



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.291 of 2022

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S.Athisayaraja@Raja

...Petitioner

Vs.

T.Rajendhiran

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and to set aside the order passed by the Additional District Judge, Srivilliputhur in Crl.M.P.No.3 of 2022 in C.A.No.45 of 2020, dated 14.02.2022 and consequently accept the compromise memo filed before the Court and further direction to Additional District Court, Srivilliputtur to acquit the petitioner/accused in the Criminal Appeal in C.A.No.45 of 2020 on the file of the Additional District Court, Srivilliputhur.

For Petitioner

: Mr.S.A.Ajmalkhan

For Respondent

: Mr.R.Niresh Kumar

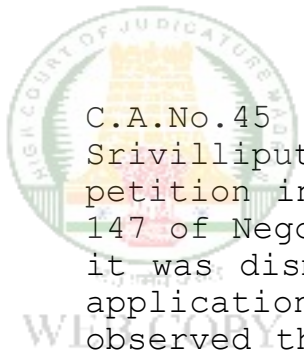
ORDER

This petition has been filed to set aside the order passed by the Additional District Judge, Srivilliputhur in Crl.M.P.No.3 of 2022 in C.A.No.45 of 2020, dated 14.02.2022 and consequently accept the compromise memo filed before the Court and further direct the learned Additional District Court, Srivilliputtur to acquit the petitioner/accused in the Criminal Appeal in C.A.No.45 of 2020, pending on the file of the Additional District Court, Srivilliputhur.

2.The petitioner is an accused. On the complaint lodged by the respondent herein alleged that the petitioner borrowed a sum of Rs.2,50,000/- from the respondent to meet the medical expenses for his wife on 20.10.2016. In order to repay the said amount, the petitioner has issued a cheque for Rs.2,50,000/- vide cheque No.578894 drawn on the State Bank of India, Srivilliputhur Branch, Virudhunagar. The said cheque presented for collection and the same was returned with an endorsement 'Insufficient Funds'. Hence, the respondent has lodged a complaint.

3.The trial Court found the petitioner's guilty and convicted him for the offence under Section 138 of Negotiable Instruments Act, and sentenced him to undergo imprisonment for a period of one year. Aggrieved by the same, the petitioner had preferred an appeal in

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



C.A.No.45 of 2020 before the Additional District Court, Srivilliputhur. While pending appeal, the petitioner has filed a petition in Crl.M.P.No.3 of 2022 in C.A.No.45 of 2020 under Section 147 of Negotiable Instruments Act, to compound the appeal. However, it was dismissed as not maintainable for the reasons that the said application was not signed by the respondent herein. It is further observed that compounding of the offence will happen only when both parties arrived at a settlement.

4.On perusal of records revealed that the respondent has also filed a suit for recovery of the said money in O.S.No.83 of 2018 before the Subordinate Court, Srivilliputhur on the strength of the very same impugned cheque in the present case. Further on the date of borrowing, the petitioner executed a pro-note for the said sum. The total borrowal amount is a sum of Rs.2,50,000/-. Even according to the respondent, the petitioner has agreed to pay the sum with interest which rate of 1%. While pending appeal, the petitioner wants to settle the entire amount and accordingly he offered a sum of Rs.5,00,000/- as full and final settlement for the amount borrowed by him for Rs.2,50,000/-. Further the respondent is not interested to settle the issue by compounding the offence.

5.In this regard, the learned counsel for the petitioner relied upon the judgment reported in **(2018) 1 SCC 560** in the case of **Meters and Instruments Private Limited and Another Vs. Kanchan Mehta** in paragraph Nos.18.1, 18.2 and 18.3 as follows:-

'18.1.Offence under Section 138 of the 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 CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC. 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.

18.2.The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3.Though compounding requires consent



of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused''.

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6.The Hon'ble Supreme Court of India revealed that the 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. The object of the provision being primarily compensatory, punitive element, being mainly with the object of enforcing the compensatory element compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court. Further held that the compounding requires consent of both parties, even in absence of such consent, the Court, in the interest of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

7.In the case on hand, admittedly the petitioner has borrowed a sum of Rs.2,50,000/- as loan on 01.10.2015. On the date of borrowal, he executed pro-note for the said sum. In order to repay the said amount, he issued a cheque for a sum of Rs.2,50,000/- and the same was presented for collection. Since it was returned as insufficient funds, the respondent has initiated the proceedings under Section 138 of Negotiable Instruments Act. The trial Court found the petitioner's guilty and convicted him. On the strength of the very same cheque and pro-note the respondent has also filed a suit in O.S.No.83 of 2018, for recover the amount before the Subordinate Court, Srivilliputhur and the same is pending. Now the petitioner taken Demand Draft and produced before this Court in favour of the respondent to the tune of Rs.5,00,000/- including reasonable interest for the pro-note amount. This Court satisfied with the amount, which ought to have been settled by the petitioner herein by way of Demand Draft of Rs.5,00,000/- (Rupees Five lakhs only) in favour of the respondent herein.

8.In view of the above, the order passed by the learned Additional District Judge, Srivilliputhur in Crl.M.P.No.3 of 2022 in C.A.No.45 of 2020, dated 14.02.2022, is liable to be set aside and the application filed for compounding offence under Section 147 of Negotiable Instruments Act, is remanded back to the Appellate Court for fresh consideration. The Appellate Court is directed to issue suitable direction to the petitioner herein to deposit a sum of Rs.5,00,000/- to the credit of C.C.No.127 of 2017 on the file of the learned Judicial Magistrate, Rajapalayam and pass suitable orders as held by the Supreme Court of India.



9. Accordingly, the Criminal Revision Case is allowed and the order passed by the learned Additional District Judge, Srivilliputhur, in Cr1.M.P.No.3 of 2022 in C.A.No.45 of 2020, dated 14.02.2022, is hereby set aside.

Sd/-

Assistant Registrar (Writ)

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/ /2022

Sub Assistant Registrar(CS)

vsd

To

1.The Additional District Court,
Srivilliputtur.

2.The Judicial Magistrate, Rajapalayam.

+1 CC to M/s.S.A. AJMALKHAN, Advocate (SR-19060[F] dated
18/04/2022)

Cr1.R.C (MD) No.291 of 2022
18.04.2022

SP (CO)

KB(10.05.2022) 4P 4C