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Crl.RC.No.72 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

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

Crl.RC.No.72 of 2018

Jayashree

...

Petitioner

Versus

T.Senthil

...

Respondent

PRAYER: Criminal Revision has been filed under Section 397(1) r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 06.12.2017 passed in CA.No.270 of 2017 on the file of the Principal Sessions Court of Erode confirming the judgment dated 19.09.2017 passed in STC.No.183 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode by allowing the present criminal revision petition.

For Petitioner : Mr.I.C.Vasudevan

ORDER

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This criminal revision has been filed against the judgment dated 06.12.2017 passed in CA.No.270 of 2017 on the file of the Principal Sessions Court of Erode confirming the judgment dated 19.09.2017 passed in STC.No.183 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode.

2. Heard, the learned counsel for the petitioner.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The respondent lodged complaint alleging that on 15.08.2010, the petitioner borrowed a sum of Rs.5,00,000/- for her urgent expenses. In order to discharge the said liability, she issued cheque and the same was presented for collection. However, it was returned dishonoured for the reason “account closed”. After causing statutory notice as contemplated under Section 138 of NI Act, the respondent lodged complaint.



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4. On the side of the respondent, he was examined as PW1 and he marked Ex.P1 to Ex.P5. On the side of the petitioner, nobody was examined and no documents were marked before the trial court. On perusal of oral and documentary evidence, the trial court found the petitioner guilty and sentenced her to undergo one year simple imprisonment and also imposed fine of Rs.3,000/-, in default to undergo three months simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the conviction rendered by the trial court.

5. The learned counsel for the petitioner would submit that the cheque was issued for security purpose and the same was misused by the respondent. The loan was borrowed by her husband and the same was duly repaid by him. At that time of borrowal of loan, the cheque was given as security purpose. Even after repayment of the entire amount, the respondent failed to return the same. Therefore, there was no legally enforceable debt to present the cheque for collection. However, the courts below without considering the same, convicted the petitioner for the offence punishable under Section 138 of NI Act.



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6. On perusal of the records, revealed that the petitioner borrowed a sum of Rs.5,00,000/- and in order to repay the same, she issued cheque.

The said cheque was presented for collection and the same was returned for the reason 'account closed. However, the submission of the petitioner is completely contradictory since she had taken a specific stand that the cheque was issued for security purpose at the time of borrowal of loan by her husband. Therefore, she never denied the issuance of cheque and signature of the cheque. Further, she also failed to make any statement when she was questioned under Section 313 of Cr.P.C. before the trial court. Further, admittedly there was money transaction between both the petitioner and the respondent herein. Even assuming that when her husband borrowed loan, the cheque was issued as security purpose, even after repayment of the entire loan amount by her husband, no steps had been taken for return of the cheque. In fact, no complaint was also lodged by her husband or by the petitioner herein.

7. That apart, when this Court suspended the sentence, imposed condition that the petitioner shall deposit 50% of the cheque amount before



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the trial court. It is also not complied with and the petitioner also failed to take notice to the respondent even till today. Therefore, the trial court rightly convicted the petitioner under Section 138 of NI Act and also the appellate court rightly confirmed the same. As such, this Court finds no infirmity or illegality in the orders passed by the courts below.

8. Accordingly, this criminal revision is dismissed.

10.10.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

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G.K.ILANTHIRAIYAN, J.

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



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this Court by an order dated 10.10.2022, dismissed the revision in Crl.R.C.No.72 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.5,00,000/- 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 10.10.2022 in Crl.R.C.No.72 of 2018 shall read as follows :-

“This Criminal Revision is directed as against the judgment dated 06.12.2017 passed in C.A.No.270 of 2017 on the file of the learned Principal Sessions Judge, Erode, confirming the order dated 19.09.2017 made in S.T.C.No.136 of 2013 on the file of the learned Judicial Magistrate Court, Fast Track Court No.II, Erode, thereby convicting the petitioner for



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the offence under 138 of the Negotiable Instruments Act (herein after referred to as “the NI 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.5,00,000/- 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. 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:-

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; (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 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 06.12.2017 passed in



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C.A.No.270 of 2017 on the file of the learned Principal Sessions Judge, Erode, confirming the order dated 19.09.2017 made in S.T.C.No.136 of 2013 on the file of the learned Judicial Magistrate Court, Fast Track Court No.II, 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.

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

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G.K.ILANTHIRAIYAN. J,

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To

- 1.The Principal Sessions Court of Erode
- 2.The Judicial Magistrate Court (Fast Track Court No.II),
Erode

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