



Bail Slip

Ambika, W/o Senthilvel, who is the Criminal Revision Petitioner / Accused in Crl.R.C(MD)No.341/2015 was directed to be enlarged on bail vide order of the Hon'ble Court dated 17.08.2015 made in MP(MD)No.1/2015 in Crl.R.C(MD)No.341/2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C. (MD)No.341 of 2015

Ambika ... Petitioner / Appellant / Accused

-vs-

Narayanaperumal ... Respondent / Respondent / Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., praying to set aside the order dated 17.03.2015 made in Crl.A.No.41 of 2013 on the file of the IV Additional Sessions Court, Tirunelveli in C.C.No.238 of 2006 on the file of the Judicial Magistrate, Valliyoor, Tirunelveli District dated 26.06.2013.

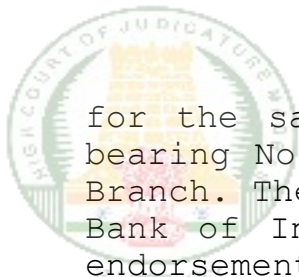
For Petitioner : Mr.T.Selvakumaran

For Respondent : Mr.S.Palanivelayutham

ORDER

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

2.The case of the petitioner is that the petitioner is the accused in C.C.No.238 of 2006 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 on 01.04.2006, the accused had borrowed a sum of Rs.50,000/- as loan for her family expenses and



for the said loan amount, on 01.05.2006, she has issued a cheque bearing No.536834, dated 01.06.2006 of State Bank of India, Pazvoor Branch. The said cheque was presented on 01.06.2006 before the State Bank of India, Pazvoor and the said instrument was returned with endorsement stating that "Funds Insufficient". Thereafter, the complainant has sent a legal notice on 05.06.2006, demanding the cheque amount within 15 days and the accused has received the legal notice on 07.06.2006. However, the accused neither sent any reply notice nor paid the cheque amount. 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 marked Exs.P.1 to P.4. No witnesses were examined on the side of the accused. 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 her to undergo simple imprisonment for one year and to pay a compensation of Rs.1,00,000/- to the complainant / respondent herein under Section 357(3) of Cr.P.C., within two months, in default to undergo simple imprisonment for two months.

4.Assailing the said order, the petitioner / accused has preferred an appeal before the Lower Appellate Court. The Lower Appellate Court has confirmed the sentence given by the trial Court. Against the concurrent finding, the present Criminal Revision Petition is filed.

5.Mr.T.Selvakumaran, learned counsel appearing for the revision petitioner, on instructions, would submit that without going into the merits of the case, this Court, while entertaining the revision petition, imposed a condition, directing the petitioner to deposit a sum of Rs.50,000/- in the said C.C.No.238 of 2006. This Court may fix the compensation as Rs.50,000/- that is instrument amount and may permit the respondent / complainant to withdraw the said amount and compound the offence against the petitioner.

6.Mr.S.Palanivelayutham, learned counsel appearing for the respondent, on instructions from the legal heirs of the respondent / complainant, would submit that during the pendency of this revision petition, the defacto complainant / respondent herein passed away, hence, his legal heirs may be permitted to withdraw the said amount. He would further submit that the legal heirs of the defacto complainant has no objection in respect of compounding the offence.

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]

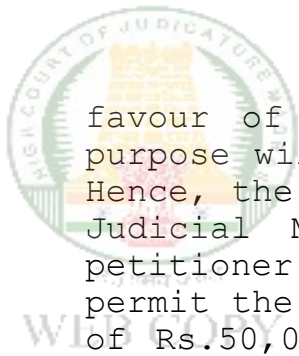
'17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a 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 see the present case, it is purely 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 and considering the consent view expressed by the learned counsel appearing for the petitioner and the respondent and the petitioner and the respondent, the petitioner agreed to disburse the amount in



favour of the legal heirs of the defacto complainant, no useful purpose will be served to allow the order of the trial to continue. Hence, the judgment in C.C.No.238 of 2006 on the file of the learned Judicial Magistrate, Valliyoor, is set aside and the revision petitioner is acquitted from the charges and further, this Court permit the respondent's legal heirs to withdraw the deposited amount of Rs.50,000/- with accrued interest, by producing the legal heir certificate and necessary identification.

10.With the above direction, this Criminal Revision Petition stands allowed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The IV Additional Sessions Judge,
Tirunelveli.

2.The Judicial Magistrate, Valliyoor,
Tirunelveli.

Copy to:

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

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-9713[F] dated 03/03/2020)

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-9869[F] dated 03/03/2020)

CRL.R.C. (MD) No.341 of 2015
02.03.2020

MYR

SDS (04.06.2020) 4P-6C