

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.05.2019

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.13894 of 2019

R.Sivakala

... Petitioner/Accused

Vs.

D.Sethuram

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to permit the petitioner and respondent, to compound the offence, based on the settlement arrived between the parties, relating to the conviction imposed in the Judgment dated 17.11.2016 made in C.C.no.131 of 2013 on the file of the learned Judicial Magistrate (Fast Track Court No.1, Magistrate Level), Coimbatore confirmed in the Judgment dated 12.02.2018 made in C.A.No.183 of 2016 on the file of the learned V Additional District & Sessions Court, Coimbatore, which was also confirmed in the order dated 11.04.2019 made in CrI.R.C.No.1009 of 2018 passed by this Court.

For Petitioner : M/s.M.Guruprasad

For Respondent : M/s.C.Arunkumar

O R D E R

This Criminal Original Petition has been filed to compound the offence based on the settlement arrived between the petitioner, who is the accused and the respondent, who is the complainant in C.C.No.131 of 2013 on the file of the Judicial Magistrate (Fast Track Court No.1, Magistrate Level), Coimbatore, on a private complaint filed by the respondent for the offence under Section 138 of the Negotiable Instruments Act.

2. The trial Court by Judgment dated 17.11.2016 has found the petitioner guilty and convicted him under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple Imprisonment for a period of six months and to pay compensation of Rs.18,50,000/- (Rupees eighteen lakhs fifteen thousand only) within two months from the date of Judgment. Aggrieved against the same, the petitioner had filed an appeal before the learned

V Additional District and Sessions Judge, Coimbatore in C.A.No.183 of 2016. The lower appellate Court by its Judgment dated 12.02.2018 had confirmed the trial Court Judgment of conviction on the petitioner. As against the Appellate Court Judgment, the petitioner filed Criminal Revision before this Court in CrI.R.C.No.1900 of 2018. This Court in revision by its Judgment dated 11.04.2019 had confirmed the findings of the lower Court, thereby confirming the Judgment of conviction rendered by the Appellate Court.

3. Thereafter, the petitioner had approached the respondent and arrived at a compromise and settlement. As per the settlement, the respondent had received a sum of Rs.7,00,000/- (Rupees seven lakhs only), out of which, Rs.6,50,000/- (Rupees six lakhs fifty thousand only) was paid by way of demand draft vide D.D.No.510445, dated 13.05.2019 drawn on ICICI Bank Limited, Tiruppur Main Branch, Tiruppur and Rs.50,000/- (Rupees fifty thousand only) by way of cash as full and final settlement. Thereafter, a joint memo was filed by the petitioner before the Fast Track Court (Magistrate) No.I, Coimbatore.

4. In the joint compromise memo filed by the petitioner/accused, the earlier proceedings and the settlement arrived between them. Today, i.e., on 29.05.2019 both the petitioner and the respondent had appeared before this court and filed an affidavit to that effect. They reiterated the Joint memo of compromise and also confirmed the compromise and settlement arrived between them were come to give quietest to the proceedings between them.

5. The learned counsel for the petitioner and the respondent confirmed the same. The learned counsel for the petitioner relied upon the decision of this Court in D.Simpson and Ors. Versus S.T.Perumal and Ors reported in MANU/TN/0928/2014, wherein this Court had elaborately dealt, as regards the principal of functus officio would not apply even after the dismissal of the revision filed before this Court and making reliance on Judgments of the Hon'ble Apex Court in these aspects has held as follows:-

"21. Having so understood the sweep of the powers under Section 482 Cr.P.C. I need only mention that the powers under Article 226/227 of the Constitution are coextensive if not wider in its sweep. The powers under Section 482 Cr. P.C. as also Article 226 and 227 of the Constitution are available with the Court to do justice in a given case when the conscience of the Court is satisfied that powers must be invoked.

22. It will be apposite to straight away look at Section 320 Cr. P.C. again. Section 320 does not specifically refer to composition prior to the commencement of the prosecution or of composition after the sentence has become final. Section 320, which must be reckoned as consolidating the law relating to composition, does not specifically refer to pre-cognizance and post-finality (of conviction) compositions. Section 320(9) Cr. P.C. only says that there shall be no composition except in accordance with the provisions of Section 320 Cr. P.C. In as much as Section 320 does not specifically refer to compositions-pre-cognizance or post-finality, and Section 320(1) only speaks of composition without any fetters or limitations about time and stage, section 320(9) cannot be held to fetter the powers in such situations.

23. The rationale underlying Section 482 Cr. P.C. is that the interests of justice may at times transcend the interests of mere law. In the peculiar facts and circumstances of a given case when the High Court considers it necessary, proper and fit and feels impelled and compelled to act in aid of justice, it should not be without powers and helpless. While appreciating the width and amplitude of the powers under Section 482 Cr. P.C. this principle cannot be lost sight of. Of course if there is a specific express bar or if the stipulations point to an implied bar, such powers cannot normally be invoked.

24. We now come to the crucial question as to whether this court, having already disposed of the revisions, can invoke the powers under Section 482 Cr. P.C. The revision has been disposed of and the verdict of guilty, conviction and sentence have now become final. I have come across decisions which stipulate that in view of Section 362, even this Court exercising original power as a criminal court under Section 482 Cr. P.C. cannot go against the mandate of Section 362. The decision in Smt. Sooraj Devi v. Pyare Lal and Another. MANU/SC/0228/1981 : (1981) 1 SCC 500 clearly holds that after the judgment is pronounced, on the same facts powers under Section 482 Cr. P.C. cannot be invoked in view of the specific bar under Section 362. This position has been held repeatedly. In Hari Singh Mann v. Harbhajan Singh Bajwa MANU/SC/0665/2000 : AIR 2001 SC 43, it was held by the Supreme Court as follows

in paragraphs 8 and 9:

8. XXX XXX

The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the Court.

9. There is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment W.P.C. No. 34540 of 2006 & connected cases passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such power cannot be exercised with the aid or under the cloak of Section 482 of the Code.

In *State of Kerala v. M.M. Manikantan Nair* MANU/SC/0307/2001 : AIR 2001 SC 2145 the Supreme Court held so in paragraph 6:

6. The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the Court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal Court can review its own judgment or order after it is signed.

In *Moti Lal v. State of Madhya Pradesh* AIR MANU/SC/0362/1994 : 1994 SC 1544 the Supreme Court held so in paragraph 2:

2. Section 362 Cr. P.C. in clear terms lays down that the Court cannot alter judgment after the same has been signed except to correct clerical or arithmetical errors. That being the position the High Court had no jurisdiction under Section 482 Cr. P.C. to alter the earlier judgment.

In *Damodaran v. State* 1992(2) KLT 165 and in *Tanveer Aquil v. State of Madhya Pradesh* : 1990 Suppl. SCC 63 we find observations which suggest that a post revision composition cannot be readily accepted. Those decisions, according to me, only reiterate the principle that a trial, appellate or

revisional court which is functus officio in respect of a subject matter cannot thereafter exercise powers in respect of such disposed of matters in view of Section 362 Cr. P.C.

25. But these decisions cannot be held to cover a situation when post-revision there has been a substantial change in the circumstances and a later request is made in a separate application under Section 482 Cr. P.C. or Article 226 or 227 of the Constitution. That question was specifically considered by the Supreme Court in *Mostt. Simrikhia v. Smt. Dolley Mukherjee* (MANU/SC/0440/1990 : 1990 CrL. L.J. 1599). In paragraph 2 of the said decision, the Supreme Court has observed thus:

If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under S. 362.

In the instant cases, when the revision petition was disposed of by this Court, this circumstance—that the parties settled the dispute and the complainant compounded the offence was not there at all. It is a subsequent change in circumstance. The decision in *Mostt. Simrikhia v. Smt. Dolley Mukherjee* (supra) squarely applies. That was a case where an earlier application under Section 482 Cr. P.C. was dismissed, but still the Supreme Court held that a change in circumstances is sufficient to justify the invocation of the powers afresh under Section 482 Cr. P.C. notwithstanding the bar under Section 362 Cr. P.C. In the instant case, the powers under Section 482 Cr. P.C. have not been sought to be invoked earlier. Only the revisional powers were exercised. That is all the more the reason why under the changed circumstances the extra ordinary inherent jurisdiction under Section 482 Cr. P.C. can be invoked. In the light of the dictum in *Mostt. Simrikhia* earlier decisions rendered and subsequent decisions, which do not refer to the said decision

specifically and in which the opinion is expressed that the powers under Section 482 Cr. P.C. cannot be invoked after disposal of the revision in view of the bar under Section 362, cannot be held to lay down the law correctly."

6. In the light of the above Judgment, as also the compromise entered into between parties and change in circumstances, this Criminal Original Petition shall stands allowed.

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Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The V Additional District & Sessions Court,
Coimbatore,

2. The Judicial Magistrate
(Fast Track Court No.1, Magistrate Level),
Coimbatore.

+1cc to Mr.M.Guru Prasad, Advocate, SR.No.44473

CrI.O.P.No.13894 of 2019

Kak (15/07/2019)

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