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Crl.R.C.No.1722 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1722 of 2023 and
Crl.M.P.Nos.16435 & 20204 of 2023

I Gulzar Ahmed

... Petitioner

Vs.

G.Chandramouli

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in respect of the impugned order dt.14.09.2023 in Crl.M.P.No.964/2023 passed by the Principal District and Sessions Judge of Kancheepuram at Chengalpattu and set aside the same and consequently allow my petition.

For Petitioner : Mr.A.Thirumaran
For Respondent : Mr.N.Soundararajan

ORDER

The petitioner was convicted by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Alandur (trial Court) by judgment, dated 18.07.2022 in C.C.No.274 of 2017 and sentenced to undergo Simple Imprisonment for one year and to pay compensation of Rs.25,00,000/- to the respondent within one month, in default to undergo Simple Imprisonment



for two months for offence under Section 138 of the Negotiable Instruments

Act, 1881. Aggrieved over the same, an appeal along with condone delay petition were filed by the petitioner before the learned Principal District and Sessions Judge of Kancheepuram District at Chengalpet (lower appellate Court) in Crl.M.P.No.964 of 2023 in C.A.SR.No.631 of 2023. The lower appellate Court, by order, dated 14.09.2023 dismissed the petition. Challenging the same, the present Criminal Revision Case is filed.

2.Gist of the case is that the petitioner borrowed a sum of Rs.20,00,000/- from the respondent for his car business in the month of December 2015 with a promise to pay Rs.45,000/- per month as interest. Initially, the petitioner paid interest for few months and thereafter when the respondent demanded for repayment of the entire amount, the petitioner promised to pay Rs.25,00,000/-. On 21.08.2017, the petitioner issued three cheque Nos.810391, 910392 & 810393 for a sum of Rs.10,00,000/-, Rs.10,00,000/- and Rs.5,00,000/- respectively to the respondent. When the respondent presented three cheques for encashment in ICICI Bank, Nanganallur Branch, Chennai, the same was returned 'Funds Insufficient'



with a return memo, dated 17.10.2017. Thereafter, the respondent sent a legal notice to repay the cheque amount, but the petitioner neither paid the cheque amount nor made any reply. After following the statutory provisions, the respondent filed a complaint before the trial Court for offence under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.274 of 2017. During trial, the respondent examined himself as PW1 and marked nine documents as Exs.P1 to P9. On the side of the petitioner/defence, no witness examined but one document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

3.This Court on 12.10.2023, 06.11.2023, 23.11.2023 and 20.12.2023 passed the following orders:

Order, dated 12.10.2023:

“The petitioner/accused in C.C.No.274 of 2017 for the offence under Section 138 of Negotiable Instruments Act, 1881 was convicted by the Trial Court by judgment dated 18.07.2022 and sentenced to undergo one year simple imprisonment and to pay a compensation of Rs.25,00,000/- to the respondent/complainant.



2. Aggrieved against the same, the petitioner preferred an appeal but with a delay of 174 days. Hence, he filed Crl.M.P.No.964 of 2023 in C.A.SR.No.631 of 2023. During the pendency of this petition, the respondent/complainant filed Crl.O.P.No.5881 of 2022 before this Court seeking a direction to consider the representation of the respondent herein dated 24.12.2022 and to take immediate action to execute the Non-Bailable Warrant issued by the Fast Track Court, Alandur, Chennai in C.C.No.274 of 2017 by judgment dated 18.07.2022. This Court by order dated 15.03.2023 directed the respondent police to get fresh Non-Bailable Warrant from the concerned Judicial Magistrate, Fast Track Court, Alandur, Chennai and execute the same within a period of three weeks from the date of receipt of a copy of the said order. Thereafter, the learned Principal District and Sessions Judge, Kancheepuram District at Chengalpattu, based on the finding of this Court in execution of Non-Bailable Warrant, dismissed the condone delay petition on 14.09.2023. Against which, the present revision is filed.

3. The contention of the petitioner is that the petitioner and the respondent were having business understanding with regard to purchase and dealing in shares. It is a



speculative business in which the petitioner made profits for the respondent/complainant and later, the business sustained loss. During the course of the business, there was some deposit of cheques with the respondent/complainant which has been used by him to proceed against the petitioner and the Trial Court not considering the same had convicted the petitioner. The petitioner thereafter preferred an appeal with a delay. Since the earlier counsel who was dealing with the petitioner's case had taken the judgment copy of the Trial Court, there was some communication gap and the certified copy was not available to immediately file the appeal. After contacting another lawyer, copy application was made only on 20.06.2023 and after obtaining the certified copy, appeal was filed with a petition to condone the delay. The Trial Court influenced by the order of this Court in Crl.O.P.No.5881 of 2023 failed to look into the fact that appeal is a statutory right, had dismissed the condone delay petition. The delay could have been condoned with some cost or condition but on the other hand, by dismissing the condone delay petition, the petitioner's statutory right has been deprived. Hence, the present revision petition.

4.The learned counsel for the petitioner fairly submitted that the petitioner is ready to deposit



Rs.5,00,000/- to the credit of C.C.No.274 of 2017. He would further submit that the petitioner has got fair chance of succeeding in the appeal and hence the appeal to be numbered and can be disposed of on merits.

5.Considering the submissions made and the petitioner has got statutory right to appeal against his conviction, the petitioner is directed to deposit Rs.5,00,000/- to the credit of C.C.No.274 of 2017 on the file of the Judicial Magistrate, Fast Track Court, Alandur, Chennai on or before 03.11.2023 and produce the receipt of the same before this Court.

6.Post the matter on 06.11.2023.”

Order, dated 06.11.2023:

“Today, learned counsel for the petitioner submitted that in obedience to the order of this Court dated 12.10.2023, the petitioner had already deposited Rs.5,00,000/- to the credit of C.C.No.274 of 2017 on the file of the Judicial Magistrate, Fast Track Court at Alandur, Chennai. He further submits that the cheque amount is Rs.20,00,000/-. The petitioner is ready to settle the cheque amount. Now he is willing to pay the balance of



Rs.15,00,000/- which, he shall pay within a stipulated time. Out of Rs.15,00,000/- the petitioner will pay Rs.10,00,000/- to the credit of C.C.No.274 of 2017 on or before 22.11.2023 and the balance Rs.5,00,000/- to the credit of C.C.No.274 of 2017 on or before 11.12.2023.

2.Today, learned counsel for petitioner produced a memo confirming the payment of Rs.5,00,000/- and the learned counsel for the respondent served with the memo. The respondent's objection is that the petitioner by giving one reason or other delaying the payment of cheque amount to the respondent complainant. The case is of the year 2017. Despite 6 years have passed, petitioner neither filed any appeal within the stipulated time nor complied with the conditions of the trial court judgment. The respondent is willing to settle the issue provided the petitioner makes the payment as promised subject to the approval from the respondent. The respondent is permitted to withdraw the deposited amount of Rs.5,00,000/- in C.C.No.274 of 2017 by filing a petition/memo. The petitioner has no objection for the respondent to receive the same, hence, notice to the petitioner is dispensed with. The trial court is directed to hand over Rs.5,00,000/- to the respondent on filing of such petition/memo.



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3.In view of the further development, this Court is inclined to stay the order passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur dated 18.07.2022 till the next date of hearing.

4.Post the matter on 23.11.2023.

5.This order passed at 4.10 p.m.

6.Learned counsel for the petitioner now at 6.20 p.m., while raising informs this Court that despite the learned counsel for the respondent/complainant giving an assurance before this Court and also learned Additional Public Prosecutor informing the Inspector of Police, B1 North Police Station, Parrys, Chennai about the subsequent development of payment of Rs.5,00,000/- and also arriving at a settlement to get the issue resolved, it is informed the petitioner/accused is remanded by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur and sent to Central Prison, Puzhal, Chennai today.

7.In view of the same, stay of the order of learned Judicial Magistrate dated 18.07.2022 passed by this Court



today, the remand of the petitioner is suspended and the petitioner is granted bail.

8.The petitioner is directed to execute own bond for a sum of Rs.10,000/- before the Superintendent of Prison, Central Prison, Puzhal, Chennai and the petitioner is directed to be released forthwith.”

Order, dated 23.11.2023:

“In continuation and conjunction to the earlier order passed by this Court on 06.11.2023, this Court is passing the following order.

2.As per the order of this Court, dated 06.11.2023, the petitioner deposited a sum of Rs.10,00,000/- to the credit of C.C.No.274 of 2017 on the file of the Fast Track Court (Magisterial Level), Alandur.

3.Today, the learned counsel for the respondent received the receipt of deposited amount and submitted that in this case, total amount is Rs.20,00,000/-, the petitioner earlier paid Rs.5,00,000/- and now, deposited Rs.10,00,000/- as per the order of this Court and the balance amount of Rs.5,00,000/- agreed to be paid on 11.12.2023. His only requirement is that he may be



permitted to withdraw the deposited amount of Rs.10,00,000/-.

4.The learned counsel for the petitioner submitted that he got no objection for withdrawal of the deposited amount.

5.In view of the same, the respondent can file a petition before the Fast Track Court (Magisterial Level), Alandur for return of deposited amount by the petitioner.

6.In view of no objection of the petitioner, the deposited amount can be handed over to the respondent. Notice to the petitioner can be dispensed. Post the matter on 12.12.2023 for reporting further compliance.”

Order, dated 20.12.2023:

“The learned counsel for the petitioner filed a memo along with the copy of Demand Drafts showing that the balance amount of Rs.5,00,000/- has been handed over to the respondent/complainant.

2.The learned counsel for the respondent admits that the respondent received Rs.5,00,000/- and seeks small accommodation to file a petition under Section 147 of the Negotiable Instruments Act for compounding the offence.



3.Post the case on 22.12.2023 under the caption “For Orders”.”

4.In continuation and conjunction to the above orders, this Court is passing the following order.

5.The learned counsel for the petitioner submitted that after the conviction of the trial Court, the petitioner preferred an appeal before the lower appellate Court along with condone delay petition in Crl.M.P.No.964 of 2023 in C.A.SR.No.631 of 2023 and the same was dismissed on 14.09.2023. He further submitted that though the cheque amount is Rs.25,00,000/-, now the issue resolved between the petitioner and the respondent for a sum of Rs.20,00,000/-. The petitioner also made the payment of Rs.20,00,000/- to the respondent through the following mode:

(i)Firstly, the petitioner paid Rs.5,00,000/- by way of demand draft No.604791, dated 29.10.2023 to the credit of C.C.No.274 of 2017 on the file of the trial Court. The scanned reproduction of the same is as follows:



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As per the Order of the HHC/Madras in Cr.R.C. No.1722/23 in C.C. 274/2017 on the file of FTC/Alandur.

CrI-Misc-61(a) GBP-MDU-7-2013.

FOIL

No. **1038010** (Form of receipt to be granted by the Court)

IN THE COURT OF THE **Judicial Magistrate**
C.C. 274/2017 **FTC / Alandur**

Received this **30th** Day of **October** 20**23**

from **Gulzar Ahmed**

son of **Mohamed Iqbal** the

sum of Rs. **5,00,000/-** (Rupees **five Lakhs** only) being

by way of D.D. No. **604791** Dt **29-10-23**

the whole/part of the

Counsel for the petn/Accused M/s. B. Deepak

Rs. 5,00,000/-

(Rupees **five Lakhs** only) **Judicial Magistrate**
FTC / Alandur

(ii) Secondly, the petitioner paid Rs.10,00,000/- by way of two demand draft Nos.218077 & 218078, dated 18.11.2023 to the credit of C.C.No.274 of 2017 on the file of the trial Court. The scanned reproduction of the same is as follows:



CrI.R.C.No.1722 of 2023

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As per the Order of the HHC/Madras in CrI.R.C.No. 1722/2023 and CrI.M.P.No.16435/2023 in C.No. 274/2017 on the file of FTC/Alandur

CrI-Misc-61(a) GBP-MDU-7-2013.

FOIL

No.

1038013

(Form of receipt to be granted by the Court)

IN THE COURT OF THE Judicial Magistrate
C.C. 274/2017 FTC / Alandur

Received this 20th Day of November - 2023

from I. Gulzar, Ahmed

son of Iemail the

sum of Rs. 10,00,000/- (Ten lakhs only) being by way of
2.No. of D.D.No. 218077 and 218078 Dt. 18-11-2023

the whole/part of the
Counsel for the petn/ Accused M/s.A. Thirumaran

Rs. 10,00,000/-
(Rupees Ten lakhs only)

Bhuvanendra Kumar
Judicial Magistrate
FTC / Alandur

(iii) Thirdly, the petitioner paid Rs.4,00,000/- by way of demand draft No.217528, dated 08.12.2023 drawn on State Bank of India, Nellore Branch in the name of the respondent. The scanned reproduction of the same is as



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follows:

State Bank of India
DEMAND DRAFT
A/C Payee
ON ORDER
Four Lakh Only
400000.00
AMOUNT BELOW 400000 (09)
Key PHEMAT Sr. No: 161550
DR. No: 161550
Branch: CHENNAI MAIN BRANCH
PF No: 7840635
SBI - CHENNAI - 133
1681 - 2383288
Received
Yehandharine

(iv) Finally, the petitioner paid Rs.1,00,000/- by way of demand draft No.604868, dated 15.12.2023 drawn on State Bank of India, Nellore Branch in the name of the respondent. The scanned reproduction of the same is as follows:

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The respondent received the above said two demand drafts of Rs.4,00,000/- and Rs.1,00,000/- and made acknowledgement in the demand drafts itself. Thus, the entire amount of Rs.20,00,000/- have been settled and the respondent has also filed the petition under Section 147 Cr.P.C., in Crl.M.P.No.20204 of 2023 in Crl.R.C.No.1722 of 2023 to compound the offence. Hence, he prays for setting aside the judgment of the trial Court as well as the impugned order passed by the lower appellate Court.

6.The learned counsel for the respondent also confirmed the receipt of Rs.20,00,000/- and the respondent agreed to give quites to the dispute between them. He further submitted that to compound the offence, the respondent filed a petition under Section 147 of the Negotiable Instruments Act, 1881 in Crl.M.P.No.20204 of 2023 in Crl.R.C.No.1722 of 2023 to withdraw the complaint.

7.Today, the petitioner and respondent present before this Court. This Court had an enquiry with both the petitioner and the respondent. The



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respondent reaffirmed the receipt of Rs.20,00,000/- from the petitioner and filing of compounding petition.

8.The respondent/complainant has filed a compounding petition before this Court in Crl.M.P.No.20204 of 2023 in Crl.R.C.No.1722 of 2023 invoking Section 147 of the Negotiable Instruments Act, 1881 to compound the offence and the same is ordered.

9.In view of the above development and in the interest of both the parties not to keep these proceedings pending since it will affect their future life, this Court is inclined to compound the case.

10.In the result, the case between the petitioner and the respondent is compounded. Hence, the judgment of the trial Court, dated 18.07.2022 in C.C.No.274 of 2017 is set aside. The impugned order, dated 14.09.2023 in Crl.M.P.No.964 of 2023 in C.A.SR.No.631 of 2023 passed by the lower appellate Court is also set aside. The petitioner is acquitted of all the charges levelled against him. The lower appellate Court is directed to reject



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and return C.A.SR.No.631 of 2023 to the petitioner in view of setting aside the judgment of the trial Court. Accordingly, this Criminal Revision Case stands allowed. The connected Crl.M.P.No.16435 of 2023 is closed.

22.12.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Principal District and Sessions Court,
Kancheepuram District at Chengalpet.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Alandur.



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M.NIRMAL KUMAR., J.

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