

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Tenth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice N. ANAND VENKATESH

CRIMINAL MISCELLANEOUS PETITION No.16831 of 2018

IN CRL RC.1166/2014

S.SARAVANA KUMAR

[PETITIONER]

Vs

R.SRINIVASAN

[RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to record the compromise between the petitioner and the Respondent so as to compound the offence for which the petitioner is found guilty by the Trial Court in S.T.C.NO.10 of 2011 on the file of the Judicial Magistrate, Fast Track Court, Hosur as confirmed in Criminal Appeal NO.13 of 2012 on the file of the Principal Sessions Judge, Krishnagiri which stood further confirmed by this Hon`ble court in Crl.RC.NO.1166 of 2014 dated 12.02.2015.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.M.SANTHANARAMAN, Advocate for the petitioner the court made the following order:-

This Miscellaneous petition has been filed to record the compromise between the petitioner and the respondent and to compound the offence.

2 The petitioner was convicted for an offence under Section 138 of Negotiable Instruments Act and the same was confirmed in the appeal as well as the revision filed before this Court. Subsequently, the parties have decided to compromise the matter among themselves. Therefore, this petition has been filed to record the compromise and to compound the offence.

3 The learned counsel for the petitioner relied upon the judgment of this Court in **D.Simpson Vs. S.T.Perumal** reported in **2014-2-L.W. (Cr1.) 239**. The relevant portion of the judgment is extracted hereunder:-

"24.We now come to the crucial question as to whether this Court, having already disposed of the revisions, can invoke the powers under Section 482 Cr.P.C. The revision has been disposed of and the verdict of guilty, conviction and sentence have now become final. I have come across decisions which stipulate that in view of Section 362, even this Court exercising original power as a criminal court under Section 482 Cr.P.C., cannot go against the

mandate of Section 362. The decision in *Smt. Sooraj Devi V. Pyare Lal & anr.* (1981) 1 SCC 500) clearly holds that after the judgment is pronounced, on the same facts powers under Section 482 Cr.P.C. Cannot be invoked in view of the specific bar under Section 362. This position has been held repeatedly. In *Hari Singh Mann V. Harbhajan Singh Bajwa* (AIR 2001 SC 43), it was held by the Supreme Court as follows in paragraphs 8 and 9:

"8....

The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the Court.

9. There is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment W.P.C.No.34540 of 2006 & connected cases 21 passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such power cannot be exercised with the aid or under the cloak of Section 482 of the Code"

In *State of Kerala V. M.M. Manikantan Nair* (AIR 2001 SC 2145) the Supreme Court held so in paragraph 6:

"6. The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the Court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal Court can review its own judgment or order after it is signed."

In *Moti Lal V. State of Madhya Pradesh* (AIR 1994 SC 1544) the Supreme Court held so in paragraph 2:

"2. Section 362 Cr.P.C. In clear terms lays down that the Court cannot alter judgment after the same has been signed except to correct clerical or arithmetical errors. That being the position the High Court had no jurisdiction under Section 482 Cr.P.C. To alter the earlier judgment."

In *Damidaran V. State* (1992 (2) KLT 165) and in *Tanveer Aquil V. State of Madhya Pradesh* (1990 Sppl. SCC 63) we find observations which suggest that a post revision composition cannot be readily accepted. Those decisions, according to me, only reiterate the principle that a trial, appellate or revisional court which is functus officio in respect of a subject matter cannot thereafter exercise powers in respect of such disposed of matters in view of Section 362 Cr.P.C.

25. But these decisions cannot be held to cover a situation when post-revision there has been a substantial change in the circumstances and a later request is made in a separate application under Section 482 Cr.P.C. Or Article 226 or 227 of the Constitution. That question was specifically considered by the Supreme Court in *Mostt. Simrikhia V. Smt. Dolley Mukherjee* (1990 Cr.L.J. 1599). In paragraph 2 of the said decision, the Supreme Court has observed thus:

"If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under S.362.

26. In the instant cases, when the revision petition was disposed of by this Court, this circumstance—that the parties settled the dispute and the complainant compounded the offence—was not there at all. It is a subsequent change in circumstance. The decision in *Mostt. Simrikhia* (supra) squarely applies. That was a case where an earlier application under Section 482 Cr.P.C was dismissed, but still the Supreme Court held that a change in circumstances is sufficient to justify the invocation of the powers afresh under Section 482 Cr.P.C notwithstanding the bar under Section 362 Cr.P.C. In the instant case, the powers under Section 482 Cr.P.C. Have not been sought to be invoked earlier. Only the revisional powers were exercised. That is all the more the reason why under the changed circumstances the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. Can be invoked. In the light of the dictum in *Mostt. Simrikhia* earlier decisions rendered and subsequent decisions, which do not refer to the said decision specifically and in which the opinion is expressed that the powers under Section 482 Cr.P.C. cannot be invoked after disposal of the revision in view of the bar under Section 362, cannot be held to lay down the law correctly.

5. In the light of the above judgments, as also the compromise entered into between parties, Crl.O.P.No.8352 of 2014 shall stand allowed, with costs of Rs.25,000/- payable by the petitioner to the Tamil Nadu State Legal Services Authority, within a period of two(2) weeks from the date of receipt of a copy of this order."

4. The petitioner and the respondent have now filed a Memo of Compromise before this Court and the respondent who is present

before this Court also admitted to receiving the amount and requested this Court to compound the offence. The Compromise Memo filed by the parties is made part and parcel of this order.

5. The judgment that has been cited supra, squarely applies to the fact of the present case.

6. In the light of the above judgment and also the compromise entered into between the parties, this Criminal Miscellaneous Petition shall stand allowed with cost of Rs.10,000/- payable by the petitioner to the credit of the Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry), within a period of two weeks from the date of receipt of a copy of this order and file a photocopy of the receipt along with a memo reporting compliance in the Registry. Accordingly, the conviction and sentence passed against the petitioner is hereby set aside.

-sd/-

10/12/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE,
KRISHNAGIRI.

2 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT, HOSUR.

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI. [FOR INFORMATION]

C.C. to M/S.M.SANTHANARAMAN Advocate on payment of necessary charges

Order

in
CRL MP.16831/2018

in
CRL RC.1166/2014

Date :10/12/2018

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MLT-27/12/2018