



CrI.R.C.No.903 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

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

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Fathi Muthu Basha

...Petitioner

-Vs-

V.Cheeralan

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the order passed by the learned VII Additional Sessions Judge, Chennai, in C.A.NO.104 of 2017 dated 24.07.2018 confirming the judgment of the learned Metropolitan Magistrate, Fast Track Court No-IV, George Town, Chennai – 1, in C.C.No.539 of 2015 dated 31.01.2017 sentencing to undergo six months S.I and to pay a compensation of Rs.2,90,700/- i/d 2 months S.I.

For Petitioner : Mr.S.Suresh

For Respondent : No appearance

ORDER

This revision is filed as against the order passed in C.A.No.104 of 2017 dated 24.07.2018 on the file on the file of the VII Additional Sessions Judge,



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Chennai, thereby confirming the judgment passed in C.C.No.539 of 2015 dated 31.01.2017 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1, thereby convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The crux of the complaint is that on 16.02.2013, the petitioner borrowed a sum of Rs.2,55,000/- from the respondent and agreed to repay the said amount with interest at the rate of 1% per month. He also executed a promissory note. In order to repay the said amount, he issued a cheque for sum of Rs.2,90,700/- with interest, when it was presented for collection and the same was returned for the reason "Account Blocked". After causing statutory notice to the petitioner the respondent lodged a complaint.

3. On the side of the respondent PW1 was examined and Exs.P1 to P7 were marked and on the side of the petitioner no one was examined and no document was marked.

4. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of NI Act and sentenced him



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to undergo six months simple imprisonment and also to pay a sum of Rs.2,90,700/- as compensation. Aggrieved by the same the petitioner preferred an appeal the same was dismissed and confirmed the judgment passed by the trial Court. Hence this revision.

5. Pending this revision, the learned counsel for the petitioner would submit that at the time of suspending the sentence, he was directed to deposit a sum of Rs.1,20,000/-. Accordingly, the petitioner deposited the said amount to the credit of trial Court. Now he is ready and willing to settle the cheque amount however he is unable to serve notice to the respondent. Therefore, this Court directed the petitioner to deposit the remaining cheque amount to the credit of trial Court. Accordingly, the petitioner deposited a sum of Rs.1,20,000/- on 11.11.2022 to the credit of C.C.No.539 of 2015 on the file of the Metropolitan Magistrate No.IV, Chennai. Now, the entire cheque amount is lying in the credit of C.C.No.539 of 2015 on the file of the Metropolitan Magistrate No.IV, Chennai.

6. 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:-

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



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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.

7. In view of the aforesaid decision, the Judgment dated 24.07.2018 passed in C.A.No.104 of 2017 on the file of the VII Additional Sessions Judge, Chennai, thereby confirming the Judgment dated 31.01.2017 in C.C.No.539 of 2015 on the file of the Metropolitan Magistrate, Fast Track Court No-IV, George Town, Chennai, are hereby set aside.

8. Accordingly, this Criminal Revision case stands allowed. The respondent is permitted to withdraw the entire amount which was deposited by the petitioner to the credit of C.C.No.539 of 2015 on the file of the



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Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1, by

way of filing appropriate application. The trial Court is directed to permit the respondent to withdraw the said amount without ordering any notice to the petitioner.

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Index : Yes/No

Speaking/Non Speaking order
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To

1. The VII Additional Sessions Judge,
Chennai.
2. The Metropolitan Magistrate,
Fast Track Court No-IV,
George Town, Chennai.



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G.K.ILANTHIRAIYAN. J.

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