

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.339 of 2019 and
CrI.M.P.Nos. 4561 & 4563 of 2019

N.Ramesh@ Venkatesan

... Petitioner

Vs

A.Shanmugam

...Respondent

PRAYER: Criminal Revision Case filed under Article 397 r/w 401 of Criminal Procedure Code to set aside the Order of Conviction and Sentence dated 21.02.2019 in C.A.No. 148 of 2018 on the File of the II Additional District and Sessions Judge, Salem, confirming the order of Conviction and Sentence dated 14.09.2018, in S.T.C.No. 356/2018, (Old No.331/2017), on the File of the District Munsif-cum-Judicial Magistrate, Vazhappady.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.S.Kalyanaraman

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. to set aside the order of Conviction and Sentence dated 21.02.2019 made in C.A.No. 148 of 2018 on the File of the II Additional District and Sessions Judge, Salem, confirming the order of Conviction and Sentence dated 14.09.2018, made in S.T.C.No.356/2018, (Old No.331/2017), on the File of the District Munsif-cum-Judicial Magistrate, Vazhappady.

2. The respondent herein filed a private complaint under Section 200 Cr.P.C., before the District Munsif-cum-Judicial Magistrate, Vazhappady, for the offence under Section 138 of the Negotiable Instruments Act, against the Revision Petitioner. The learned Magistrate after conducting an enquiry found that the revision petitioner has committed the offence under Section 138 of the Negotiable Instruments Act and also sentenced him to undergo Rigorous Imprisonment for one year and to pay compensation of Rs.12,42,428/-, and in default, to undergo simple imprisonment for 6 months. As against the said order passed by the Learned Magistrate, the Revision petitioner has filed the appeal before the Session Judge in Criminal Appeal No. 148/2018.

3. The Learned II Additional District Session Judge after hearing the appeal in Criminal Appeal No.148 of 2018 dismissed the appeal by confirming the judgment of the Learned Magistrate in STC.No.356/2018 against which the accused has filed the present Criminal Revision before this Court in CrI.R.C.No. 339 of 2008. During the pendency of the case, the petitioner has filed CRL.MP.No.4563 of 2019, for compounding the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel appearing for the petitioner would submit that as per the the guidelines issued by the Honourable Supreme Court, the case of Damodar S. Prabhu Vs. Sayed Babalal H. reported on (2010) 5 SCC 663, in the event of offence under Section 138 of Negotiable Instrument Act, the offence should have been compounded even during the pendency of the appeal or at the stage of revision. In case the parties are ready to compound the offence, they should approach the Court and they have to pay a sum equal to 15 % of the Cheque amount. As per the guidelines of the Honourable Supreme Court and also the direction of this Court, the revision petitioner has already deposited a sum of Rs.1,87,500/- equivalent to the 15% of the cheque amount and also has filed the petition to the compound the offence.

5. The learned counsel for the respondent has stated no objection to compound the offence. Since the offence under Section 138 of Negotiable Instrument Act is a compoundable offence, the petitioner was directed to compensate the cheque amount to the respondent/complainant, while filing the appeal before the Session Judge. The Session Judge, while admitting the appeal, passed a conditional order directing the revision petitioner/accused to deposit a sum of Rs.50,000/- before the Magistrate in the STC.No. 356/2018. The parties have now consented for compounding of the offence. The petitioner has undertaken to pay the balance of Cheque amount by way of DD by 10.07.2019. The learned counsel for the respondent also agreed for the same.

6. Considering the facts and circumstances of the case and also considering the guidelines issued by the Honourable Supreme Court, the case of Damodar S. Prabhu Vs. Sayed Babalal H. reported in (2010) 5 SCC 663 the petitioner has deposited 15% equivalent to the cheque amount before the registry and this Court has accepted the deposit of 15% of the amount equivalent to the cheque amount towards the compounding fees, hence, this petition is allowed for compounding the offence under Section 138 of Negotiable Instrument Act and the petition for compounding of offence in CrI.MP.No.4563 of 2019 is allowed. The Revision petitioner is directed to pay a sum of Rs. 11,94,356/-, by way of DD drawn in the name of the respondent on or before

10.07.2019 failing which the order passed by this Court shall stand cancelled and the respondent is at liberty to proceed further and the revision shall stand restored automatically without any further reference and the respondent is permitted to withdraw a sum of Rs.50,000/- deposited before the Magistrate in the STC.No. 356/2018, without filing any formal application.

7. In the result, the Revision Petition is allowed on condition that the revision petitioner fails to pay the amount, the order passed by this Court shall stand cancelled without any further reference to this Court and the respondent is at liberty to proceed against the revision petitioner, in accordance with law. Registry is directed to remit the 15% of the amount to the credit of Tamil Nadu State Legal Service Authorities, Chennai as per the guidelines given by the Hon'ble Supreme Court. Consequently, connected miscellaneous petition in Crl.MP.No. 4563 of 2019 is allowed and the Crl.M.P.No. 4561 of 2019 is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge, Salem
2. The District Munsif-cum-Judicial Magistrate, Vazhappady.
3. The Registrar General, High Court, Madras 104.
4. The II Additional District and Sessions Judge, Salem

+1 CC to Mr.K.Selvaraj, Advocate sr 35250.

+1 CC to Mr.S.Kalyanaraman, Advocate sr 35134.

Crl.R.C.No.339 of 2019 and
Crl.M.P.Nos.4563 & 4561 of 2019

NR(CO)
SP(25/04/2019)