



Crl.R.C.Nos.650 and 651 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

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

Crl.R.C.No.650 and 651 of 2019
and Crl.M.P.Nos.9060, 9062, 9063 and 9064 of 2019

GhurshidAftab

... Petitioner **in both Crl.R.Cs**

Vs.

Mangala

... Respondent **in both Crl.R.Cs**

Prayer in Crl.R.C.No.650 of 2019: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the Judgment dated 09.04.2019 passed by the Learned XVI Additional District and Sessions Judge, Chennai in Crl.A.No.158 of 2018 confirming the Judgment dated 05.03.2018 passed by the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.831 of 2016 and to acquit the Revision Petitioner.

Prayer in Crl.R.C.No.651 of 2019: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the Judgment dated 09.04.2019 passed by the Learned XVI Additional District and Sessions Judge, Chennai in Crl.A.No.159 of 2018 confirming the Judgment dated 05.03.2018 passed by the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.830 of 2016 and to acquit the Revision Petitioner.



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In both Crl.R.Cs

For Petitioner : Mr.R.Abdul Mubeen
For Respondent : No appearance

COMMON ORDER

The Criminal Revision case in Crl.R.C.No.650 of 2019 has been filed as against the Judgment passed in Crl.A.No.158 of 2018, dated 09.04.2019, on the file of the learned XVI Additional District and Sessions Judge, Chennai, confirming the Judgment and Conviction passed in C.C.No.831 of 2016, dated 05.03.2018, on the file of the III Metropolitan Magistrate, George Town, Chennai, thereby convicting the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The Criminal Revision case in Crl.R.C.No.651 of 2019 has been filed as against the Judgment passed in Crl.A.No.159 of 2018, dated 09.04.2019, on the file of the learned XVI Additional District and Sessions Judge, Chennai, confirming the Judgment and Conviction passed in C.C.No.830 of 2016, dated 05.03.2018, on the file of the III Metropolitan Magistrate, George Town, Chennai, thereby convicting the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.



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3. The revision petitioner is an accused in the complaints lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. As per the complaint, the petitioner borrowed a sum of Rs.2,00,000/- and Rs.5,00,000/- on 08.03.2013 and promised to repay the same within a period of two months. On demand, in order to discharge the said liability, the petitioner issued two cheques for a sum of Rs.2,00,000/- and Rs.5,00,000/- respectively and the same were presented for collection. However, both the cheques returned dishonoured for the reason “Funds Insufficient”. Immediately, after causing legal notice, the respondent lodged complaints.

4. On the side of the respondent, she was examined as P.W.1 and marked Exs.P.1 to P.5. On the side of the petitioner, she was examined as D.W.1 and no document was marked. On a perusal of oral and documentary evidences, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced her to undergo six months simple imprisonment in each case and also awarded compensation of sum of Rs.2,68,000/- and Rs.6,70,000/- respectively. Aggrieved by the same, the petitioner preferred appeals and the same was dismissed confirming the orders passed by the Trial Court. Hence, these revisions.



5. The learned counsel appearing for the petitioner would submit that

both the cheques were issued only for security purpose during a chit transaction.

The respondent was running a chit, in which the petitioner subscribed for two chit transactions. While taking chit amount, she issued two cheques for security purpose and it was misused by the respondent to initiate proceedings under Section 138 of Negotiable Instruments Act. He also pointed out that in the cross examination of P.W.1, the petitioner rebutted the presumption arising out of 139 of Negotiable Instruments Act. The defacto complainant admitted that there was a chit transaction between them. The respondent also deposed that she did not file any document to prove the source of such huge amount and she is not an income tax assessee. Therefore, the respondent had no source of income to lend such a huge amount. However, the Courts below mechanically convicted the petitioner.

6. He further submitted that pending revisions, both the parties have settled their issues and by agreeing for a sum of Rs.7,50,000/-. Accordingly the petitioner paid a sum of Rs.4,70,000/- and the same was duly received by the respondent. Subsequently, further amount was also paid to the respondent. However, there was no acknowledgement. Now, the petitioner is a 76 year old lady and she is bed ridden and is not able to move.



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7. Considering the above facts and circumstances of the case, especially the fact that the respondent had also agreed for the amount which was already received by her as full and final settlement and there is nobody present before this Court to contest the case, this Court is inclined to dispose of both the revisions.

8. A perusal of records revealed that the petitioner so far paid a sum of Rs.4,70,000/-. According to the petitioner, the amount was also received by the respondent. The petitioner is also aged about 76 years and admitted into the hospital for her age old illness. It seems there was some settlement between them and as such the respondent is not coming forward before this Court to contest the matter.

9. Hence, this Court is inclined to set aside the conviction and sentence imposed on the petitioner on the ground that the matter has been already settled between the parties.

10. 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 sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

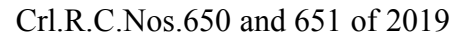
19. We thus sumup and hold that as opposed to [Section 320](#) Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences ‘compoundable’ within the statutory framework, the extraordinary power enjoined upon a High Court under [Section 482](#) Cr.P.C. or vested 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)



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*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*



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.

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12. Accordingly, these Criminal Revision cases are allowed.

Consequently, connected Miscellaneous petitions are also closed.

14.11.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

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To

1.The XVI Additional District and Sessions Judge, Chennai.

2.The III Metropolitan Magistrate, George Town, Chennai.

G.K.ILANTHIRAIYAN. J,



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