

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

CRL. OP. No. 28027 of 2019

1. T. Jitendra

2. T. Mahaveer ... Petitioners/Accused

-Vs-

V. Gangadaran ... Respondent/Complainant

Prayer : Petition filed under Section 482 of Criminal Procedure Code to compound the offence of 138 of Negotiable Instruments Act in C.C. No. 7357 of 2014 passed by the Metropolitan Magistrate Fast Track Court, No.II, Egmore, Chennai dated 18.03.2014, under Section 147 of Negotiable Instruments Act, between the petitioners and the respondent based upon the joint compromise entered into between the petitioners and the respondent and set him to liberty (after disposal of CRL. RC. No. 1352 of 2017 by this Hon'ble Court an order dated 19.03.2019).

For Petitioners : C. Prabakaran

For Respondent : Mr.B.S.Jothiraman

O R D E R

This Criminal Original Petition has been filed to compound the offence under Section 138 of Negotiable Instruments Act in C.C.No. 7357 of 2014 on the file of the Metropolitan Magistrate Fast Track Court, No.II, Egmore, Chennai, by order dated 18.03.2014, under Section 147 of Negotiable Instruments Act and also for consequential direction to set them at liberty after disposal of CRL. RC. No. 1352 of 2017 by this Court, by order dated 19.03.2019.

2. The respondent had instituted a complaint against the petitioners under Section 138 of Negotiable Instruments Act, 1881 in C.C. No. 7357 of 2014, on the file of the Metropolitan Magistrate Fast Track Court, No.II, Egmore, Chennai.

3. The facts of the complaint is that the petitioners have borrowed money from the respondent a sum of Rs. 2,00,000/- and Rs. 3,00,000/- based on a pro-note on 17.02.2010 and 27.06.2011 respectively. In lieu of discharging the said loan, both the petitioners issued two cheques and the said cheques when presented in bank, were returned unpaid as 'funds insufficient'.

4. After trial, considering the oral and documentary evidence, the learned trial Judge convicted the petitioners by judgment dated 18.03.2014 and sentenced the petitioners to undergo one year Simple Imprisonment and also directed the first petitioner to pay a sum of Rs. 4,00,000/- as compensation and the second petitioner to pay a sum of Rs. 6,00,000/- as compensation, in default both the petitioners should undergo Simple Imprisonment of three months. As against which, the petitioners have preferred an Appeal in C.A. No. 84 of 2017 on the file of the Principal Sessions Judge, Chennai and the same was also dismissed, whereby the learned Judge confirmed the conviction and sentence of the trial Court by order dated 04.10.2017. Thereafter, the petitioners have preferred Criminal Revision before this Court in CRL. RC. No. 1352 of 2017 and the same was also dismissed by order dated 19.03.2019.

5. In fact, the petitioners preferred Special Leave Petition before the Hon'ble Supreme Court in SLP Diary No. 33989 of 2019. When the matter was pending before the Hon'ble Supreme Court, the petitioners have settled the entire amount to the respondent. Thereafter, the SLP filed by the petitioners was also withdrawn on 02.12.2019. The petitioners have filed this petition to compound the offence under Section 138 of Negotiable Instruments Act.

6. In this regard, the learned counsel appearing for the petitioners filed a memo of compromise dated 21.10.2019 and also relied upon the judgment of this Court in CRL. OP. No 17518 of 2014 dated 25.07.2014, where this Court has held as follows:

"(i) (2010) 3 MLJ (Crl) 390 (SC) (Damodar S.Prabhu v. Sayed Babalal H) and (ii) (2014) 2 MLJ (crl) 654 (D.Simpson v. S.T. Perumal)

4. In the first case, the Hon'ble three Judges larger bench of the Supreme Court issued guidelines to whether the Court holding a trial or hearing an appeal, can impose costs on the accused, even while compounding an offence. In the course of discussion, the Hon'ble Apex Court in para 11 referred to the earlier judgment reported

in AIR 2010 SC 276 (K.M. Ibrahim v. K.P. Mohammed and another) for the legal proposition that the compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible. It is observed in paras 11 and 12 of the earlier decision as follows:

"11. Asfaras 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...

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."

The observation made in para 12 makes it abundantly clear that Section 147 of the Act does not bar the parties from compounding the offence under Section 138 even after proceedings has been concluded before the Appellate Forum. Thus, the observation of the Hon'ble Apex Court answered the first query raised herein about the stage at which compounding the offence can be made, on the basis of the settlement arrived at between the parties. Further, the Hon'ble Apex Court in (2010) 3 MLJ (Cr1) 390 (SC) (Damodar S. Prabhu v. Sayed Babalal H) issued guidelines that if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

5. In the second case reported in

(2014) 2 MLJ (Cr1) 654 (D.Simpson v. S.T. Perumal), the learned brother Judge of this Court, having found that the parties settled the dispute and the complainant compounded the offence and it is a subsequent change in circumstance, is pleased to hold that extraordinary inherent jurisdiction under Section 482 of Criminal Procedure Code can be invoked in view of the changed circumstances and allowed the petition on the basis of the compromise entered into between the parties. The learned brother Judge in his decision, referred to various decisions of the Hon'ble Supreme Court, one among which is the decision reported in AIR 2003 SC 1386 (B.S. Joshi v. State of Haryana) wherein the Hon'ble Apex Court is of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing and Section 320 of the Code does not limit or affect the powers under Section 482 of Criminal Procedure Code. These observations were made, while considering the question of quashing an FIR and the learned brother Judge also considered the question of quashing a sentence, which has become final, when the offence is legally compounded."

7. The case referred by the learned counsel for the petitioners is alias to the case on hand, though the conviction and the sentence was confirmed by this Court by way of revision and though the order of conviction became final and binding, the parties having arrived at compromise subsequently, the factum of compromise can be considered for allowing the parties to compound the offences subject to payment of cost.

8. In the result, conviction under Section 138 of Negotiable Instruments Act against the petitioners is compounded and order of conviction and sentence is set aside in view of the compromise arrived at between the parties on payment of cost of Rs. 20,000/- (Rupees Twenty Thousand Only) to the Tamil Nadu Legal Service Authority by the petitioners within a period of two weeks from the date of receipt of a copy of this order.

9. Accordingly, this Criminal Original Petition is ordered.

Sd/-
Deputy Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

vji

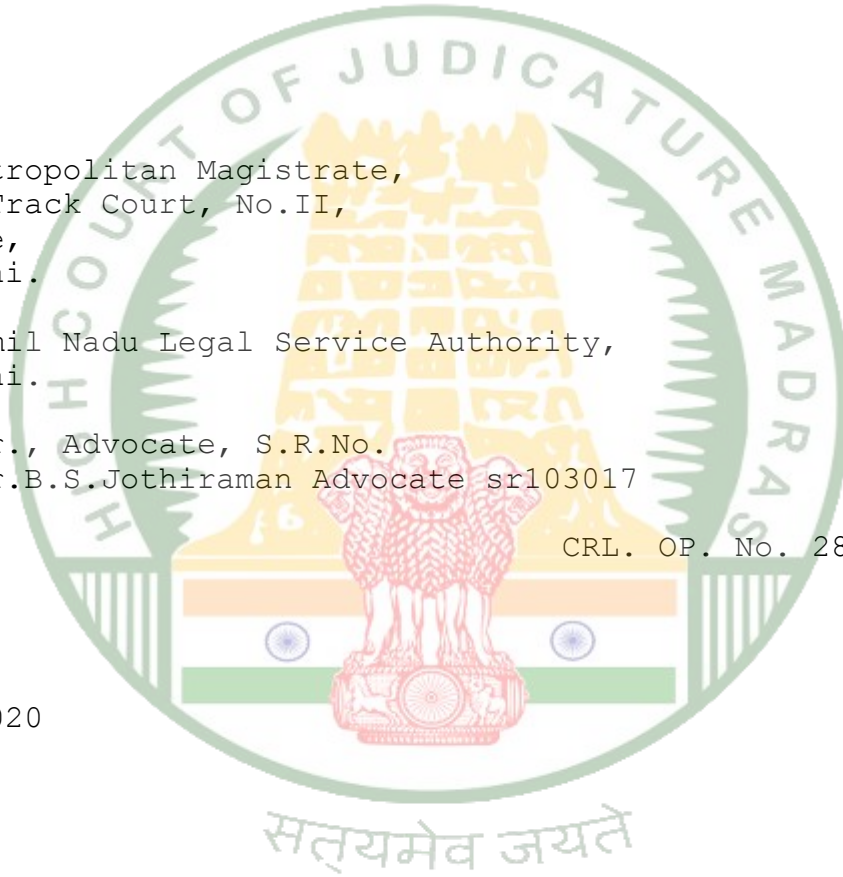
To

1. The Metropolitan Magistrate,
Fast Track Court, No.II,
Egmore,
Chennai.
2. The Tamil Nadu Legal Service Authority,
Chennai.

+lcc to Mr., Advocate, S.R.No.
+lcc to Mr.B.S.Jothiraman Advocate sr103017

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