

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1095 of 2018 &
Crl.M.P.No.12726 & 12727 of 2018

Nixon Fernando

... Petitioner

Vs.

Ramesh

... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code against the judgment passed in C.A.No.92 of 2015 dated 23.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai, dismissed the appeal and confirming the order passed in C.C.No.7126 of 2014 dated 01.04.2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet and set aside the same.

For Petitioner : Mr.K.V.Ramesh

O R D E R

This criminal revision has been filed against the judgment passed in C.A.No.92 of 2015 dated 23.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai, dismissed the appeal and confirming the order passed in C.C.No.7126 of 2014 dated 01.04.2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet and set aside the same.

2.The petitioner is the accused and the respondent is the complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3.The case of the revision petitioner is that the accused borrowed a sum of Rs.7 lakhs from the complainant on 02.12.2011 for renovating his Theatre. In order to discharge his part liability, the accused issued a cheque dated 19.02.2013 bearing No.029169 drawn on Union Bank, Egmore Branch, Chennai-600 008 for Rs.1 lakh. When the complainant presented the cheque for collection with the State Bank of Mysore, St. Thomas Mount, Chennai Branch on 06.04.2013 and the same was returned on 08.04.2013 for the reason "Funds Insufficient" and subsequently, the complainant issued a legal notice on 13.04.2013, calling upon the accused to make payment. After receipt of the legal

notice, the accused issued incorrect reply on 02.05.2013. Subsequently, the complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.7126 of 2014 before the learned XVIII Metropolitan Magistrate, Saidapet.

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 one year and to pay compensation of Rs.2 lakhs, to the complainant, in default to undergo further simple imprisonment for six months, under Section 357(3) Cr.P.C., Challenging the same, the petitioner filed appeal in C.A.No.92 of 2015 before the learned IV Additional Sessions Judge, Chennai and the learned IV Additional Sessions Judge, Chennai, vide judgment dated 23.07.2018, dismissed the appeal and confirmed the conviction and sentence passed by the learned XVIII Metropolitan Magistrate, Chennai. 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.To that extent, Compromise Memo dated 03.10.2018 duly signed by the petitioner and the respondent as well as by Mr.P.Karuppiah, Advocate & Notary Public, Government of India, 70, Avvai Nagar, Chennai-50 and the relevant portion of the same reads as follows :

" I, Ramesh, S/o.Seetharaman, Hindu, aged about 50 years, Proprietor Dhanam Pictures, having office at No.37, Arcot Road, Vadapani, Chennai-600 026, do hereby solemnly affirm and sincerely state as follows:-

1)I am the petitioner herein and respondent in CrI.R.C.Nos.1092, 1093, 1094, 1095, 1096 of 2018 and the main appeal and as such I am well acquainted with the facts of the case.

2)I submit that I have filed Criminal Cases against the appellant herein for the alleged offences Under Sec.138 of Negotiable Instruments Act and the same was disposed by the Hon'ble XVIII Metropolitan Magistrate Court, Saidapet, Chennai as follows:

The petitioner above named begs to prefer this Memorandum of Grounds of Criminal Revision Petition No.1094 of 2018 before this Hon'ble Court against the order passed in C.A.No.190/2015 dt.18.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai dismissed the appeal on partly confirmed the judgment and order of conviction passed in C.C.No.669/2015 dated 31.08.2015 on the file of the learned Metropolitan Magistrate XVIII Saidapet and prays for setting aside the same.

The petitioner above named begs to prefer this Memorandum of Grounds of Criminal Revision Petition No.1096 of 2018 before this Hon'ble Court against the order passed in C.A.No.192/2015 dt.23.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai dismissed the appeal on partly confirmed the judgment and order of conviction passed in C.C.No.668/2015 dated 31.08.2015 on the file of the learned Metropolitan Magistrate XVIII Saidapet and prays for setting aside the same.

The petitioner above named begs to prefer this Memorandum of Grounds of Criminal Revision Petition No.1093 of 2018 before this Hon'ble Court against the order passed in C.A.No.191/2015 dt.18.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai dismissed the appeal on partly confirmed the judgment and order of conviction passed in C.C.No.670/2015 dated 31.08.2015 on the file of the learned Metropolitan Magistrate XVIII Saidapet and prays for setting aside the same.

The petitioner above named begs to prefer this Memorandum of Grounds of Criminal Revision Petition No.1092 of 2018 before this Hon'ble Court against the order passed in C.A.No.91/2015 dt.23.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai dismissed the appeal on partly confirmed the judgment and order of conviction passed in C.C.No.7125/2014 dated 01.04.2015 on the file of the learned Metropolitan Magistrate XVIII Saidapet and prays for setting aside the same.

The petitioner above named begs to prefer this Memorandum of Grounds of Criminal Revision Petition No.1095 of 2018 before this Hon'ble Court against the order passed in C.A.No.92/2015 dt.23.07.2018 on the file of the learned IV Additional Sessions Judge, Chennai dismissed the appeal on partly confirmed the judgment and order of conviction passed in C.C.No.7126/2014 dated 01.04.2015 on the file of the learned Metropolitan Magistrate XVIII Saidapet and prays for setting aside the same.

2) I Further submit that the above matter was settled on 24.07.2017. The MOU between me and the accused the total all cases was settled and the same was marked before this Hon'ble Court by way of typed set of papers here and the Memorandum of Understanding between me and the accused on 24.07.2017. The above all Crl.R.Cs. Amount was settled by way of Demand Draft and reported as full and final settlement by the accused in favour of me. There is no any further dues. Hence, it is therefore prayed that this Hon'ble Court may be pleased to accept the affidavit and pass further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

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 dated 01.04.2015 in C.C.No.7126 of 2014 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.7126 of 2014 on the file of the learned XVIII Metropolitan Magistrate, Saidapet and confirmed the judgment passed in C.A.No.92 of 2015 by the learned IV Additional Sessions Judge, Chennai, are hereby set aside and this criminal revision is disposed of. The revision petitioner/accused is acquitted from all the charges levelled against him.

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

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional Sessions Judge,
Chennai.

2. The XVIII Metropolitan Magistrate,
Saidapet.

+ 2 ccs to Mr.K.V. Ramesh, Advocate SR.69614

Cr1.R.C.No.1095 of 2018 &
Cr1.M.P.No.12726 & 12727 of 2018

PP (CO)
EU (26/10/2018)

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