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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM : JUSTICE N.SESHASAYEE

CRL.R.C.NO.963 OF 2019

S.B.Prabhakar

...Revision Petitioner/Accused

Vs.

K.Murugeswari

...Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397(1) of Criminal Procedure Code, to set aside the conviction and the consequential sentence imposed therein in C.A.No.83 of 2018 dated 11.06.2019 on the file of IV Additional District Judge, Thiruvallur at Ponneri which confirmed the conviction and sentence imposed in S.T.C.No.73 of 2016 dated 18.04.2018 on the file of Judicial Magistrate-II, Ponneri.

For Petitioner : Mr.D.Murthy

For Respondent : Mr.K.Seetharam

ORDER

This Revision is preferred by the accused who suffered a conviction and sentence for the offence under Section 138 of the Negotiable Instruments Act, 1991, sentencing him to undergo one month simple imprisonment and to pay a compensation of Rs.1,10,000/- as per Section 357(3) Cr.P.C. in default to undergo simple imprisonment for a period of two weeks in S.T.C.No.73 of 2016 which later came to be confirmed by the learned Sessions Judge in Crl.A.No.83 of 2018. Aggrieved by the same, this revision is filed.

2. The case of the complainant is that on 13.10.2013, he has advanced a sum of Rs.2.10 lakhs to the accused. The accused had issued two cheques, one dated 30.07.2015 for Rs.1,00,000/- and other cheque dated 28.08.2015 for a sum of Rs.1,10,000/- towards repayment of the debt. The cheque involved in this case were marked as Ex.P1. Both these cheques were presented for encashment, but they came to be dishonoured as "Funds



Insufficient" by the complainant's banker vide return advice memo dated 06.11.2015. In the meantime, the amount due on the first cheque for Rs.1,00,000/- was settled and the cheque was taken back by the accused. Following the same, the defacto complainant had issued a demand notice(Ex.P3) dated 18.11.2015 to the accused for repayment of Rs.1,10,000/- and the same has been received by the accused, but he had not replied hitherto, hence, the defacto complainant filed the complaint. The complainant examined himself and the accused did not enter the box during trial. On appreciating the evidence, both the trial Court and the first Appellate Court convicted and sentenced him for the offence as mentioned in the opening paragraph.

3.1 The learned counsel for the revision petitioner brought to the notice of the Court that even before the Trial Court he had taken out the petition under Section 147 of the Negotiable Instrument Act for compounding the offences, that it was not considered by the learned Magistrate, nor disposed of, still, he has dealt with the same in his judgment. In Paragraph 14 of his judgment, the learned Magistrate says that this petition was filed without the consent of the complainant. Despite having made this observation, the learned Magistrate proceeded not to grant any compensation. Even the Appellate Court has not granted any compensation under Section 357 Cr.P.C.,

3.2 Be that as it may, the complainant has filed O.S.No.87 of 2019 before Sub-Court, Ponneri. This suit was laid by him for realisation of the amount due on the very cheque involved in his case, and that suit came to be decreed, and for executing the same, the defacto complainant took out E.P.No.27 of 2018 for attachment of certain movables belonging to the Revision Petitioner/Accused. Subsequently, on 07.06.2019, the decreetal amount of Rs.1,30,251/- was deposited in the Court, following which, the Court had closed the E.P. on 07.06.2019 which includes the cost of Rs.1,23,719/-.

4. The learned counsel submitted that right from the trial stage, the Revision Petitioner is keen to settle the issue, but unfortunately, the Magistrate could not have seized the opportunity to bring out the settlement between the parties.

- what could have been realised before the Magistrate Court, now has been settled before the Civil Court.
- At any rate, no compensation was directed to be paid. The compensation amount ordered is Rs.1,10,000/- and it has not been paid. Since it was paid in a Civil Court, it was also paid with an interest. The offence is compoundable, but compounding the offence essentially requires both the complainant and the accused coming before the Court to make the statement. Instead, the said statement has been made by



the Civil Court in its order in E.P.No.27 of 2018 dated 07.06.2019. Since the amount due on the cheque had already been paid, this Court in the best interest of justice has to record that the offence has been compounded.

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5. Learned counsel also submitted that he has to deposit a sum of Rs.16,500/- in terms of the order passed by this Court in CrI.M.P.No.13614 of 2019 and he is permitted to withdraw the same.

6. With the above observation this Criminal Revision Petition is disposed of.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nr/msv

To

1. The Judicial Magistrate No.II,
Ponneri.
2. -do- through The Chief Judicial Magistrate,
Thiruvallur.
3. The IV Additional District Judge,
Thiruvallur at Ponneri.

+1cc to Mr.D.Murthy, Advocate, S.R.No.12509

CrI.R.C.No.963 of 2019

MG(CO)
RLP(25/03/2022)