

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.R.C.NO.1575 OF 2012
AND M.P.NO.1 OF 2012

1. M/s.Sivamathi Animation
Softwares & Electronics Ltd.,
Represented by its Managing Director,
R.S.Sivaprakasam, Sri Jayalakshmi Buildings,
62-g, 4th Floor, North Boag Road,
T.Nagar, Chennai - 17.
2. R.S.Sivaprakasam,
Managing Director/
Authorized Signatory, Sivamathi Animation
Softwares Electornics Ltd.,
62-g, 4th Floor, North Boag Road,
T.Nagar, Chennai - 17. .. Petitioners/Accused

Vs.

M/s.Kumar Agencies,
Represented by its Proprietor,
P.V.Rathinakumar,
S/o.P.M.Venkatesa Chettiar,
No.56/1, Gandhi Road,
Vellore - 4. ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 12.12.2012 passed in C.C.No.21 of
2012 on the file of the Judicial Magistrate (Fast Track Court),
Vellore.

For Petitioners: Mr.B.Soundarapandiyan

For Respondent : Mr.E.Kannadasan

O R D E R

This criminal revision has been filed seeking to set aside
the order dated 12.12.2012 passed in C.C.No.21 of 2012 on the
file of the Judicial Magistrate (Fast Track Court), Vellore.

2. For the sake of convenience, the petitioners and the respondent will be referred to as accused and complainant, respectively.

3. The facts of the case in a nutshell are as under:

3.1 It is the case of the complainant that the accused appointed him as Distributor for Vellore area for distributing the educational software produced by the accused. As part of the terms of such appointment, the complainant gave a sum of Rs.5,00,000/- on 20.09.2007 to the accused for the distributorship. Thereafter, the accused did not appoint the complainant as distributor and therefore, the complainant demanded the refund of the deposited amount of Rs.5,00,000/-.

3.2 The accused gave a cheque (Ex-P1) dated 23.01.2008 for the said amount, which, when presented by the complainant, was dishonoured, for insufficiency of funds. Hence, the complainant initiated a prosecution in C.C.No.109 of 2008 before the Judicial Magistrate Court No.IV, Vellore (Now, the case has been transferred to the file of the Judicial Magistrate Court (Fast Track Court), Vellore and re-numbered as C.C.No.21 of 2012), for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

3.3 During the pendency of the trial, the complainant and the accused appeared before the Lok Adalat in the trial Court, in which, the accused agreed to return the sum of Rs.5,00,000/- to the complainant. Accordingly, the accused returned a sum of Rs.4,00,000/- in installments from 11.03.2011 to 09.09.2011. The accused was due the balance amount of Rs.1,00,000/-. Since the accused was not able to raise funds, he defaulted in giving the balance amount in the Lok Adalat proceedings. Hence, the matter was sent to the trial Court for further proceedings in accordance with law.

3.4 While so, the accused filed Crl.O.P.No.18931 of 2012 under Section 482 Cr.P.C. before the High Court, for quashing the prosecution on the ground that he is ready and willing to pay the balance amount of Rs.1,00,000/- to the complainant.

3.5 After hearing the learned counsel for the complainant, this Court relied upon the judgment of the Supreme Court in Damodar S.Prabhu Vs. Sayed Babalal H.¹ and passed final orders in Crl.O.P.No.18931 of 2012, making the following observations:

"4. On the other hand, the learned counsel appearing for the respondent would submit that though the petitioners have paid Rs.4,00,000/- prosecution can be proceeded

1 (2010) 5 SCC 663

against the petitioners since they have not paid the balance of Rs.1,00,000/-. Relying on a decision reported in "(2010) 5 SCC 663 (Damodar S.Prabhu Vs. Sayed Babalal H.)", the learned counsel submitted that if at all the petitioners seek for compounding the case, the same can be allowed subject to the condition that the petitioners are required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Service Authority.

8. Therefore, having regard to the above guidelines and in view of the petitioners willing to make payment of balance cheque amount, the petitioners are directed to make an application for compounding the offence before the trial Court. On such application being made by the petitioners, the trial Court is directed to consider and pass appropriate orders subject to payment of 10% of the balance cheque amount of Rs.1,00,000/- to be deposited with the District Legal Services Authority.

With the above direction, this criminal original petition is disposed of."

3.6 As directed by this Court, the accused deposited a sum of Rs.1,00,000/- before the trial Court on 05.01.2013 and also deposited a sum of Rs.10,000/- towards costs in the office of the District Legal Services Authority, Vellore, on 05.01.2013.

3.7 Thereafter, when the accused filed an application for compounding the offence, the complainant refused to give his consent and therefore, the trial Court, by order dated 12.12.2012 in C.M.P.No.4431 of 2012 in C.C.No.21 of 2012, rejected the plea of the accused. Hence, the accused is before this Court.

4. Heard Mr.B.Soundarapandian, learned counsel for the accused and Mr.E.Kannadasan, learned counsel for the complainant.

5. Mr.E.Kannadasan, learned counsel for the complainant reiterated the stand of the complainant by submitting that the complainant is not agreeable for compounding of the offence.

6. However, the learned counsel for the accused submitted that in Damodar S.Prabhu (supra), the Supreme Court had issued guidelines for compounding the offence under the NI Act in order

to reduce the burden of such cases on the trial Courts. He placed reliance on paragraph No.5 of the aforesaid judgment of the Supreme Court, which reads as follows:

"5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts. As per the 213th Report of the Law Commission of India, more than 38 lakh cheque bouncing cases were pending before various Courts in the country as of October 2008. This is putting an unprecedented strain on our judicial system."

7. This Court gave its anxious consideration to the rival submissions.

8. It is true that the complainant cannot be forced by the Courts to compound the offence as observed by the trial Court. However, in this case, the parties had appeared before the Lok Adalat and had agreed to settle the case at Rs.5,00,000/-, pursuant to which, the accused gave a cheque for a sum of Rs.4,00,000/- and there was a slight delay in paying the balance amount of Rs.1,00,000/-.

9. On the facts and circumstances obtaining in this case, when the parties have agreed on certain terms of settlement, they should not go back without good cause. In this case, the accused has been offering the sum of Rs.1,00,000/- from 2012 onwards, which the complainant has not been receiving for reasons best known to him.

10. On account of the obdurate attitude of the complainant, a settlement that was arrived at before the Lok Adalat remains in the limbo. Hence, under the peculiar facts and circumstances of this case, the proceedings in C.C.No.21 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court), Vellore, is hereby quashed, on condition that the accused shall deposit a further sum of Rs.25,000/- as litigation costs to the complainant, in the trial Court, within a period of four weeks from the date of receipt of a copy of this order, failing which, the proceedings in C.C.No.21 of 2012 will stand revived. The complainant will be entitled to withdraw the sum of Rs.1,00,000/- that has already been deposited by the accused and

also the sum of Rs.25,000/- that is to be deposited by the accused pursuant to this order, without notice to the accused, but, on proper identification by the counsel along with proof of identity.

In fine, this criminal revision is allowed. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
(Fast Track Court),
Vellore.
2. Do Thro' The Chief Judicial Magistrate,
Vellore District.
3. The Deputy Registrar (Crl.Section),
Madras High Court,
Chennai - 104.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.91338

+1cc to Mr.B.Soundarapandiyan, Advocate sr.91572(21/01/2020)

Cr1.R.C.No.1575 of 2012

EV(CO)
CS/10/12/2019
nr 21/01/2020

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