



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.3222 of 2022

K.Mohammed Maraikayar

... Petitioner

Vs.

M.Janba Shahip

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to issue a direction to compound the offence of section 138 of NI Act, in STC.No. 1438 of 2014, on the file of the Judicial Magistrate Court, Periyakulam, direct the Hon'ble Judicial Magistrate, Periyakulam, under section 147 of NI Act, based on the Joint Compromise Deed dated 26.06.2021, entered between the petitioner and the respondent, after the disposal of Crl.R.C.(MD). No.712 of 2017.

For Petitioner : Mr.P.Muthu Vijaya Pandian

For Respondent : Mr.B.Santhanam Rajeshkumar

ORDER

This Criminal Original Petition has been filed to compound the offence of Section 138 of NI Act, in STC.No.1438 of 2014, on the file of the Judicial Magistrate Court, Periyakulam and direct the learned Judicial Magistrate, Periyakulam, under section 147 of NI Act, based on the Joint Compromise Deed dated 26.06.2021, entered between the petitioner and the respondent, after the disposal of Crl.R.C. (MD).No.712 of 2017.

2. The petitioner was convicted in S.T.C.No.1438 of 2014 on the file of the learned Judicial Magistrate, Periyakulam for the offences under Section 138 of Negotiable Instruments Act and the same was confirmed in the Appeal in C.A.No.46 of 2016 on the file of the Principal District Court, Theni. Aggrieved by the same, the petitioner has filed revision before this Court in Crl.R.C.(MD). No.712 of 2017. It was also dismissed by an order dated 09.04.2021.

<https://hccourts.org.in/hccourts/revise> The petitioner and the respondents have entered into a



compromise and on receipt of the entire cheque amount, the respondent not to enforce the sentence imposed on the petitioner. In this regard, both entered into the full and final settlement and also produced receipt of the same before this Court.

3. In this regard, the Hon'ble Supreme Court of India, in the case of **Meters and Instruments Private Limited and another Vs. Kanchan Mehta reported in (2018) 1 SCC 560**, held as follows:

"offence under Section 138 of Negotiable Instruments Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is preponderance of probabilities. The same has to be normally tried summarily as per provisions of summary trial under Cr.P.C. but with such variation as may be appropriate to proceedings under chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect."

4. Further, the parties settled the dispute and the complainant compounded the offence. The change in circumstances is sufficient to justify the invocation of the powers afresh under Section 482 of Cr.P.C. notwithstanding the bar under Section 362 of Cr.P.C.

5. In view of the above and also the compromise entered into between the parties, the conviction and sentence imposed on the petitioner for the offences punishable under Section 138 of Negotiable Instruments Act in S.T.C.No.1438 of 2014 on the file of the learned Judicial Magistrate, Periyakulam and subsequently confirmed in C.A.No.46 of 2016 on the file of the Principal District Court, Theni are set aside.

6. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (AS)

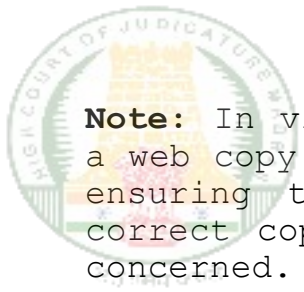
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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To

1.The Judicial Magistrate, Periyakulam, Theni District.

2.The Principal District Judge, Theni.

+1 CC to M/s.P.MUTHUVIJAYAPANDIAN, Advocate (SR-8192[F] dated 23/02/2022)

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