

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1187 of 2018
and
Crl.M.P.Nos.13978, 13979
and 13981 of 2018

Kalaiselvan Petitioner/Accused

Vs.

Krishnamoorthy ... Respondent/Complainant

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code to call for the records and allow the Criminal revision by setting aside the Judgment dated 12.09.2015 passed by the Judicial Magistrate Court, Fast Track Court, Magisterial Level, Alandur in C.C.No.219 of 2014, confirmed by the Principal District Judge, Kanchipuram District at Chengalpattu in C.A.No.37 of 2015 by judgment dated 08.09.2017.

For Petitioner : Mrs.Sumithra Vasudevan

For Respondent : Mr.T.Arun Kumar

O R D E R

This criminal revision has been filed seeking to call for the records and to set aside the Judgment dated 12.09.2015 passed by the Judicial Magistrate Court, Fast Track Court, Magisterial Level, Alandur in C.C.No.219 of 2014, confirmed by the Principal District Judge, Kanchipuram District at Chengalpattu in C.A.No.37 of 2015 by judgment dated 08.09.2017.

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 brief facts of the case is as follows:

(i)The accused borrowed a sum of Rs.9,50,000/- from the complainant in the year 2007. To discharge the said liability,

he issued three post dated cheques bearing Nos.605308, 605309 and 605307 dated 30.11.2013, 30.12.2013 and 30.10.2014 respectively drawn on State Bank of India, Adambakkam, Chennai in favour of the respondent. When the cheques were presented for collection and encashment, the same were dishonoured for the reasons "funds insufficient" and "payment stopped by the drawer" along with a return memo on 31.01.2014. Hence, the complainant issued a legal notice dated 20.02.2014 to the accused. For which, the accused issued a reply notice dated 04.03.2014 stating that the allegations made in notice were false and frivolous. Hence, the complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.219 of 2014 on the file of the Judicial Magistrate Court, Fast Track Court, Magisterial Level, Alandur against the accused.

(ii)After elaborate discussions, the trial Court convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Rigorous imprisonment for six months and to pay a sum of Rs.1,50,000/- as compensation to the complainant. Challenging the same, the accused filed an appeal in Criminal Appeal No.37 of 2015 on the file of the learned Principal Sessions Judge, Kancheepuram at Chengalpattu. The learned Principal Sessions Judge, Kancheepuram at Chengalpattu dismissed the appeal by judgment dated 08.09.2017 confirming the conviction and sentence passed by the learned Judicial Magistrate Court, Fast Track Court, Magisterial Level, Alandur. Aggrieved by the same, the present Criminal revision has been filed by the accused.

4.The learned counsel for the accused/petitioner submitted that the Court punished the petitioner and to fix the vicarious liability, the accused was convicted by the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur in C.C.No.219 of 2014 dated 12.09.2015 for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Rigorous imprisonment for six months and to pay a sum of Rs.1,50,000/- as compensation to the complainant and the same was confirmed by the learned Principal District Judge, Kancheepuram at Chengalpet in C.A.No.37 of 2015 by judgment dated 08.09.2017.

5.The learned counsel for the accused/petitioner further submitted that the petitioner already paid Rs.50,000/- on 15.09.2013, deposited a sum of Rs.25,000/- in C.C.No.219 of 2014 on the file of the learned Judicial Magistrate, (Fast Track Court), Magisterial Level, Alandur at the time of suspension of sentence in C.A.No.37 of 2015. In order to prove his bona-fide, the petitioner undertakes to deposit Rs.1,25,000/- towards remaining balance of the cheque amount of Rs.2,00,000/- by D.D.No.184747 for Rs.1,25,000/- towards full and final settlement of his liability. The respondent/complainant

accepted to receive the payment and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act, as against this petitioner alone. Hence, the learned counsel requested this Court to allow the Criminal Revision and permit the respondent/complainant to withdraw the amount of Rs.25,000/-, which is lying in the credit of C.C.No.219 of 2014 on the file of Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur.

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 has been filed and the relevant portion of the same reads as follows :

"3.It is submitted that the petitioner was convicted in C.C.No.219 of 2014 on 12.09.2015 by the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur confirmed by the Principal District Judge, Kancheepuram District at Chengalpet in C.A.No.37 of 2015 on 08.09.2017 for the offence under Section 138 of the Negotiable Instruments Act, sentence imposed on him to undergo Rigorous imprisonment for six months and to pay the compensation of Rs.1,50,000/- to the respondent under Section 357 of Cr.P.C.

5.It is submitted that revision petitioner paid Rs.50,000/- on 15.9.2013, deposited Rs.25,000/- before Judicial Magistrate, (F.T.C). Magisterial Level, Alandur at the time of suspension of sentence in C.A.No.37 of 2015. The petitioner undertakes to deposit Rs.1,25,000/- towards remaining balance of the cheque amount of Rs.2,00,000/- by D.D.No.184747 for Rs.1,25,000/- permit the respondent to receive the said Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to-day, the same may kindly be recorded and allow this revision.

6.It is therefore humbly prayed that this Hon'ble Court may be pleased to allow the revision petition in CrI.R.C.No.1187 of 2018, permit the respondent to withdraw the deposit amount of Rs.25,000/- in C.C.No.219 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur."

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 C.C.No.219 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur, in respect of the petitioner is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused alone in C.C.No.219 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur, and confirmed in C.A.No.37 of 2015 by the learned Principal Sessions Judge, Kancheepuram at Chengalpattu are set aside and this criminal revision petition is disposed of. Consequently, connected criminal miscellaneous petitions are closed. The petitioner/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/accused in order to wipe out his vicarious liability has paid a sum of Rs.50,000/- to the respondent/complainant on 15.09.2013, deposited Rs.25,000/- before the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur and also undertakes to deposit a sum of Rs.1,25,000/- and the respondent/complainant has consented to allow the revision by setting aside the conviction imposed on the petitioner alone by the trial Court. The respondent/complainant is permitted to withdraw a sum of 25,000/- (Rupees Twenty five thousand only) with accrued interest if any, which is lying in the credit of C.C.No.219 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

cla

To

1.The Principal District Judge,
Kancheepuram District at Chengalpattu.

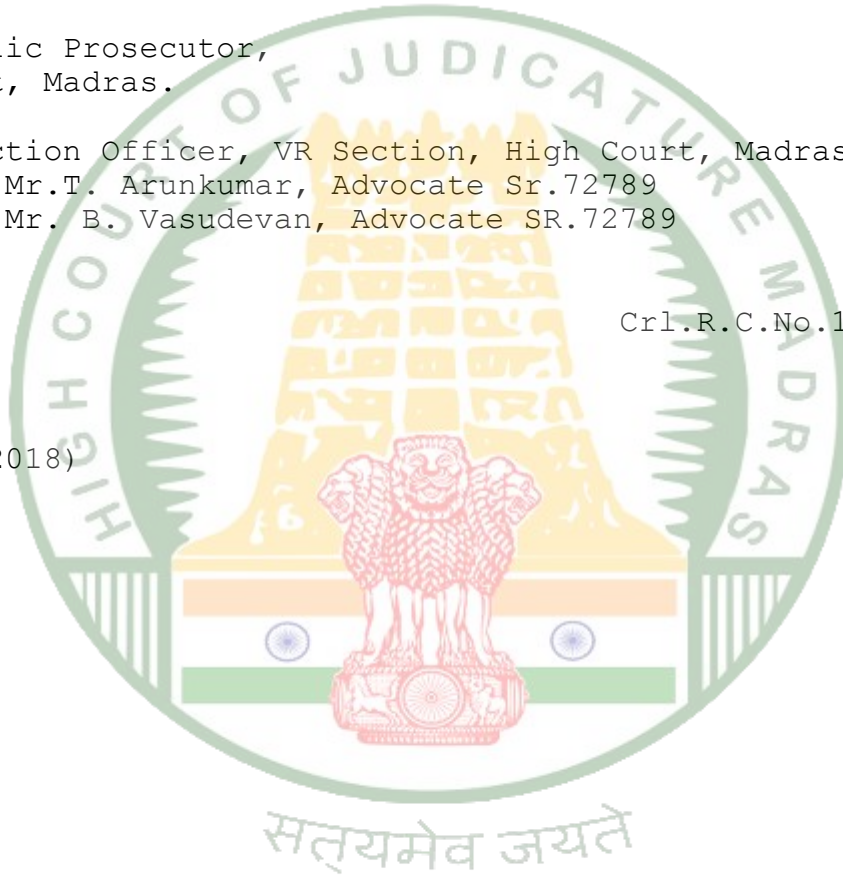
2.The Judicial Magistrate,
Fast Track Court,
Magisterial Level,
Alandur.

3.The Public Prosecutor,
High Court, Madras.

4. The Section Officer, VR Section, High Court, Madras.
+ 1 cc to Mr.T. Arunkumar, Advocate Sr.72789
+ 1 cc to Mr. B. Vasudevan, Advocate SR.72789

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BR(CO)
EU(16/11/2018)



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