

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.10.2018
CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.962 of 2018
&
Cr.M.P.No.12354 of 2018

N.Kumar ... Petitioner

Vs.

Velayutham ... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code, praying to set aside the judgment of the learned XVI Additional Sessions Judge, City Civil Court, Chennai-1 in Crl.A.No.5 of 2018 dated 26.07.2018, confirming the judgment passed by the learned VII Metropolitan Magistrate Court, George Town, Chennai, made in C.C.No.1889 of 2016 dated 05.12.2017 and acquit the petitioner in accordance with law.

For Petitioner : Mr.E.Sathiyaraj

For Respondent : Mr.C.Saravanan

O R D E R

This criminal revision has been filed praying to to set aside the judgment of the learned XVI Additional Sessions Judge, City Civil Court, Chennai-1 in Crl.A.No.5 of 2018 dated 26.07.2018, confirming the judgment passed by the learned VII Metropolitan Magistrate Court, George Town, Chennai, made in C.C.No.1889 of 2016 dated 05.12.2017 and acquit the petitioner in accordance with law.

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 C.C.No.1889 of 2016 before the learned VII Metropolitan Magistrate Court, George Town, Chennai-600 001, against the accused stating that the accused is the Proprietor of Uthayam Enterprises, had borrowed a hand loan of Rs.75,000/- and Rs.50,000/- [totally Rs.1,25,000/-] from the complainant. Out of which, a sum of Rs.75,000/- has been paid to the complainant and insofar as the balance of Rs.50,000/- is concerned, in order to discharge his liability, he issued a Cheque bearing No.107552 dated 12.01.2016 at the rate of 24% p.a. drawn on Vijaya Bank, Avadi, Chennai Branch. When the said Cheque was presented for collection, the same was returned as 'Funds Insufficient' on 13.04.2016. The complainant issued a legal notice on 22.04.2016 and the same was received by the accused on 25.04.2016.

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 and further directed to pay the amount of Rs.75,000/- to the complainant within two months of time as

compensation. Challenging the same, the petitioner filed appeal in C.A.No.5 of 2018 before the learned XVI Additional City Civil and Sessions Court, Chennai-600 001 and the learned XVI Additional City Civil and Sessions Court, Chennai-600 001, vide order dated 26.07.2018, dismissed the appeal and confirmed the conviction and sentence passed by the learned VII Metropolitan Magistrate, George Town, Chennai-1. Aggrieved by the same, the present revision is filed.

5.The learned counsel for the petitioner submitted that the lower Court punished the accused was convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment and further directed to pay the amount of Rs.75,000/- to the complainant within two months of time as compensation. He would further submit that the petitioner in order to appropriate his responsibility in the said instrument paid a sum of Rs.75,000/- (Rupees Seventy Five Thousand Only) by way of demand draft bearing No.256339 dated 23.10.2018 drawn on Indian Bank, Madras High Court Branch, in favour of the complainant 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 23.10.2018, 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 have also been filed and the relevant portion of the same reads as follows :

□4.Pending the revision, both parties decided to settle the matter amicably and give quietness to the issue once for all. Hence both the parties agreed to settle the issue and reduce the same into writing.

5.Accordingly, the parties have compromised the matter as under:

TERMS OF COMPROMISE

A)The petitioner undertake to pay sum of Rs.75,000/- to the Respondent and agreed to receive the said a sum of Rs.75,000/- from the Petitioner as full and final settlement.

B)The petitioner herein has paid a demand draft D.D.No.256339 drawn on Indian Bank, Madras High Court Branch dated 23-10-2018 for Rs.75,000/- and the Respondent acknowledges the receipt of the same.

C)The Respondent agrees not to proceed the case against the Petitioner with regard to the complaint in C.C.No.1889 of 2016.

D)Both the parties above named confirm that they are entering into this compromise of their own volition, and after examining all facts and statements, independently and thoroughly.

E)The Respondent herein returns the original RC Book of the vehicle bearing No.TN07M1427 to the petitioner. The Petitioner acknowledge the receipt of the same and both parties agrees that they don't have any claims against each other.

F)The above CrI.R.C.No.962 of 2018 shall be disposed of based on the Memo of Compromise and the memo of compromise may be made part and parcel of the order.□

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 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.1889 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai-600 001, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner in C.C.No.1889 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and confirmed the same in C.A.No.5 of 2018 by the learned XVI Additional Sessions Judge, City Civil Court, Chennai-600 001, are hereby set aside and this criminal revision is disposed of. The revision petitioner is acquitted from all the charges levelled against him.

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

23.10.2018

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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To

1.The XVI Additional Sessions Judge,
City Civil Court,
Chennai-1.

2.The VII Metropolitan Magistrate,
George Town, Chennai-1.

3.The Public Prosecutor
Madras High Court, Chennai.

M.DHANDAPANI,J.

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