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Crl.R.C.No.1647 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1647 of 2023

Sakthivel

... Petitioner

Vs.

Mahalingam

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 18.08.2023 made in Crl.M.P.No.2341 of 2023 passed by the learned Principal Sessions Judge, Krishnagiri.

For Petitioner : Mr.S.Sathish Rajan

For Respondent : Mr.S.Subramaniya
for M/s. S.P.Patel

ORDER

This Criminal Revision Case is filed against the order passed by the learned Principal Sessions Judge, Krishnagiri, in Crl.M.P.No.2341 of 2023, vide order dated 18.08.2023.



Crl.R.C.No.1647 of 2023

WEB COPY

2. The petitioner herein is an accused in the private complaint filed by the respondent/complainant for the offence under Section 138 of Negotiable Instruments Act in S.T.C.No.476 of 2016 before the learned Judicial Magistrate, Uthangarai. The trial Court, by an order dated 23.11.2020 convicted the petitioner by imposing the imprisonment for a period of one year and also by directing the petitioner to pay a compensation of Rs.5,00,000/-. Against which, the petitioner preferred the appeal along with the petition to condone the delay of 758 days in filing the appeal. The learned Principal Sessions Judge, Krishnagiri dismissed the said petition in Crl.M.P.No.2341 of 2023 vide order dated 18.08.2023. Aggrieved against the same, the present criminal revision case is filed.

3. Learned counsel for the petitioner submitted that after the judgment passed in S.T.C.No.476 of 2016, the petitioner was suffered with jaundice and he was taking native treatment. Further due to the impact of the spread of Covid pandemic, the petitioner was advised not to vedge around until his recovery from jaundice and other complications and



thereby, it took some time. Hence, there was delay in filing the appeal.

Therefore, the petitioner filed the application in Crl.M.P.No.2341 of 2023 seeking to condone the delay of 758 days in filing the appeal.

4. He further submitted that the Principal Sessions Judge, Krishnagiri, had failed to look into the facts that it is a statutory appeal and also the petitioner's health condition, dismissed the petition seeking to condone the delay in filing the appeal for the reason that there was a huge delay of 758 days and not provided any basic details to prove that he took native treatment. Further, since the petitioner had not appeared on the date of judgment i.e. on 23.11.2020, a non-bailable warrant was issued, he was arrested on 02.06.2023 after a period of 4½ years and he is still in custody. The petitioner had been denied with the opportunity of hearing his statutory appeal and was confined. Considering the health condition and as well as plight of the family, the petitioner is not to be blamed for the delay in making the payment.



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5. Learned counsel for the petitioner further submitted that the private complaint filed under Section 138 of Negotiable Instruments Act is purely a civil dispute, which could be compounded at any stage as per Section 148 of Negotiable Instruments Act as well as by the several judgments of this Court and the Hon'ble Apex Court. The petitioner and his family members mobilised the funds and approached the respondent/complainant to negotiate for an amicable settlement and in furtherance of the same, a settlement was arrived between the parties.

6. Thereby, the petitioner and the respondent entered into a compromise and the respondent/complainant has agreed to receive a sum of Rs.4 lakhs as full and final settlement and out of which, a sum of Rs.3 lakhs was received and agreed to receive a sum of Rs.1 lakh after compounding the offence and the petitioner undertakes to file the petition under Section 148 of Negotiable Instruments Act to compound the case.



7. Today, the learned counsel for the respondent along with the respondent is present before this Court and they have also filed an affidavit to that effect, which is extracted hereunder :-

“1. I am the respondent herein and the complainant in S.T.C. NO. 476 of 2016 on the file of Judicial Magistrate, Uthangarai and as such I am conversant with the facts of the case.

2. I respectfully submit that I have filed the complaint as against the petitioner herein in S.T.C. NO. 476 of 2016 before the Judicial Magistrate Uthangarai for the offence under section 138 of Negotiable Instruments Act for the dishonor of the Cheque of Rs. 5,00,000/- issued by the petitioner/accused herein.

3. I respectfully submit that after trial the Learned Judicial Magistrate by Judgement dated 03.11.2020 was pleased to convict the petitioner to undergo one year simple imprisonment and to pay the cheque amount of Rs.5,00,000.- as compensation.

4. I respectfully submit that the petitioner accused preferred appeal as against the order of conviction along with a delay condonation application in Crl.M.P. No. 2341 of 2023 before the Principal District Court, Krishngiri. The Learned Judge by order dated 18.08.2023 made in



Crl.M.P.No. 2341 of 2023 was pleased to dismiss the application seeking to condone the delay of 758 days in filing the appeal. During the pendency of the delay condonation application the petitioner/accused was arrested on 02.06.2023 and he is jail.

5. I respectfully submit that subsequently the family of the petitioner accused approached me and agreed to settle pay a sum of Rs.4,00,000/- as full and final settlement which was accepted by me and in furtherance of the same, the son of the Petitioner accused paid a sum of Rs.3,00,000/- as part payment and agreed to pay the balance agreed sum of Rs.1,00,000/- at the time of compounding the offence. I have agreed to receive the said Sum of Rs.1,00,000/- after compounding the offence.

6. I undertake to compound the offence in view of the settlement arrived between us and I have no further claim as against the petitioner accused in respect to the subject cheque in STC No. 476 of 2016 on the file of Judicial Magistrate, Uthangarai.

It is therefore prayed that this Hon'ble Court may be pleased to record my affidavit and pass further orders as this Hon'ble Court may deem fit and property in the circumstances of the case and thus render justice.”



8. The learned counsel for the petitioner filed the Joint Memo of

Compromise and the relevant portion of the Memo of Compromise is extracted hereunder:-

“It is submitted that the above Revision has been filed as against the Order dated 18.08.2023 made in Crl.M.P. 2341 of 2023 dismissing the application filed by the petitioner herein to condone the delay of 758 in preferring the Appeal filed as against the order of Conviction dated 03.11.2020 made in S.T.C. No. 476 of 2016 passed by the Learned passed by the Judicial Magistrate Uthangarai for the alleged offence under section 138 of Negotiable Instrument Act.

It is submitted that during the pendency of the above Crl.M.P., the petitioner was arrested on 02.06.2023 and he is Jail. Now subsequent to the impugned Order, there was a compromise between the complainant and the family of the accused. It was mutually agreed that the petitioner to pay a sum of Rs.4,00,000/- as full and final settlement and the same was accepted by the respondent herein. In furtherance of the same the petitioner/ accused has paid a part payment of Rs.3,00,000/-out of the agreed amount of Rs.4,00,000/- and agreed to pay the balance sum of Rs. 1,00,000/- at the time of compounding the offence.



It is submitted that the respondent complainant received the part payment of Rs.3,00,0000/- and agreed to compound the offence and thereafter to receive the balance amount of Rs.1,00,000/-. It is submitted that there is no further claim as against the petitioner and the respondent.

It is therefore prayed that this Hon'ble Court may be pleased to record the Joint Memo of Compromise and pass further orders as this Hon'ble Court may deem fit and property in the circumstances of the case and thus render justice.”

9. The learned counsel for the respondent/complainant reiterated the compromise before this Court and submitted that the respondent undertakes that in view of the compromise entered into between the petitioner and the respondent and the substantiate amount has already been paid except for the balance amount of Rs.1 lakh, which was agreed to be received, he will withdraw the case filed against the petitioner,

10. In view of the above and since the reasons stated by the petitioner are reasonable, the learned Principal Sessions Judge, Krishnagiri is directed to render justice in condoning the delay and straight away take



Crl.R.C.No.1647 of 2023

the appeal on file, if it is otherwise in order and also receive the application to compound the case between the petitioner and the respondent/complainant, without any delay. This direction is required since the petitioner is in prison from 02.06.2023 and also finding that the offence is compoundable in nature.

11. Accordingly, the Criminal Revision Case stands disposed of. The Joint Memorandum of Compromise and the Affidavit filed by the respondent shall form part of the Court records.

03.10.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

Note: Issue order copy on 03.10.2023

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To

1. The Principal Sessions Judge, Krishnagiri.
2. The Judicial Magistrate, Uthangarai.

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Crl.R.C.No.1647 of 2023

M.NIRMAL KUMAR,J.

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