



Crl.R.C.No.1424 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

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

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1. M/s Shree Dharsan Engineering
represented by its
Partner V.Sudharsan
No.11, Sakthi Nagar,
Periyanaickenpalayam,
S.R.K.V.(Post),
Coimbatore-641 020.

2. Sudharsan
Partner, M/s.Shree Dharsan Engineering
No.11, Sakthi Nagar,
Periyanaickenpalayam,
S.R.K.V.(Post),
Coimbatore-641 020.

... Petitioners

Vs.

1. The State
represented by the Public Prosecutor
III Additional District and Sessions Judge,
Coimbatore.

2. P.Purushothaman

... Respondent



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PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the Judgment passed by the Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore in C.C.No.3 of 2012 dated 24.11.2016 and confirmed by the Judgment passed by the III Additional District and Sessions Court, Coimbatore in C.A.No.181 of 2016 dated 16.04.2018 and acquit the petitioners.

For Petitioners : Mr.S.B.Viswanathan
For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)
For R2 : Mr.K.Vasanthanayagan

ORDER

This Criminal Revision case has been filed as against the Judgment passed in C.A.No.181 of 2016 dated 16.04.2018 on the file of the III Additional District and Sessions Court, Coimbatore, thereby confirmed the Judgment passed in C.C.No.3 of 2012 dated 24.11.2016 on the file of the Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore, thereby convicted the petitioners for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the



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respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that A1 is the firm. A2 and A3 are partners of A1 firm. The accused approached the respondent on 02.01.2011 and requested to lend loan to the tune of Rs.7,50,000/-. They also promised that they will repay the said amount, within a period of two months. Considering the said request, the respondent arranged and lent a sum of Rs.7,50,000/- as loan on 08.02.2011. On the same day, the accused issued post dated cheque for the said amount. On instructions, it was presented for collection. However, it was returned dishonored with an endorsement “Insufficient Funds”. Immediately, 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 18. On the side of the petitioner, they examined D.Ws.1 to 3 and marked Exs.D1 to 4. On a perusal of oral and documentary evidences, the Trial Court found the petitioners guilty for the offence punishable under Section 138 of Negotiable Instruments Act. A1 was convicted and sentenced to pay a fine of Rs.10,000/-. A2 being



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the partner of A1 shall pay the fine amount, in default to undergo two months simple imprisonment. A2 was also sentenced to undergo one year simple imprisonment. Aggrieved by the same, the petitioners preferred an appeal and the same was dismissed, confirming the Judgment passed by the Trial Court. Hence, this revision.

4. Both the learned counsel for the petitioners and the second respondent submitted that they arrived at an amicable settlement and fixed an amount of Rs.4,00,000/- to be paid by the petitioners. Accordingly, the petitioners issued post dated cheque, dated 30.12.2022 in favour of the second respondent herein. The second respondent also has no objection to set aside the conviction and sentence imposed on the petitioners by the Courts below, in pursuant to the settlement arrived at between them.

5. 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



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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



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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;



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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.

6. In view of the above, the Judgment passed in C.A.No.181 of



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2016 dated 16.04.2018 on the file of the III Additional District and Sessions Court, Coimbatore, thereby confirming the Judgment passed in C.C.No.3 of 2012 dated 24.11.2016 on the file of the Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore, are hereby set aside.

7. It is made clear that if the post dated cheque, dated 30.12.2022 is not honoured by the petitioners, the conviction and sentence imposed on the petitioners by the Court below shall stand automatically restored. In such case, the official respondent is at liberty to take appropriate steps to secure the petitioners to serve the sentence imposed by the Courts below.

8. Accordingly, this Criminal Revision case stands allowed.

29.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mn



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To

1. The III Additional District and Sessions Court, Coimbatore.
2. The Judicial Magistrate Fast Track Court at Magisterial Level-II.
3. The Public Prosecutor,
III Additional District and Sessions Judge,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J



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