



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 25.02.2020

PRONOUNCED ON : 28.02.2020

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THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) Nos.189 of 2012 & 281 of 2013

CRL. A. (MD) No.189 of 2012

S.P.Ramamurthy .. Appellant / Respondent / Complainant

Vs

A.R.Jinna Mohamed .. Respondent / Appellant / Accused

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to set aside the judgment passed by the learned Sessions Judge, Trichy in C.A.No.63 of 2010, dated 05.07.2011 and confirm the judgment in C.C.No.635 of 2006, dated 25.05.2010, passed by the learned Judicial Magistrate, Trichy and may convict the accused.

For Appellant : Mrs.AL.Ganthimathi

For Respondent : Mr.Sulthan Basha
for M/s. Ajmal Associates

CRL. A. (MD) No.281 of 2013

S.P.Ramamurthy .. Appellant / Respondent / Complainant

Vs

S.Noordin .. Respondent / Appellant / Accused

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to set aside the order dated 17.07.2013 in Criminal Appeal No.37 of 2012, on the file of the Ist Additional District Judge, Tiruchirapalli, reversing the order of conviction and sentence dated 22.05.2012 in C.C.No.353 of 2008, on the file of the learned Judicial Magistrate No.1, Tiruchirapalli and thereby allow the present Criminal Appeal.

For Appellant : Mrs.AL.Ganthimathi

For Respondent : Mr.N.Balakrishnan

**COMMON JUDGMENT**

The appellant in Crl.A.(MD).No.189 of 2012 is the complainant, who filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent / accused in the above said Appeal. The trial Court by the judgment dated 25.05.2010 made in C.C.No.635 of 2006 had found the respondent guilty and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment. Against which, the respondent had filed Appeal in C.A.No.63 of 2010, before the learned Additional District Judge, Trichirappalli, Fast Track Court No.I and the learned Additional District Judge by the common judgment dated 05.07.2011 had set aside the conviction and sentence. Against which, the appellant / Complainant has filed the present Appeal in Crl.A.(MD).No.189 of 2012.

2. The appellant in Crl.A.(MD).No.281 of 2013 is the complainant, who filed a private complaint under Section 138 of the Negotiable Instruments Act, against the respondent / accused in the above said Appeal. The trial Court by the judgment dated 22.05.2012, made in C.C.No.353 of 2008, had found the respondent guilty and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment. Against which, the respondent had filed Appeal in C.A.No.37 of 2012, before the learned I Additional District Judge, Trichirappalli and the learned I Additional District Judge by the judgment dated 17.07.2013, had set aside the conviction and sentence. Aggrieved over the same, the appellant / Complainant has filed the present Appeal in Crl.A.(MD).No.281 of 2013.

3. The case of the prosecution is that the accused in both the cases had borrowed some amount from the appellant herein and issued promissory notes and cheques for repayment. When the cheques were presented before the Bank and the same were returned with endorsement such as "account closed" and "Stop payment". Thereafter, the appellant / complainant issued statutory notices to the accused and filed private complaints before the Trial Court.

4. Today, when the matters are taken up for hearing, it is submitted by both the counsel that the Criminal Appeals filed by the appellant are against the acquittal of the respondents / accused. It is further submitted that during the pendency of these Criminal Appeals, compromise has been arrived at between the Appellant and the respondents and dispute has been resolved amicably between both of them and to that effect, an undertaking affidavit has been filed by the respondents and it was signed by both counsel. It is further submitted that today the accused has paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) by way of Demand Draft



No.24022020 from the HDFC Bank to the appellant. The undertaking affidavit filed by the respondents is extracted hereunder:-

"1).I respectfully state that I am the respondent of Crl.A.(MD).No.18 of 2012 and I am well acquainted with the facts of the case. I have filed the present petition me and on behalf of the respondent namely Noordeen in Crl.A.(MD).No.281 of 2013 on the file of this Court.

2).I respectfully state that the appellant had filed cases as against me and my son-in-law under the 138 of the Negotiable of Instruments Act and the same was taken cognizance in C.C.No.635 of 2006 and S.T.C.No.19 of 2009 on the file of the Judicial Magistrate Court No.II, Trichy. The learned Judicial Magistrate Court convicted me and my son-in-law for the above said cases. Aggrieved over the same, I and my son-in-law had approached the Additional District Judge, Fast Track Court No.I, Trichy, in C.A.No.62 and 63 of 2010. The Lower Appellate Court was acquitted me and my son-in-law. Subsequent to the same, the complainant had filed the Criminal Appeal Petition before this Hon'ble Court in Crl.A.(MD). Nos.189 of 2012 and 281 of 2013 and the same was pending till date.

3).I respectfully state that, at the time of pending adjudication, we along with the appellant had amicably agreed to resolve our differences out of Court. In order to resolve the same, we along with the appellant have entered into a compromise. According to the said compromise, out of 90 Lakhs, the appellant has agreed to receive a sum of Rs.28,00,000/- (Twenty Eight Lakhs), from us in order to discharge their debt as full and final settlement. On the strength of the same, that on 25.02.2020, initially the appellant / complainant has received a Demand Draft bearing No.007057 drawn at HDFC Bank, Pudukottai Branch to the tune of Rs.3,00,000/- and I along with my son-in-law jointly liable to remaining the outstanding will be settle by us under the following respective phased manner by way of issuing demand draft through their both counsel.



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Date / Month / Year	Amount
25.03.2020	5,00,000.00
25.04.2020	5,00,000.00
25.05.2020	5,00,000.00
25.06.2020	5,00,000.00
25.07.2020	5,00,000.00
Total	25,00,000.00

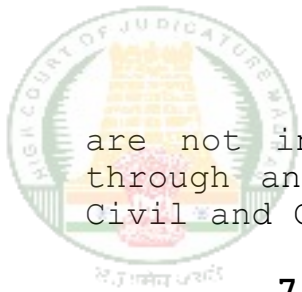
4).I respectfully state that, I along with my son-in-law have undertake to repay the above mentioned respective installments within stipulated time without any default. If any default in the above said terms, the complainant / appellant has right to take any legal action as against us. When the entire amount will be settled by us, the complainant has liable to return the following cheques along with blank letter heads and pro-notes signed by us which were kept under the custody of the complainant / Appellant.

The details of the cheques as follows:-

S.No.	Cheque No.	Date	Bank	Amount
1.	034549	17.05.2006	Canara Bank	25.00.000.00
2.	034550	24.05.2006	Canara Bank	25,00,000.00
3.	229208	28.04.2005	Indian Overseas Bank	Blank Cheque
4.	229209	28.04.2005	Indian Overseas Bank	Blank Cheque
5.	261693	28.04.2005	ICICI Bank	Blank Cheque
6.	261694	28.04.2005	ICICI Bank	Blank Cheque
7.	261695	28.04.2005	ICICI Bank	Blank Cheque

5. The payment has to be made as per the schedule. The appellant though agreed for the compromise and undertakes to honour the commitment and make the payment as per the agreed compromise, the only apprehension is that the appellant / complainant had received the various cheques and some of them are blank cheques. The appellant apprehends that it might be used later further to persecute the respondents / accused.

6. At this juncture, the learned counsel appearing for the appellant submitted that the appellant is not interested to proceed further with these cases. He further undertakes before this Court that the appellant shall not proceed further against the respondents / accused in both cases. Further reiterates that the above cheques



are not in a possession and should not use the same by him or through anyone in prosecuting, initiating any proceedings in both Civil and Criminal.

7. Recording the undertaking and submissions of both the appellant and the respondents, these Criminal Appeals stand disposed of accordingly.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

To

- 1) The Sessions Judge, Trichy.
- 2) The Judicial Magistrate, Trichy.
- 3) The Ist Additional District Judge, Tiruchirapalli.
- 4) The Judicial Magistrate No.I, Trichy.
- 5) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.AL.GANTHIMATHI, Advocate (SR-9424 & 9425[F]

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-9473 & 8345[F]

PRE DELIVERY JUDGMENT IN
CRL. A.(MD) Nos. 189 of 2012
& 281 of 2013
Dated 28.02.2020.

DB(CO)

TR(13.03.2020)5P 12C