

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.10130 of 2019

1. M/s Silver Sea Logistics Private Limited
Old No.1, New No.3, First Floor,
Lake View Road, Adambakkam,
Chennai - 600 088.

2. K.Rebakah ...Petitioners/A1 & 3

Vs

1. M/s.Zn Synergies Private Limited,
Represented by its Executive Director,
Mr.Siddique Hussain, No.38/2, First Floor,
Venkatachala Street, Shenoy Nagar,
Chennai - 600 030.

2. K.Komalavallee ...Respondents/Complainant & 2nd Accused

Prayer: Criminal Original Petition filed Under Section 482 of the Code of Criminal Procedure, to set aside the impugned judgment in C.C.No.2919 of 2015 dated 11.03.2019 delivered by the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai, based on the Joint Compromise Memo arrived between the petitioners and the 1st respondent/complainant.

For Petitioners : Mr.R.Manickavel

O R D E R

This Criminal Original Petition has been filed by the petitioners to set aside the impugned judgment in C.C.No.2919 of 2015, dated 11.03.2019 passed by the learned Metropolitan Magistrate, (Fast Track Court-II), Egmore, Allikulam, Chennai-600 003, based on the Joint Compromise Memo arrived between the petitioners and the 1st respondent/complainant. Thereby the Trial Court has convicted the petitioners/A1 & A3 for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "NI Act") and sentenced them to undergo simple imprisonment for a term of one

year as per Section 255(2) Cr.P.C. The A1 and A3 are directed to pay compensation for a sum of Rs.9,92,938/- to the Respondent/Complainant as provided under Section 357(3) of Cr.P.C., read with section 138 of the NI Act. In default, the A3 shall undergo simple imprisonment for another term of three months in addition to her substantive sentence.

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

3. The learned counsel appearing for the petitioners submitted that after the conviction, the matter has been settled between the parties and to that extent, they filed a Joint Compromise Memo, dated 03.04.2019.

4. The learned counsel appearing for the petitioners has 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 petitioners are 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 is squarely applicable to the present case. After the conviction was passed by the Trial Court dated 11.03.2019, the petitioners and the respondents have entered into a Joint Compromise Memo and the cheque amount was paid. The said Joint Compromise Memo, dated 03.04.2019 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. Considering the above facts and circumstances of the case, the parties having been 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 petitioners herein are acquitted from all the charges leveled as against the petitioners under Section 138 of the Negotiable Instruments Act.

Sd/-
Assistant Registrar (AD-IV)

//True copy//

Sub Assistant Registrar

msm

To

1. The Metropolitan Magistrate,
Fast Track Court-II, Egmore, Chennai.
2. The Public Prosecutor, High Court, Madras.

Crl.O..P.No.10130 of 2019

SAI (CO)
GMY (27/05/2019)

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