



Crl.R.C.No.256 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.256 of 2018

S.Pushpalatha

... Petitioner

Vs.

S.Dineshkumar

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the Judgment dated 30.01.2018 passed in C.A.No.213 of 2017 on the file of the I Additional District and Sessions Judge, Erode confirming the Judgment dated 03.04.2017 passed in S.T.C.No.432 of 2014 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode by allowing the present criminal Revision petition.

For Petitioner : Mr.I.C.Vasudevan
For Respondent : Not ready in notice
No appearance

ORDER

This Criminal Revision case has been filed to set aside the Judgment dated 30.01.2018 passed in C.A.No.213 of 2017 on the file of the I Additional District and Sessions Judge, Erode, confirming the Judgment dated 03.04.2017 passed in



S.T.C.No.432 of 2014, on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that on 25.06.2014, the petitioner borrowed a sum of Rs.3,20,000/- as loan. In order to discharge the said liability, the petitioner issued post dated cheque, dated 25.07.2014 for the said amount. On instructions, the said cheque was presented for collection and the same was returned dishonoured for the reason “Funds Insufficient”. After causing legal notice, the respondent lodged a complaint.

3. On the side of the respondent, he was examined as P.W.1 and marked Exs.P.1 to P.5. On the side of the petitioner, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the petitioner guilty and convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced her to undergo six months simple imprisonment. The Trial Court also ordered



compensation of the cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed by the Appellate Court, confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner would submit that the cheque which was marked as Ex.P.1 was issued only for the purpose of security and there is no legally enforceable debt in favour of the respondent herein. Further contended that no amount was borrowed by the petitioner at any point of time and the respondent failed to comply with the provisions under Section 138 of Negotiable Instruments Act. Therefore, the Courts below without considering the above facts and circumstances, convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

5. A perusal of records revealed that the petitioner borrowed a sum of Rs.3,20,000/- and in order to repay the same, she issued a cheque and the said cheque was presented for collection and it was returned dishonoured for the reason “Funds Insufficient”. Though, the statutory notice was issued by the respondent, the petitioner failed to reply to rebut the evidence of the respondent herein. That apart, the petitioner failed to examine anybody and failed to mark



any document to substantiate the contentions raised by the petitioner. Therefore, the respondent discharged his initial burden as required under Section 138 of Negotiable Instruments Act. Though, the presumption can be rebutted by the petitioner under Section 139 of Negotiable Instruments Act, the petitioner failed to rebut the presumption attached to the cheque and at least not created a shadow of doubt on the cheque. Admittedly, the petitioner never denied the issuance of cheque which was marked as Ex.P1 and also the signature of the cheque. In fact, while suspending the sentence, this Court imposed a condition that the petitioner shall deposit 50% of the cheque amount before the Trial Court. However, the petitioner failed to comply the same.

6. Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

7. Accordingly, this Criminal Revision case stands dismissed.

14.10.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN, J.

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This matter is listed today before this Court under the caption “For being mentioned” at the instance of the learned counsel appearing for the petitioner.

2. The learned counsel appearing for the petitioner submitted that this Court by an order dated 14.10.2022, dismissed the revision in Crl.R.C.No.256 of 2018 by confirming the orders passed by the Courts below thereby convicting the petitioner for the offence under Section 138 of the Negotiable Instruments Act. He further submitted that the petitioner and the respondent have amicably settled the issue and the petitioner paid the full cheque amount of Rs.3,20,000/- on 09.10.2022 itself, to the respondent in cash. He also filed a compromised memo dated 09.10.2022 entered between the parties to that effect. Hence, he prayed to allow the appeal.

3. Considering the submission made by the learned counsel appearing for the petitioner, this Court is inclined to allow the Criminal Revision. Therefore, the entire order dated 14.10.2022 in Crl.R.C.No.256 of 2018 shall read as follows :-

“This Criminal Revision is directed as against the judgment dated



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30.01.2018 passed in C.A.No.213 of 2017 on the file of the learned I Additional District and Sessions Judge, Erode, confirming the order dated 03.04.2017 made in S.T.C.No.432 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode, thereby convicting the petitioner for the offence under 138 of the Negotiable Instruments Act.

2. The learned counsel appearing for the petitioner submitted that as per the compromise entered between the petitioner and the respondent, the above matter is settled out of Court and the petitioner paid the full cheque amount of Rs.3,20,000/- in cash on 09.10.2022 itself. Hence, he prayed to allow the revision petition.

3. A Joint Memo of Compromise dated 09.10.2022 has been filed before this Court which have been signed by the petitioner and the respondent and also by their respective counsel.

4. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Ramgopal and others vs. The State of Madhya Pradesh reported in 2021 (6) CTC 240*** and the relevant paragraphs are



extracted hereunder:-

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“18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sublime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sumup and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences ‘compoundable’ within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society;



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(ii) *Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.*

20. Having appraised the aforestated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us, we are inclined to invoke powers under Article 142 and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that: Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature;

Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest;

Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed;

Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s);

Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the



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purported compromise, any untoward incident transpired between the parties;

Sixthly, since the Appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any illwill and have no vengeance against each other; and

Seventhly, the cause of administration of criminal justice system would remain unaffected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.

5. In view of the above judgment, the conviction and sentence imposed on the petitioner by the judgment dated 30.01.2018 passed in C.A.No.213 of 2017 on the file of the learned I Additional District and Sessions Judge, Erode, confirming the order dated 03.04.2017 made in S.T.C.No.432 of 2014 on the file of the learned Judicial Magistrate Court, Fast Track Court No.I, Erode, are hereby set aside and the petitioner/accused acquitted of all charges. Fine amount, if any, paid shall be refunded to the petitioner forthwith. Bail bonds, if any, executed shall stand cancelled.



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6. Accordingly, the Criminal Revision Petition stands allowed. The Joint Compromise Memo dated 09.10.2022 shall form part and parcel of this Order ”

Registry is directed to carryout the necessary amendment and issue order copy a fresh.

09.11.2022

rts

To

- 1.The I Additional District and Sessions Judge,
Erode.
- 2.The Judicial Magistrate Court (Fast Track Court No.I),
Erode.

G.K.ILANTHIRAIYAN. J,

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