



BAIL SLIP

Rajadurai, Appellant/ Accused, S/o. Thuyamani, Male, 36 years was released on Bail vide this court order dated 30.10.2015 made in MP(MD)No.1 of 2015 in Crl.RC (MD)No.531 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2020

CORAM:

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

CRL.R.C. (MD)No.531 of 2015

and

M.P. (MD)No.2 of 2015

Rajadurai ... Petitioner /Appellant/Accused

-vs-

V.Gurusamy ... Respondent /Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C., praying to call for the records and set aside the Judgment dated 16.07.2015 passed in Crl.A.No.91 of 2008 on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, confirming the conviction and sentence imposed upon the petitioner in C.C.No.396 of 2005 on the file of the learned Judicial Magistrate, Sivakasi, Virudhunagar District, dated 20.05.2008 and acquit the petitioner.

For Petitioner : Mr.A.Thiruvadi Kumar
For Respondent : Mr.K.Gokul

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.396 of 2005 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.50,000/- as loan for business purpose and for the said loan amount, on 16.05.2005, he has issued a cheque bearing No.190329, dated 16.05.2005 of Catholic Syrian Bank Limited Sivakasi Branch for Rs.20,000/-. 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 26.05.2005, demanding the cheques amount and the accused has



received the legal notice and sent a reply notice on 31.05.2005 denying the contentions of the defacto complainant. 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.5. On behalf of the petitioner/accused, the accused himself has examined as DW1 and one Periyalvar was examined as DW2 and no documents were marked 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 r/w 142 of the Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- to the complainant/respondent herein, in default to undergo simple imprisonment for three months.

4. 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.

5. The learned counsel appearing for the revision petitioner would submit that without going into the merits of the case, this Court, while entertaining the revision petitions, imposed a condition directing the petitioner to deposit a sum of Rs.15,000/- in C.C.No.396 of 2005. This Court may fix the compensation as Rs.35,000/- and may permit the respondent/complainant to withdraw the said amount and compound the offence against the petitioner. The learned counsel would further submit that admittedly, the trial Court as well as the first appellate court convicted the accused. As against the concurrent findings, the present revision petition is filed. It is well settled law that the revision petition is maintainable only if the order of trial Court is perverse. Hence, this Court may modify the sentence instead of suffering one year punishment by imposing compensation, which is equal to the cheque amount, as penalty amount by confirming the conviction order passed by the courts below.

6. The learned counsel appearing for the respondent, on instructions from the respondent/complainant, would submit that the defacto complainant has no objection in respect of modifying the sentence.

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



'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 bear 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. The above decision makes it clear that in the cheque transaction and in the commercial transaction, this Court have power under Section 147 of the Act to compound the offence punishable under Section 138 of the Negotiable Instrument 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 also the petitioner and the respondent and the revision petitioner himself has come forward to pay the entire compensation amount and seeks modification of the order of punishment and the respondent has also no objection for the same, the conviction ordered by the Courts below are confirmed, however, the sentence is modified as follows:-

The petitioner shall pay a sum of Rs.35,000/- to the respondent as compensation, failing which, the sentence imposed by the trial court stands confirmed. On such deposit is being made, this Court permits the respondent/complainant to withdraw the deposited amount with accrued interest.

10. With the above modification, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

myr/skn
To

1. The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.
2. The Judicial Magistrate,
Sivakasi, Virudhunagar.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.A.THIRUVADIKUMAR, Advocate (SR-10263[F] dated 05/03/2020)

+1 CC to Mr.K.GOKUL, Advocate (SR-11044[F] dated 11/03/2020)

CRL.R.C. (MD) No. 531 of 2015

05.03.2020

VB (07.05.2020) 4P 7C