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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.14252 of 2019

D.Felix Thyagarajan

.. Petitioner

Vs.

M.D.Radhakrishnan

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to permit the Petitioner and the Respondent to compound the offence, based on the Joint Compromise Memo filed in I.P.No.131 of 2006 dated 11.11.2014 before this Court, relating to the conviction imposed in the judgment in C.C.No.304 of 2001 dated 15.12.2003 on the file of Learned II Metropolitan Magistrate, Egmore, Chennai and the same was confirmed in C.A.No.2 of 2004 on the file of the learned III Additional Sessions Judge, In-charge II Additional Sessions Judge, Chennai, in Judgment dated 29.9.2004 and the same was also confirmed by this Court in R.C.No.1946 of 2004 by order dated 06.09.2006 and set the Petitioner at liberty.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.S.P.Meenakshisundaram

O R D E R

This petition has been filed seeking to set aside the judgment of conviction and sentence passed in C.C.No.304 of 2001 and confirmed in Crl.A.No.2 of 2004 and further confirmed in Crl.R.C.No.1946 of 2004 by this Court.

2.The petitioner who faced criminal proceedings for an offence under Section 138 of the Negotiable Instruments Act, was convicted and sentenced by the trial Court and the same was confirmed by this Court.

3.Subsequently, there has been a compromise between the parties in parallel proceedings in I.P.No.131 of 2006 and a memorandum of compromise was also filed before the Official



Assignee, Chennai whereby a sum of Rs.11,50,000/- was settled by the petitioner in favour of the respondent.

4.The learned counsel for the petitioner submitted that in view of the fact that the offence under Section 138 of Negotiable Instruments Act can be compounded even after the judgment of conviction, the subsequent compromise entered into between the parties can be taken into consideration and the conviction and sentence passed against the petitioner can be interfered by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

5.In order to substantiate his submission, the learned counsel for the petitioner relied upon the various reported judgments.

6.The learned counsel for the respondent submitted that the parties have mutually settled the dispute among themselves and memorandum of compromise was also filed before the Official Assignee, Chennai to that effect. Therefore, the learned counsel for the respondent does not have any objection in the conviction and sentence passed against the petitioner from being set aside by this Court.

7.In view of the undisputed facts, it will be useful to rely upon the judgment cited by the learned counsel for the petitioner.

8.The Hon'ble Supreme Court in the case of K.Subramanian vs. R.Rajathi Represented by P.O.A.P. Kaliappan reported in (2010) 15 SCC 352 held as follows:-

"8.Having regard to the salutary provisions of Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

9.For the forgoing reasons CrI.MP.No.12801 of 2009 in which prayer to condone the delay of 39 days caused in filing review application is allowed and delay is condoned. The review petition succeeds. The order dated 11-9-2008 dismissing SLP (CrI.) No.6974 of 2008 arising out of CrI.MP No.14586 of 2008 is recalled. The said SLP is restored on file with its original number. CrI.MP No.12804 of 2009 in which the prayer is made by the petitioner to permit him to produce affidavits sworn by him on 1-12-2008 as well as the affidavit



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sworn by P.Kaliappan, power-of-attorney holder of R. Rajathi on 1-12-2008 as additional documents is allowed. CrI.MP No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal Case No. 726 of 2003 under Section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence.

10.The order of conviction and sentence recorded by all the courts are hereby set aside and the petitioner is acquitted of the charge levelled against him. All the applications including the review petition accordingly stand disposed of as also SLP (CrI.) No.6974 of 2008 arising out of CrI.MP No.14586 of 2008 in terms of this order."

9.This Court in the case of M/s.Armour Pharmaceuticals, Rep. by Mr.T.R.Tagore, Plot No.42, Anrich Industrial Estate, Bollaram, Medak District-502 325 and another v. M/s.T.V.S.Finance & Services Ltd., Rep. by Mr.Balakrishnan, No.24, Haddows Road, Chennai-600 006 (CrI.R.C.Nos.43 to 46 of 2011 dated 12.06.2018) held as follows:-

"3.By virtue of the enabling provision under Section 147 of the Negotiable Instruments Act, the offence has been made compoundable notwithstanding anything contained in the Code of Criminal Procedure. Normally, this Court in exercise of its powers under Section 482 of the Criminal Procedure Code can compound even a non compoundable offence where it is at the stage of an FIR or a final report or a pending criminal proceedings. But where criminal proceedings had ended up and conviction and punishment had been imposed, the question arises as to whether this Court in exercise of its powers under Section 482 of the Criminal Procedure Code can compound the offence.

4.The Hon'ble Supreme Court in the judgment reported in Manohar Singh .Vs. State of Madhya Pradesh and Another reported in [2004 (13) SCC page 75] has specifically dealt with this issue as to whether the High Court in exercise of its jurisdiction under Section 482 Cr.PC can set aside the conviction and sentence imposed by the Courts below on the ground that the parties have settled the matter amicably. The Hon'ble Supreme Court while dealing with this issue has specifically



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observed as follows:

However a compoundable offence can be compounded in view of compromise, if the Court finds it proper to do so even after conviction if the appeal is pending.

5. Now by virtue of the insertion of Section 147 of the Negotiable Instruments Act, the offence under Section 138 of the Negotiable Instruments Act has become compoundable. This Court in exercise of its jurisdiction under Section 482 of Criminal Procedure Code, taking into consideration the facts and circumstances of the case, deems it fit to quash the conviction and sentence by the courts below in view of the settlement arrived at between the parties."

10. The Hon'ble Supreme Court in the case of *Meters and Instruments Private Limited and another vs. Kanchan Mehta* reported in (2018) 1 SCC 560 held as follows:-

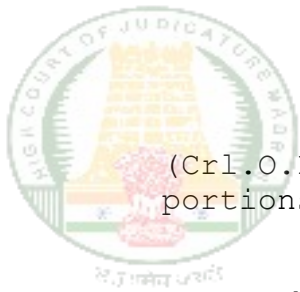
"18. From the above discussion the following aspects emerge:

18.1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

11. This Court in the case of *D. Simpson v. S.T. Perumal*



(CrI.O.P.Nos.8352 & 6556 of 2014, dated 02.04.2014) relevant portions are extracted hereunder:-

"4.....

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 & anr. (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 (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 (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 1994 SC 1544) the Supreme Court held so in paragraph 2:



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"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* (1990 CrL.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."

26. 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* (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



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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.

27. In the light of the above judgments, as also the compromise entered into between parties, Crl.O.P.No.8352 of 2014 shall stand allowed, with costs of Rs.25,000/- payable by the petitioner to the Tamil Nadu State Legal Services Authority, within a period of two (2) weeks from the date of receipt of a copy of this order."

12. In view of the above, this Court has no hesitation to set aside the judgment of conviction and sentence passed against the petitioner. Since the parties have mutually compromised the issue and the money has been settled in favour of the respondent.

13. In the result, this Criminal Original Petition is allowed and the judgment in C.C.No.304 of 2001 dated 15.12.2003 on the file of Learned II Metropolitan Magistrate, Egmore, Chennai and the same confirmed in C.A.No.2 of 2004, on the file of the learned III Additional Sessions Judge, In-charge II Additional Sessions Judge, Chennai, in Judgment dated 29.9.2004 and the same further confirmed by this Court in Crl.R.C.No.1946 of 2004, by order dated 06.09.2006, is hereby set aside.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

VS



To

1. The II Additional Sessions Judge, In charge-
II Additional Sessions Judge, Chennai

2. The Principal Judge, Chennai

3. The II Metropolitan Magistrate,
Egmore, Chennai

4. The Chief Metropolitan Magistrate, Chennai

+1cc to Mr.R.Vivekananthan, Advocate SR.No.55674

+1cc to Mr.S.P.Meenakshisundaram, Advocate SR.No.55581

Crl.O.P.No.14252 of 2019

PA(CO)
GMY(05/08/2019)