

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9247 of 2019

S.Vijaya

...Petitioner / Accused

Vs.

N.Velmurugan

...Respondent / Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to permit the petitioner and the respondent to compound the offence, based on the Joint Memo of Compromise dated 14.02.2019 relating to the conviction imposed in the judgment dated 01.12.2014 made in STC No.347 of 2012 on the file of the learned Judicial Magistrate/FTC No.I, Erode confirmed in the judgment dated 30.09.2016 made in C.A.No.2 of 2015 on the file of the learned First Additional Sessions Judge, Erode which was also confirmed in the order dated 10.07.2017 made in Crl.R.C.No.1394 of 2016.

For Petitioner : Mr.N.Manoharan

ORDER

This Criminal Original Petition has been filed seeking to permit the petitioner and the respondent to compound the offence, based on the Joint Memo of Compromise dated 14.02.2019 relating to the conviction imposed in the judgment dated 01.12.2014 made in STC No.347 of 2012 on the file of the learned Judicial Magistrate/FTC No.I, Erode confirmed in the judgment dated 30.09.2016 made in C.A.No.2 of 2015 on the file of the learned First Additional Sessions Judge, Erode which was also confirmed in the order dated 10.07.2017 made in Crl.R.C.No.1394 of 2016 on the file of this Court.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on records.

3. The learned counsel appearing for the petitioner submitted that after the conviction, the matter has been settled between the parties and also filed a Joint Compromise Memo, dated 14.02.2019.

4. The learned counsel appearing for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court of India in CDJ 2009 SC 2052 reported in K.M.Ibrahim v. K.P.Mohammed and Anr, dated 02.12.2009, wherein it has been held as follows:

8.The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C, this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge leveled against him.

9.The object of Section 320 Cr.P.C., which would not in the strict sense of the term apply to a proceeding under the Negotiable Instruments Act, 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained in the said section, with or without the leave of the Court, and also vests the Court with jurisdiction to allow such compromise. By virtue of Sub-Section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Negotiable Instruments Act, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

10. Apart from the above, this Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line

with Sub-Section (B) of Section 320 Cr.P.C. in an application under Section 147 of the aforesaid Act, in order to do justice to the parties.

11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

13. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, we allow the parties to compound the offence, set aside the judgment of the Courts below and acquit the appellant of the charges against him.

5. The learned counsel further submitted that since the matter has been settled between the parties, the petitioner is permitted to compound the offence punishable under Section 147 of the Negotiable Instruments Act.

6. The above judgment of the Hon'ble Supreme Court of India will squarely apply to the present case. After the conviction was passed by the Trial Court dated 01.12.2014, the petitioners and the respondents have entered into a Joint Compromise Memo before the trial Court and the cheque amount was paid. The said Joint Compromise Memo, dated 14.02.2019 reads thus:

(i) It is submitted that the petitioners/accused have paid a sum of Rs.3,00,000/- (Rupees Three Lakh Only) today vide Demand Draft dated 02.04.2019, drawn on

bank State Bank of India, Perambur Branch, Chennai drawn in favour of the first respondent/complainant in full settlement of all claim made and payable under the cheque claim made in C.C.No.2919 of 2015 and the respondent/complainant has received and acknowledged the same.

(ii).It is mutually agreed between the parties that the aforesaid amount paid by the petitioners/accused shall be full and final payment towards the cheque claim made in the above C.C.No.2919 of 2015

(iii).As per the ruling of the Hon'ble Supreme Court "Where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C., (2018 (1) SCC 560).

(iv).It is therefore, jointly prayed that the above quash petitioner may be ordered and this Court may be pleased to quash the impugned judgment dated 11.3.2019 in C.C.No.2919 of 2015 delivered by the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai, based on this Joint Compromise by allowing this quash petition.

7. In view, of the above fact that the parties have settled their disputes in keeping with the provisions for compounding the offence under Section 138 of the NI Act, this Court permitted the parties to compound the offence.

8. Accordingly, the Criminal Original Petition is allowed and the judgment in C.C.No.2919 of 2015, dated 11.03.2019 passed by the learned Metropolitan Magistrate, (Fast Track Court-II), Egmore, Chennai, is hereby set aside and the petitioner herein is acquitted from all the charges leveled as against the petitioner under Section 138 of the Negotiable Instruments Act.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mpa/vsn

To

1. The Metropolitan Magistrate, (Fast Track Court-II),
Egmore, Chennai
- 2) The Judicial Magistrate,
Fast Track Court No.1,
Erode.
- 3) The I Additional Sessions Judge,
Erode.

+1 cc to Mr.N.Manoharan, Advocate, S.R.No.36689

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NMI (CO)
SSM(19/06/2019)



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