

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.13129 of 2011

and

M.P.Nos.1 and 2 of 2011

1.Cossy Casual Comforts,
Rep. by its Managing Partner
P.Saravana Balaji
Having Office at
No.105, Muthur Main Road,
Solar Pirivu, Erode.

2.P.Saravana Balaji Petitioners

Vs.

M/s.Sri Ragavendra Tex,
Rep. by its power of Attorney
D.Chandra Jothy,
S/O.G.Dakshinamoorthy,
23, 5th Pulikkuthi Street,
Gugai, Salem - 636006.

... Respondent

PRAYER: Petition filed under Section 482 of Cr.P.C., seeking to call for the records of the case in S.T.C.No.379 of 2010 on the file of the Judicial Magistrate III, Salem and quash the same in so far as the Petitioner.

For Petitioners : Mr.C.Veeraraghavan

For Respondent : Mr.R.Asokan

O R D E R

This Criminal Original Petition has been filed seeking to call for the records of the case in S.T.C.No.379 of 2010 on the file of the Judicial Magistrate III, Salem and quash the same.

2. The case of the petitioners is that the respondent is a partnership firm and one P.Velliangiri is the Partner of the firm and he had given power of attorney to his Manager D.Chandra Jothy. The allegation is that the petitioner sent a purchase order to the respondent on 07.10.2009 for Rs.9,13,200/-. Towards part payment, on 19.02.2010, the petitioner issued cheque for a sum of Rs.2,00,000/- bearing No.307430, State Bank

of India, Erode. The said cheque was deposited in Corporation Bank, Salem and the same was returned on 25.02.2010 for the reason "payment stopped by drawer". Hence, a complaint was filed by the respondent and the same was taken on file in STC.No.379 of 2010 by the learned Judicial Magistrate III, Salem. Challenging the same, the present criminal original petition has been filed.

3.The learned counsel for the petitioners submitted that during the pendency of this petition, the petitioners and the respondent arrived at a compromise and the petitioners have settled the amount under the cheque on 14.06.2017 by way of D.D. Bearing D.D.No.237379 dated 13.06.2017 for Rs.2,00,000./-, drawn on Canara Bank, Erode. The respondent/ complainant accepted and received the payment and has consented and filed an affidavit for compounding the offence under Section 138 of the Negotiable Instruments Act.

4.To that extent, an affidavit signed by the Partner of the respondent Company Mr.P.Velliangiri has been filed. The relevant portion of the affidavit reads as follows:-

"2. I state that I preferred complaint against the petitioners herein u/s.138 of Negotiable Instrument and the same has been taken on file in STC.No.379 of 2010 by the Judicial Magistrate No.III, Salem. Challenge the said proceedings, the petitioners preferred the above quash petition before this Hon'ble Court. The petitioners have settled the amount under the cheque on 14.06.2017 to my counsel appeared before this Hon'ble Court by way of D.D. Bearing D.D.No.237379 dated 13.06.2017 for Rs.2,00,000.-, drawn on Canara Bank, Erode.

3.I state that in view of the amount settled by the petitioners I am not interested to prosecute the petitioners and if the trial is proceed against the petitioners may not ended in conviction and the offence committed by the petitioners is not against the public. In view of the amicable settlement between us I have no claim against the petitioners in respect of the above case and I have no further grievance against the petitioners. Hence I may be permitted to compound the offence u/s.138 and 142 of N.I.Act. "

5. In the case of Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663], the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

'16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

'17.2. Compounding of offences.-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court.'

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act - Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

'...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only

a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.''

6. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant has also received the amount from the petitioner/ accused and in this regard an affidavit has also been filed by the complainant. Therefore, the complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. Further Section 147 of the Negotiable Instruments Act also empowers this Court to compound the offence under section 138 of the Negotiable Instruments Act.

7. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the affidavit filed by the complainant, this Court is of the view that nothing survives for adjudication in this matter.

8. Accordingly, this criminal original petition is closed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate III,
Salem.

+1cc to Mr.C.Veeraraghavan, Advocate Sr.No.881

AKM/14.02.2020 /4P-3C/

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