



Crl.R.C.(MD)No.132 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.132 of 2019

M.Balasubramanian

... Petitioner/Appellant/Accused

vs.

J.Adhavansivaji

... Respondent /Respondent/Complainant

PRAYER : This Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in S.T.C.No.2462 of 2012, dated 16.02.2018 on the file of the learned Judicial Magistrate No. 2, Kumbakonam by confirming the order passed in Criminal Appeal No. 16 of 2018, dated 14.12.2018 on the file of the learned Additional District Court, Kumbakonam.

For Petitioner : Mr.T.R.Subramanian

For Respondent : Mr.R.Narayanan



ORDER

WEB COPY

This revision has been filed as against the Judgment passed in Criminal Appeal No.16 of 2018, dated 14.12.2018, by the learned Additional District Court, Kumbakonam by confirming the order passed in S.T.C.No.2462 of 2012, dated 16.02.2018 by the learned Judicial Magistrate No.2, Kumbakonam.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of the N.I. Act.

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) from the respondent, on 20.04.2012, for his daughter's marriage. The petitioner/accused issued a post dated cheque for the loan amount. When the same was presented for collection, it was returned as dishonored for the reason “insufficient funds”. After causing statutory notice, the respondent lodged the complaint.

4.On the side of the respondent, he had examined P.W.1 and also marked Exs.P.1 to P.9 and on the side of the petitioner, he had not examined any witness and no documents were marked.



WEB COPY

5. On perusal of the oral and documentary evidence, the trial Court convicted the petitioner/accused for the offences punishable under Section 138 of N.I Act and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.16 of 2018 on the file of the learned Additional District Court, Kumbakonam and the Appellate Court also dismissed the same confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

6. The learned counsel appearing for the petitioner would submit that while pending this revision, the matter has been settled out of Court between the parties by settling the cheque amount.

7. Considering the above circumstances and the settlement arrived between the parties, this Court is inclined to set aside the conviction and sentence imposed by the Court below.

8. 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

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 sublime 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 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;

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.

8.In view of the aforesaid, the Judgment made in Crl.A.No.16 of 2018, dated 14.12.2018 on the file of the learned Additional District Court, Kumbakonam by confirming the order made in S.T.C.No.2462 of 2012, dated 16.02.2018 on the file of the Judicial Magistrate No.2, Kumbakonam, is set aside.



Crl.R.C.(MD)No.132 of 2019

9. Accordingly, the Criminal Revision Case is allowed. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner/accused forthwith.

16.06.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes/No
sjj

To

1. The Additional District Court, Kumbakonam.
2. The Judicial Magistrate No.2, Kumbakonam.
3. The Inspector of Police,
Fort Police Station
Tiruchirappalli
Trichy District
4. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CrI.R.C.(MD)No.132 of 2019

G.K.ILANTHIRAIYAN , J.
sji

CrI.R.C.(MD)No.132 of 2019

16.06.2023