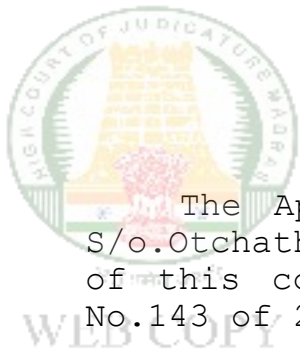


**BAIL SLIP**

The Appellant/Sole Accused namely O.Kasimayan, Male aged 32, S/o.Otchathevar was directed to be released on bail as per the order of this court dated 22.06.2015 in MP(MD)1 of 2015 in CrI.A (MD) No.143 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED 17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. (MD) NO. 143 OF 2014

O.Kasimayan

...Appellant /Respondent/
Accused

Vs.

M/s.Shriram Transport Co., Ltd.,
Represented thro' its Branch Manager,
C.Likeshnath

...Respondent /Appellant
Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the Judgment and decree, dated 31.03.2015, passed in CrI.A.No.43 of 2014, by the learned Additional District and Sessions Judge, Theni at Periyakulam and to restore the Judgment of acquittal made in S.T.C.No.54 of 2013 on the file of the Judicial Magistrate, Fast Track Court (M.L) at Theni, dated 07.07.2014.

For Appellant : Mr.A.Saravanan

For Respondent : Mr.M.Jegadeesh Pandiyan

JUDGMENT

The appellant / accused was charged and tried before the learned Judicial Magistrate, Fast Track Court (M.L) at Theni, in S.T.C.No.54 of 2013, for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The trial Court, vide the impugned judgment dated 07.07.2014, has acquitted the accused.

2.Aggrrieved by the said conviction and sentence, the complainant has filed Criminal Appeal in C.A.No.43 of 2014 before the learned Additional District and Sessions Judge, Theni at

Periyakulam and the Lower Appellate Court, by its judgment dated 31.03.2015 has convicted and sentenced the accused as under :-

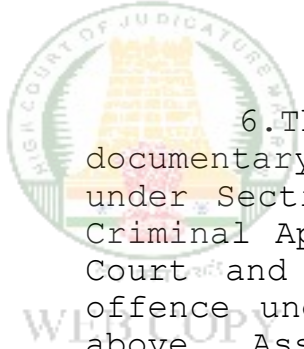
Section	Sentence
U/s., 138 of the Act	Convicted and sentenced to undergo simple imprisonment for a period of one (1) year and to pay compensation amount of Rs.6 lakhs as cheque amount, in default to undergo six months simple imprisonment.

Challenging the same, the present Criminal Appeal is filed.

3.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4.The case of the prosecution is that the accused on 30.04.2010 entered into a hypothecation agreement for purchase of TELCO open Model 1993, HGV, with Registration No.TN 10 3223 and promised to repay the Principal amount of Rs.3,94,335/- in 29 equal installments. The Complainant is a Public Limited Company and on 30.04.2010, the accused entered into a loan cum hypothecation with the complainant along with one M.Balamurugan as a guarantor and in pursuance of the said agreement, the complainant had financed out to one TELCO open model 1998 HGV bearing registration No.TN 10 3223 for a total agreement value of Rs.3,94,335/- being payable in 29 monthly installments. The accused started to make payment and upto 31.12.2012, he paid a sum of Rs.58,341/- and thereafter, he failed and neglected to pay the further monthly installments as agreed by him. Thereafter, the complainant issued demand notice on 07.12.2012 to the accused and the Guarantor and called them to discharge the balance amount. After the receipt of demand notice, the accused issued a cheque bearing No.032392 on 07.02.2013 for Rs.5,00,000/- to be drawn at Axis Bank, Theni Branch in favour of the complainant company in order to discharge his partial due. The complainant presented the cheque on 07.02.2013 through Aix Bank, Theni Branch for collection. But the cheque was returned on 11.02.2013 with a memo of "Insufficient Fund". Therefore, the defacto complainant has issued legal notice through his Lawyer on 01.03.2013 demanding the cheque amount. The accused has received the same on 04.03.2013. However, the accused has not chosen to give reply or settle the cheque amount. Hence, the defacto complainant has filed the private complaint under Section 138 of the Act before the trial Court.

5.In order to prove the case, the prosecution examined P.W.1 and marked Exs.P-1 to P-7. When the accused was questioned u/s 313 (1)(b) Cr.P.C. about the incriminating circumstances appearing against him, he denied the same as false. On the side of the defence, D.W.1 was examined and Exs.D-1 to D-4 were marked.



6. The trial Court upon consideration of both oral and documentary evidence, has acquitted the accused for the offence under Section 138 of the Act as stated above. Against which, the Criminal Appeal was filed by the accused before the Lower Appellate Court and the same was allowed convicting the accused for the offence under Section 138 of the Act and sentenced him as stated above. Assailing the same, the present Criminal Appeal is filed.

7. The learned counsel appearing for both sides have stated that they settled the matter out of court and they have filed a joint compromise memo dated 12.03.2020, wherein, both the parties and their learned counsels have signed. They have also requested this Court to record the said joint compromise memo entered into between them and to set aside the judgment passed in Crl.A.No.43 of 2014, dated 21.09.2015 on the file of the learned Additional District and Sessions Judge, Theni. The memo of compromise reads as under:-

"It is respectfully submitted that the respondent herein filed complaint under Section 138 of Negotiable Instrument Act against the appellant herein in S.T.C.No.54 of 2013 on the file of the Fast Track Court, Theni acquitted the appellant herein for the said complaint. Aggrieved over the same, the respondent herein filed Crl.A.No.43 of 2014 on the file of the Additional District Sessions Judge, Theni at Periyakulam. By Judgment dated 31.03.2015 the learned Appellate Court convicted the appellant for the said offence and imposed punishment of one year simple imprisonment and pay Compensation of Rs.6 lakhs as cheque amount, in default of the payment of the Compensation further 6 months simple imprisonment also imposed. Further aggrieved over the said conviction and payment of compensation, the appellant herein prepare present appeal before this Hon'ble Court in C.A.No.143 of 2015.

It is submitted that during pendency of the present criminal appeal both the parties amicably settled the issue in question out of Court and no more claims between each other. In view of the amicable settlement arrived between parties by recording the same the present appeal may be allowed and acquit the appellant herein / sole accused in the charge of Section 138 of Negotiable Instrument Act."

8. Heard both sides and perused the records.

9. 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 paragraph Nos. 16 and 17:

'16. It is evident that the permissibility of 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]

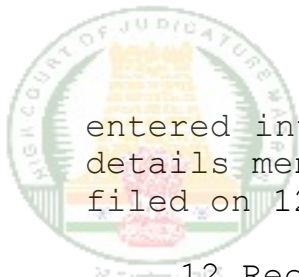
'17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a 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.'

10. With the above principles in mind, if this Court looks at the present case, it is purely a commercial transaction and Section 147 of the Act also empowers this Court to compound the offence under section 138 of the Act.

11. In view of the ratio laid down by the Hon'ble Apex Court in the Judgment reported in **[2010 (5) SCC 663]** (cited supra) and considering the compromise entered into between the parties, no useful purpose will be served in allowing the sentence of lower appellate Court to continue. It is found that both parties have



entered into a genuine settlement and settled the matter as per the details mentioned in the joint memo dated 12.03.2020. The joint memo filed on 12.03.2020 is recorded.

12. Recording the compromise memo dated 12.03.2020, this Criminal Appeal is allowed of and the judgment dated 21.09.2015 made in CrI.A.No.43 of 2014 passed by the learned Additional District and Sessions Judge, Theni, reversing the judgment passed in S.T.C.No.54 of 2013, dated 07.07.2014 on the file of the Judicial Magistrate, Fast Track Court (M.L) at Theni, is set aside. The joint memo of compromise filed on 12.03.2020 shall form part of this order.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Rj2

Encl Xerox copy of Joint Compromise Memo

To

1. The Additional District and Sessions Judge,
Theni at Periyakulam
2. The Judicial Magistrate, Fast Track Court (M.L) ,
Theni.
3. -Do- Through The Chief Judicial Magistrate, Theni.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.
5. The Record Keeper, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

CrI.A. (MD) .No.143 of 2015
17.03.2020

VB (19.06.2020) 5P 7C