



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 06.02.2020

JUDGMENT DELIVERED ON : 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL MP (MD) No.8933 of 2019

in

CrI.RC.(MD) No.602 of 2012

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P.N.Stalin .. Petitioner / Petitioner
Vs.
L.Kuzhanthaivelu, ... Respondent / Respondent

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, 1973 r/w Section 147 of Negotiable Instruments Act, 1881, to permit the petitioner to deposit the Cheque amount of Rs.2,00,000/-, before the Judicial Magistrate Court No.II, Srivilliputtur, to the credit of the case in C.C.No.249 of 2002.

Prayer in CrI.RC(MD) No.602 of 2012

Criminal Revision filed under Sections 397 and 401 Cr.P.C., to call for the records and set aside the conviction and modified sentence imposed by the Court of the Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A.No.154 of 2004 dated 27.07.2012 confirming the conviction and sentence imposed by the Judicial Magistrate Court No.II, Srivilliputtur in C.C.No.249 of 2002 dated 24.09.2004 and allow this criminal revision petition.

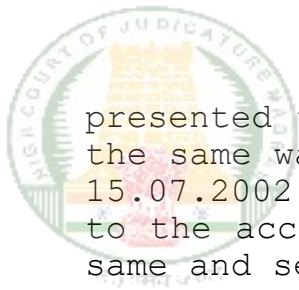
For Petitioner : Mr.M.Jothi Basu
For Respondent-1 : Mr.S.Venkatesh

ORDER

This Criminal Miscellaneous Petition has been filed praying to permit the petitioner to deposit the Cheque amount of Rs.2,00,000/-, before the Judicial Magistrate Court No.II, Srivilliputtur, to the credit of the case in C.C.No.249 of 2002.

2. The petitioner, who is accused in C.C.No.249 of 2002 in a private complaint filed by the respondent, for the offence under Sections 138 and 141 of Negotiable Instruments Act. The complaint was filed against four persons of which A1 is Jai Fire Works (P) Ltd., a Company; A2 and A3 were its Directors and A4 is the Managing Director of the 1st Accused Company.

3. The case is that during the month of October 2001, the accused borrowed a sum of Rs.2,00,000/-, as hand loan, to develop his business and agreed to repay the loan amount with 24% interest, for which, on 22.01.2002, the accused had issued three cheques, bearing Nos.954240, 504900 and 954201 respectively for a sum of Rs.1,00,000/- and Rs.50,000/- and Rs.50,000/-, drawn in State Bank of India (SBI), Sivakasi Branch. The respondent / complaint



presented the cheques in his account at SBI, Srivilliputtur Branch, the same was returned, as "Exceeds Arrangements", by its Memo dated 15.07.2002. On 23.07.2002, the complainant issued statutory Notice, to the accused, for dishonour of cheque. The accused received the same and sent a reply on 06.08.2002, denying the liability.

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4. On completion of trial, the trial Court found the accused guilty and sentenced the first Accused / Company to pay a fine of Rs.5000/-; the 2nd accused was sentenced to undergo 1 year R.I. and directed to pay a sum of Rs.5000/-, as fine, in default, to under go 3 months S.I., the accused Nos.3 and 4 were sentenced to under go 6 months S.I., by its Judgment dated 24.09.2004.

5. Aggrieved over the same, the Criminal Appeal in C.A.No.154 of 2004 by A1 and A2 and C.A.No.153 of 2004 by A3 and A4 were filed before the learned Principal Sessions Judge, Virudhunagar at Srivilliputhur. The appellate Court, by Judgment dated 27.07.2012, confirmed the conviction imposed by the trial Court, but reduced the sentence to 6 months for A2 and allowed C.A.No.153 of 2004, as regards A3 and A4.

6. Aggrieved against the same, a Revision in Crl.R,C(MD)No.602 of 2012, came to be filed by the petitioner / A2, against the finding and Judgment in C.A.No.154 of 2004, confirming the conviction of the accused in C.C.No.249 of 2002.

7. During pendency of the Revision, the petitioner attempted to settle the issue with the respondent, but he was unable to find out the whereabouts of the respondent. The petitioner had taken earnest steps to settle the issue during pendency of the Revision, but he was unable to do so, for the above said reasons.

8. This Court, by Judgment dated 18.12.2018, finding no reasons or sound ground to set aside the Judgment of the Court below dismissed the Criminal Revision and directed the learned Judicial Magistrate No.2, Srivilliputhur, to secure the petitioner viz., P.N.Stalin, to undergo the remaining period of sentence, if any.

9. The petitioner now come with this petition after making payment of Rs.2,00,000/- and compounding the offence with the respondent to the effect that a compromise memo had been filed wherein the receipt of Rs.2,00,000/- in cash had been accepted and the respondent having willingness and no objections to compound the offence. Further, the petitioner relied upon the Judgment of the Hon'ble Apex Court in **Damodar S.Prabhu Vs. Sayed Babalal** reported in **(2010 (2) MWN (Cr.) DCC 17 (SC))** on the object and scope of Negotiable Instruments Act wherein, in case of offence of dishonour of cheque, it is compensatory aspect of the remedy which will be given priority over the punitive aspect.

10. Further, submitted that the proceedings under Section 138 of Negotiable Instruments Act are a Quasi-Criminal proceedings and placed reliance on the decision of the Hon'ble Apex Court in **M.Abbas Haji Vs. TN.Channakeshava** reported in **(2019 (3) MWN (Cr.) DCC 49 (SC))**. Further, placing heavy reliance on the decisions of this Court in **D.Simpson Vs. S.T.Perumal** reported in **2014 (1) MWN (Cr.) DCC 161 (Mad)** and in **R.Sivakala Vs. D.Sethuram** reported in **2019 (3) MWN Cr. DCC 69** wherein this Court on earlier occasions, following the decisions of the Hon'ble Apex Court reported in **(2010 (2) MWN (Cr.) DCC 17 (SC) (cited supra)** and the Judgment of Kerala High Court in **Sabu George Vs. Home Secretary, Department of Home Affairs, New Delhi** reported in **2007 Cri.L.J.1865**, considering the compromise entered into between the parties, petition for compounding the offence was allowed, invoking the powers under Section 482 of Cr.P.C.,

11. The petitioner submitted that the Judgments of the Hon'ble Apex Court in **State of Madhya Pradesh Vs. Man Singh** reported in **(2019 SAR (Criminal) 1130)** and the Judgment of Hon'ble Apex Court in **New India Assurance Co.Ltd., Vs. Krishna Kumar Pandey** made in **Criminal Appeal No.1852 of 2019, dated 6th December 2019**, would not affect the case of the petitioner, since in those Judgments, the case was decided on merits and in one case, without hearing the affected parties orders passed behind his back. He submitted that CrI.R.C.(MD)602 of 2012 was decided without hearing the respondent / complainant and it cannot be construed as an order passed one on merits. Further, the order passed is in violation of fundamental principle of *audi alteram partem* and hence, prayed for compounding of the offence.

12. The learned counsel for the respondent submitted that the respondent was not aware of the proceedings pending before this Court and that is the reason he had not appeared when the CrI.R.C (MD)No.602 of 2012 was disposed of by this Court and the respondent / complainant's primary concerned is only to recover the money rather than seeing the petitioner / drawer of the cheque in jail and the dispute between them had been settled, the entire cheque amount has been received and the complainant has no objection for the offence being compounded.

13. Further both the petitioner and the respondent had appeared before this Court and the complainant acknowledged the receipt of the cheque amount and expressed his willingness to compound the offence. Further, as per Section 147 of Negotiable Instruments Act, the Apex Court, time and again held that at any stage compounding of offence under Section 147 of Negotiable Instruments Act can be done. It is to be noted Section 147 of Negotiable Instruments Act is a non-obstande clause and primacy is to compound the offence, once the matter has been compromised between the parties and the payment has been made in full and final settlement of the claims herein.

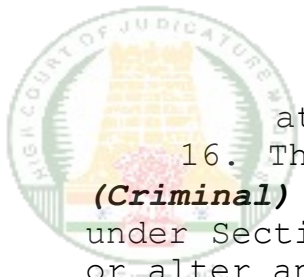


14. In this case, the petitioner / accused and the respondent / complainant had appeared before this Court, reiterated the receipt of cheque amount in full and final settlement of the claims herein and the matter has been compromised between them fully. The Hon'ble Apex Court, in the Judgment reported in **(2010 (2) MWN (Cr.) DCC 17 (SC)** (cited supra) had observed as follows:-

"... Unlike that for other forms of crime, the punishment here (in so far 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 seeing 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. If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

15. The proceedings under Section 138 of Negotiable Instruments Act are Quasi-Criminal. In the case of **State of Punjab Vs. Davinder Pal Singh Bhullar and Others** (2011) 14 SCC 770, it has been held that 'if a Judgment has been pronounced in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it in such an eventuality the orders becomes a nullity and the provisions of Section 362 Cr.P.C., would not operate'. The relevant paragraph is extracted hereunder, for better appreciation:-

" If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not



at fault."

16. The Hon'ble Apex Court in Judgment reported in **(2019 SAR (Criminal) 1130)** (cited supra) has held that the inherent powers under Section 482 of Cr.P.C., cannot be used by High Court to reopen or alter an order disposing of the petition decided on merits.

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17. In this case, the respondent could not be served notice and he had not appeared before the Court when the Criminal Revision Case was disposed of. The respondent / complainant is ever willing and had received the cheque amount and compromised. Further, taking into the consideration the object and reason of Section 138 of Negotiable Instruments Act in cases of dishonour of cheque, it is compensatory aspect of remedy, which should be given priority over punitive aspect. Further taking into account the fact that this Court had permitted and allowed compounding of the offence, after disposing of the Criminal Revision Case. In view of the same, the compromise is allowed and the offence between the petitioner and the respondent in C.C.No.249 of 2002, on the file of learned Judicial Magistrate No.II, Srivilliputhur, is compounded. The petitioner / accused is acquitted of all the charges.

18. In the result, Criminal Miscellaneous Petition is allowed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

- 1.The Principal Sessions Judge,
Virudhunagar District at Srivilliputtur
 - 2.The Judicial Magistrate Court No.II,
Srivilliputtur,
 3. The Chief Judicial Magistrate,
Virudhunagar District at Srivilliputtur.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- copy to:
The Record Clerk, Criminal Section (2 copies)
Madurai Bench of Madras High Court, Madurai
+1cc to Mr.S.Venkatesh, Advocate, Sr.No.6528

**PRE-DELIVERY ORDER MADE IN
CRL MP(MD)No.8933 of 2019 in
Crl.RC. (MD)No.602 of 2012
13.02.2020**

SMA/24/02/2020/5P/8C