C.A.No.105 of 2017 on the file of the Additional District Judge (Fast Track Court), Vellore, Vellore District, are set aside and this criminal revision is disposed of. The revision petitioner/accused is acquitted from all the charges levelled against him.

11. This criminal revision is accordingly disposed of.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate, (FTC),
Vellore.

2.The Additional District Judge (Fast Track Court),
Vellore, Vellore District.

3. The Chief Judicial Magistrate,
Vellore, (for information)

4. The Section Officer, Criminal Section,
High Court, Madras. 104.

+ 1 cc to M/s. M. Praveen Kumar, Advocate SR.69293

+ 1 cc to M/s. K. Thyagarajan, Advocate Sr.69367

Cr1.R.C.No.925 of 2018

NRL(CO)
EU(14/11/2018)

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