



Bail Slip

Petitioner namely Mr.X.Angelo Vaz, was released on Bail as per order of this Court dated 12/03/2015 made in MP(MD)No.1/2015 in Crl.RC(MD)No.110 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

CRL.R.C.[MD]No.110 of 2015

X.Angelo Vaz : Petitioner/Appellant/Accused

Vs.

K.Musthafa : Respondent/Respondent/Complainant

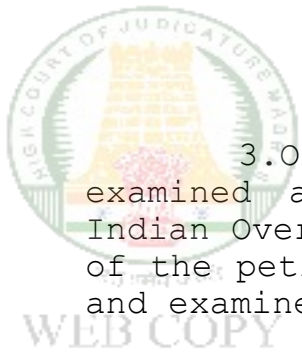
PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., praying to call for the records and set aside the judgment dated 29.01.2015 passed in Crl.A.No.56 of 2014 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, confirming the conviction and sentence imposed upon the petitioner in C.C.No.179 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District dated 22.08.2014 and acquit the petitioner.

For Petitioner : Mr.A.Thiruvadikumar
For Respondent : Mr.R.Anand

O R D E R

The Criminal Revision Petition is filed by the accused against the concurrent findings of the conviction passed by the Lower Court as well as the Lower Appellate Court.

2.The case of the petitioner is that he is the accused in C.C.No.179 of 2013 for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The respondent/ complainant has filed a complaint before the Lower Court, stating that the accused had borrowed a sum of Rs.1,80,000/- as loan for business purpose and for the said loan amount, on 18.01.2013, he has issued a cheque bearing No.224325 dated 18.01.2013 of Indian Overseas Bank, Tuticorini Branch for Rs.1,80,000/-. When the said cheque was presented for collection, the said instrument was returned with endorsement stating that "**Funds Insufficient**". Thereafter, the complainant has sent a legal notice on 11.04.2013, demanding the cheque amount and the said legal notice was returned to the complainant with an endorsement "intimation delivered" on 12.04.2013. The accused knowingly and wantonly evaded the service of notice. Therefore, the said complaint was filed before the trial Court.



3. On behalf of the respondent/complainant, he himself has examined as P.W.1 and examined one Chidambaram Branch Manager, Indian Overseas Bank as P.W.2, and marked Exs.P.1 to P.6. On behalf of the petitioner/accused, the accused himself has examined as DW1 and examined D.W.1 and D.W.2 and marked Ex.D1 and Ex.D2.

4. After hearing the rival submissions, the trial Court has found the petitioner/accused guilty for the offence under Section 138 of the Act and sentenced him to undergo simple imprisonment for one year and to pay the cheque amount of Rs.1,80,000/- to the complainant/respondent herein, in default to undergo simple imprisonment for one month.

5. Assailing the said order, the petitioner/accused has preferred appeal before the Lower Appellate Court. The Lower Appellate Court has confirmed the sentence given by the trial Court. Against the concurrent findings, the present Criminal Revision Petitions are filed.

6. When the matter is taken up for hearing today, both the learned counsel represented that the parties entered into compromise vide memo dated 11.03.2020. The terms of the joint compromise memo are extracted hereunder:-

"1. It is submitted that the petitioner herein had faced Trial in C.C.No.179 of 2013 on the file of the learned Judicial Magistrate/Fast Track Court (Magisterial Level) Thoothukudi, Thoothukudi District, dated 22.08.2014, wherein the petitioner was found guilty u/s 138 of Negotiable Instruments Act and sentenced to undergo 1 year S.I, and to pay Rs.1,80,000/- (Cheque Amount) as compensation to the complainant in default to undergo 1 month S.I, which was confirmed in Crl.A.No.56 of 2014 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District by Judgment dated 29.01.2015. It is submitted that as against the concurrent findings, the petitioner had preferred the present criminal revision.

2. It is submitted that as against the said conviction and sentence the petitioner had preferred Crl.RC(MD)No.110 of 2015 before this Hon'ble Court. It is submitted that this Hon'ble Court vide suspending the sentence had directed the petitioner to deposit a sum of Rs.80,000/- to the credit of the Trial Court which the petitioner had duly complied with. It is submitted that the petitioner had handed over a sum of Rs.1,00,000/- vide D.D.No.107844 drawn on Indian Bank, Thoothukudi dated 07.03.2020. It is submitted that the petitioner herein had paid the entire cheque amount and as such the



had been settled and in addition the petitioner is paying Rs.20,000/- as costs to the respondent.

3.It is submitted that the offence U/s. 138 of Negotiable Instruments Act is a compoundable offence. It is submitted that the petitioner had settled the entire cheque amount and as such the respondent herein is also prepared to compound the offence with the petitioner. It is submitted that at present the dispute between the parties have been resolved and the dispute is mainly a money dispute, more particularly personal in nature, which is also compoundable. It is submitted that as the cheque amount of Rs.1,80,000/- is being paid by the petitioner herein, the respondent has got no objection to compromise the dispute and to compound the offence. It is submitted that the petitioner has no objection for the respondent to withdraw the deposited amount."

7.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.''

8. 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.

9. 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 consent expressed by the learned counsel for the petitioner, the accused/petitioner having agreed to deposit the cheque amount to the respondent/complainant, no useful purpose will be served in allowing the sentence of trial Court to continue. Hence, this Court, instead of confirming the sentence awarded by the lower appellate Court, is inclined to modify the sentence.

10. Hence, the Judgment made in C.A.No.56 of 2007, dated 29.01.2015, by the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District confirming the conviction and sentence imposed upon the petitioner in C.C.No.179 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District, dated 22.08.2014, is modified as under:-

(i) The accused is directed to deposit a sum of Rs.1,80,000/- as ordered by the Courts below, within a period of four [4] weeks from the date of receipt of a copy of this order;

(ii) The respondent is entitled to withdraw the amount of Rs.1,80,000/- within a period of one [1] week from the date of deposit, by producing necessary identification; and

(iii) Failing to deposit the above said amount within the



stipulated period by the accused will lead to restoration of the earlier order passed by the Lower Appellate Court made in C.A.No.56 of 2007, dated 29.01.2015, on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, confirming the conviction of the accused for a period of one year Simple Imprisonment along with the Cheque amount of Rs.1,80,000/- with default clauses, for which, the Police shall be directed to secure the accused/petitioner to undergo the remaining period of sentence as ordered by the Courts below, stated supra.

11.At this juncture, it is represented by both sides that now the complainant is mentally ill-health, hence, a direction may be issued to the trial Court to disburse the amount to the legal heirs of the complainant.

12.In the light of the above submission, the trial Court is directed to disburse the amount to the legal heirs of the respondent/complainant, after satisfying the identification of the legal heirs of the respondent and on filing application.

13.With the above modification, this Criminal Revision Case stands disposed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn

To

1.The II Additional District and Sessions Judge,
Thoothukudi, Thoothukudi District.

2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi, Thoothukudi District.

3.The Record Clerk, (2 copies)
Criminal Section
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-11404[F]

CRL.R.C. [MD]No.110 of 2015

12.03.2020.

SMA/19/06/2020/5P/6C

<https://hcservices.ecourts.gov.in/hcservices/>