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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.18252 of 2015 and 22853 of 2019
and

M.P.No.1 of 2015 in Crl.O.P.No.18252 of 2015

M.Mumtaz Begum ... Petitioner in Crl.O.P.No.18252/2015
S.Mohan Kumar ... Petitioner in Crl.O.P.No.22853/2019

Vs.

S.Mohan Kumar ... Respondent in Crl.O.P.No.18252/2015
M.Mumtaz Begum ... Respondent in Crl.O.P.No.22853/2019

Prayer in Crl.O.P.No.18252/2015: Petition filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to S.T.C.No.525 of 2015 on the file of the Judicial Magistrate II, Krishnagiri and quash the same.

Prayer in Crl.O.P.No.22853/2019: Petition filed under Section 482 of Cr.P.C., seeking to direct the learned Judicial Magistrate No.II, Krishnagiri to transfer the above STC No.525 of 2015 to the learned Metropolitan Magistrate Court, Egmore, Chennai.

In Crl.O.P.No.18252 of 2015

For Petitioner : Mr.T.Arockia Doss
for M/s.Doss and Viswa Associates

For Respondent : Mrs.R.Meenakshi Devi

In Crl.O.P.No.22853 of 2019

For Petitioner : Mrs.R.Meenakshi Devi

For Respondent : Mr.T.Arockia Doss
for M/s.Doss and Viswa Associates

COMMON ORDER

These Criminal Original Petitions have been filed seeking to call for the records pertaining to S.T.C.No.525 of 2015 on the file of the Judicial Magistrate II, Krishnagiri and quash the same and for a direction to transfer the above STC No.525 of



2015 to the learned Metropolitan Magistrate Court, Egmore, Chennai.

2. The petitioner in CrI.O.P.No.18252 of 2015 is the accused and the respondent is the de-facto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The complainant has preferred a complaint under Section 138 of the Negotiable Instruments Act in S.T.C.No.525 of 2015 before the learned Judicial Magistrate No.II, Krishnagiri, against the accused stating that the accused to discharge her liability towards complainant, had issued 4 cheques drawn on Bank of Baroda, Veppanapalli Branch bearing Nos.519691, 519692, 519693 & 519694 for a sum of Rs.25,00,000/- each. When the said Cheques were deposited on 05.09.2013 for collection, the same were returned on 06.09.2013 with an endorsement as 'Funds Insufficient'.

4. The learned counsel for the petitioner submitted that during the pendency of these Criminal Original Petitions, the petitioner and the respondent-complainant have entered into a compromise and filed a Joint Memo of Compromise dated 29.07.2021 to that effect, the terms of which are reduced into writing. The petitioner and the respondent-complainant have signed in the Joint Memo of Compromise and counter-signed by their respective counsels.

5. The terms of Joint Memo of Compromise are recorded, which reads as follows:

"1. It is submitted that the respondent herein preferred a complaint under Section 138 of Negotiable Instrument Act before learned Judicial Magistrate-II at Krishnagiri in STC.No.525 of 2015 and the same is pending.

2. I state that in which the petitioners herein have preferred quash petition before this Hon'ble Court and the same is also pending. Now the both petitioner and complainant compromised the issue based on Memorandum of Understanding dated 27.07.2021 and settled the issue out of Court amicably.

3. I state that now the respondent/complainant gives voluntary consent to quash the case in STC No.525 of 2015 pending on the file of the learned Judicial Magistrate-II) at Krishnagiri by allowing the above quash petition."



6. 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 offence and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

'16. It is evident that the permissibility of the 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.'



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7. With the above principles in mind, if this Court see the present case, it is only a money transaction and in this regard a Joint Memo of Compromise has also been filed by the petitioner and respondent-complainant. Therefore, the complainant's interest lies primarily in recovering the money rather than sending the accused in jail.

8. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the Joint Memo of Compromise filed by the parties, this Court is of the view that the charge sheet in S.T.C.No.525 of 2015 on the file of the learned Judicial Magistrate No.II, Krishnagiri, is liable to be set aside.

9. Accordingly, the charge sheet in S.T.C.No.525 of 2015 on the file of the learned Judicial Magistrate No.II, Krishnagiri, is hereby quashed and CrI.O.P.No.18252 of 2015 is allowed in terms of the above Joint Memorandum of Compromise.

10. In view of the order passed in CrI.O.P.No.18252 of 2015, there is no necessity to pass orders in the petition filed in CrI.O.P.No.22853 of 2019 seeking a direction to transfer the above S.T.C.No.525 of 2015 to the learned Metropolitan Magistrate Court, Egmore. Accordingly, CrI.O.P.No.22853 of 2019 is closed. Consequently, the connected miscellaneous petition is closed.

* Enclosed the xerox copy of Joint Compromise Memo Filed by Both Parties.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II, Krishnagiri.

2.The Judge,

II Metropolitan Magistrate Court, Egmore, Chennai.

3.The Public Prosecutor,

High Court of Madras, Chennai - 600 104.

+1CC to M/s.Dass & Viswa Associates, Advocate, SR.No. 39543

CrI.O.P.Nos.18252 of 2015
and 22853 of 2019

KK(CO)

B.VC (01/10/2021)