

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1221 of 2018

D.Anitha Charles

... Petitioner

Vs.

V.Selvaraj

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 (1) r/w 401 of the Criminal Procedure Code seeking to call for the entire records in judgment in Crl.A.No.27 of 2018 dated 25.04.2018 on the file of the First Additional District Sessions Court, Erode confirming the order of conviction passed in S.T.C.No.550 of 2013 dated 02.01.2018 on the file of the Judicial Magistrate Court, (FTC No.I), Erode, 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.I.C.Vasudevan

For Respondent : Mr.Titus Enock

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 First Additional District Sessions Court, Erode in Crl.A.No.27 of 2018 dated 25.04.2018 confirming the order passed in S.T.C.No.550 of 2013 dated 02.01.2018 on the file of the Judicial Magistrate Court, (FTC No.I), Erode, 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.550 of 2013 dated 02.01.2018 on the file of the Judicial Magistrate Court, (Fast Track Court No.I), Erode, against the accused stating that the

accused borrowed a sum of Rs.1,20,000/- in favour of the complainant on 21.01.2013 from the respondent and to re-pay the same within a period of one month. Thereafter, the petitioner not paid the amount and the accused also issued Cheque bearing number '082799' dated 19.03.2013 drawn on Andhra Bank, Erode Branch for a sum of Rs.1,20,000/-. When the said Cheque was presented on 06.05.2013 for collection, the same was returned on 07.05.2013 as 'insufficient funds'. Thereafter the complainant issued legal notice to the accused on 25.05.2013 and the same was received by the accused on 04.06.2013, 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 sentenced him to undergo simple imprisonment for a period of one year under Section 255(2) of Cr.P.C. and further the accused was directed to pay the 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.27 of 2018 before the First Additional District Sessions Court, Erode and the said Court vide judgment dated 25.04.2018, dismissed the appeal and confirmed the conviction and sentence passed by the Judicial Magistrate Court, (Fast Track Court No.I), Erode. 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. Though the parties are not present before this Court today, the respondent in this revision has filed compounding petition in CrI.M.P.No.14125 of 2018 duly signed by the petitioner/ respondent in revision and the respondent/ revision petitioner as well as the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

7. The relevant portion of the affidavit filed in support of the petition in CrI.M.P.No.14125 of 2018 reads as follows :

"3. I submit that subsequently as per the compromise made by the well wishers of both of us, the above matter is settled out of Court. In fact, the respondent has paid the cheque amount as full satisfaction to me.

Hence, it is just and necessary to permit me to withdraw the said complaint given by against the respondent and to compound the said case.

4. I submit that hence it is just and necessary to compound the said case as settled out of Court, otherwise, I would be put to much trouble and hardships.

Therefore, I most humbly pray that this Hon'ble Court may be pleased to permit me to compound the said case in S.T.C.No.550 of 2013 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode, which is the subject matter of the above revision in CrI.R.C.No.44711 of 2018, pending on the file of Court and thus render justice."

8. 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.''

9. 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.

10. 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 dated 06.10.2017 on the file of the Judicial Magistrate, (FTC), Vellore, is liable to be set aside.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.6 of 2017 dated 06.10.2017 on the file of the Judicial Magistrate, (FTC),

Vellore and confirmed in C.A.No.27 of 2018 on the file of the First Additional District Sessions Court, Erode are set aside and this criminal revision is disposed of. The revision petitioner/ accused is acquitted from all the charges levelled against him.

12. This criminal revision is accordingly disposed of.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The First Additional District Sessions Court,
Erode.

2.The Judicial Magistrate Court, (FTC No.I),
Erode.

+1 cc Mr.I.C.Vasudevan, Advocate Sr.No.75442

Cr1.R.C.No.1221 of 2018

PA(CO)
CSL/30.11.2018