

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1188 of 2018
and
Crl.M.P.Nos.13982, 13984
and 13985 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.220 of 2014, confirmed by the Principal Sessions Judge, Kanchipuram District at Chengalpattu in C.A.No.38 of 2015 by judgment dated 08.09.2017.

For Petitioner : Mr.B.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.220 of 2014, confirmed by the Principal District Judge, Kanchipuram District at Chengalpattu in C.A.No.38 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 a post dated cheque bearing No.926147 dated

30.03.2013 on Canara Bank, Nanganallur Branch, Chennai in favour of the respondent. When the cheque was presented for collection and encashment, the same was dishonoured for the reason "kindly contact drawer" along with a return memo on 17.06.2013. Hence, the complainant issued a legal notice dated 12.07.2013 to the accused and the same was acknowledged by Ex.P.4. For which, the accused has not given any reply and he has not come forward to return the said amount. Hence, the complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.220 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.2,00,000/- as compensation to the complainant. Challenging the same, the petitioner filed an appeal in Criminal Appeal No.38 of 2015 on the file of the learned Principal Sessions Judge, Kancheepuram at Chengalpattu. The learned Principal Sessions Judge, Kancheepuram at Chengalpattu dismissed the said 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/petitioner.

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.220 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.2,00,000/- as compensation to the complainant and the same was confirmed by the learned Principal District Judge, Kancheepuram at Chengalpet in C.A.No.38 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.220 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.38 of 2014. In order to prove his bona-fide, the accused undertakes to deposit Rs.1,25,000/- towards remaining balance of the cheque amount of Rs.2,00,000/- by D.D.No.18476 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.220 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.220 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.38 of 2015 on 08.09.2017 for the offence under Section 138 of the Negotiable Instruments Act, sentenced imposed on him to undergo Rigorous imprisonment for six months and to pay the compensation of Rs.2,00,000/- 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 the Judicial Magistrate, (F.T.C). Magisterial Level, Alandur at the time of suspension of sentence in C.A.No.38 of 2015. The petitioner undertakes to deposit Rs.1,25,000/- towards remaining balance of the cheque amount of Rs.1,50,000/- by D.D.No.184746 for Rs.1,25,000/- permit the respondent to receive the said amount of 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.1188 of 2018, permit the respondent to withdraw the deposit amount of Rs.25,000/- in C.C.No.220 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.220 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.220 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur, and confirmed in C.A.No.38 of 2015 by the learned Principal Sessions Judge, Kancheepuram at Chengalpattu are set aside and this criminal revision is disposed of. The revision petitioner/accused is acquitted from all the charges levelled against him. Consequently, connected criminal miscellaneous petitions are closed.

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.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.220 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 Sessions Judge,
Kancheepuram District at Chengalpattu.

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

3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. B. Vasudevan, Advocate Sr.72125

+ 1 cc to Mr. T. Arunkumar, Advocate Sr.72790

Crl.R.C.No.1188 of 2018

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



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