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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.18242 of 2018
and Crl.M.P.No.9564 of 2018

M.C.Ravikumar

... Petitioner

Vs.

M/s. Consolidated Construction Consortium Ltd.,
Represented by its Authorized Signatory,
Mr.P.Senthil Kumar,
No.5, 2nd Link Street,
CIT Colony, Mylapore, Chennai-4.

... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.2032 of 2018 on the file of the Fast Track Court-1, Metropolitan Magistrate, Egmore, Chennai and quash the same insofar as the petitioner/accused 3.

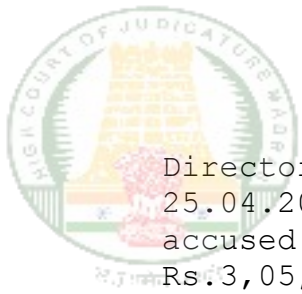
For Petitioner : Mr.K.Shakespeare

For Respondent : Mr.S.S.Rajesh

O R D E R

The petitioner has filed this petition seeking to quash the order in C.C.No.2032 of 2018 on the file of the Fast Track Court-1, Metropolitan Magistrate, Egmore, Chennai insofar as the petitioner/accused 3.

2. The petitioner is the accused (A3) in the private complaint issued by the respondent. The case of the respondent/complainant is that the respondent was awarded the contract for construction of a hotel by the first accused vide agreement dated 01.09.2006 for a total cost of Rs.10,80,00,000/- (Rupees Ten Crores Eighty Lakhs only). It is the further case of the respondent that there was a total outstanding of Rs.6,52,76,375/- due payable by the accused, for which, the complainant had filed an application under Section 9 of the Arbitration and Conciliation Act before this Court in A.No.1954 of 2017. In the said proceedings, the second accused, being the



Director of the first accused company, entered into a MOU dated 25.04.2017 with the respondent company. As per MoU, the second accused had agreed to settle as full and final settlement of Rs.3,05,00,000/- to the respondent. In this regard, the second accused has also executed an affidavit of undertaking before this Court in A.No.1954 of 2017, for which, he has issued a cheque bearing No.151772 dated 15.07.2017 issued in favour of the respondent. When the respondent presented the same for encashment, it was returned as 'funds insufficient'. Therefore, the respondent company, after issuing statutory notice, filed a complaint against the respondents 1 to 3 for offence under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'NI Act') before the learned FTC-I, Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate has taken cognizance of the same, registered the complaint. Aggrieved over the same, the petitioner (A3) has come forward with this Original Petition seeking to quash the proceedings.

3. The learned counsel for the petitioner (A3) contended that during pendency of this petition, the second accused paid directly to the respondent for a sum of Rs.1,00,00,000/- (Rupees One Crore only) on 21.06.2017 and deposited a sum of Rs.2,05,00,000/- (Rupees Two Crores Five Lakhs only) to the credit of A.No.1954/2017 before this Court on 05.09.2017. The entire amount stated in the impugned complaint has been settled to the respondent/complainant. Therefore, the learned counsel prays that the proceedings may be quashed against the petitioner.

4. The learned counsel for the respondent/complainant are not disputed the contention raised by the learned counsel for the petitioner. The respondent company has filed an affidavit dated 14.09.2017 filed before this Court and admitting the payment made by the petitioners.

5. Heard the learned counsel on either side and perused the materials available on record.

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 offences 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



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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.'

7. With the above principles in mind, if this Court see the present case, the respondent/complainant has received the entire sale consideration from the petitioner/ accused and in



this regard affidavits have been filed by the respondent/complainant. Therefore, the complainant's interest lies primarily in recovering the money rather than sending the accused in jail.

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8. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the affidavit filed by the respondent/complainant, this Court is of the view that the charge sheet in C.C.No.2032 of 2018 on the file of the learned FTC-I, Metropolitan Magistrate, Egore, Chennai, is liable to be set aside.

9. Accordingly, the charge sheet in C.C.No.2032 of 2018 on the file of the learned FTC-I, Metropolitan Magistrate, Egore, Chennai, is hereby quashed and the criminal original petition is disposed of. The petitioner/ accused (A3) are acquitted from all the charges levelled against him.

10. With the above directions, the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Fast Track Court-1,
Metropolitan Magistrate,
Egmore, Chennai

+1cc to Mr.K.Shakespeare, Advocate SR.No.56819

Crl.O.P.No.18242 of 2018

PA(CO)
GN(09/06/2022)