



Crl.R.C(MD)No.498 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.498 of 2018

Chandran

... Petitioner/
Appellant/Accused

Vs.

1.Sheeba Bowshli

... 1st Respondent/
1st Respondent/Complainant

2.The State of Tamil Nadu,
Represented by Public Prosecutor,
Nagercoil,
Kanyakumari District.

... 2nd Respondent/
2nd Respondent

PRAYER: Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to set aside the Judgment dated 07.06.2018 passed in Crl.A.No.127 of 2011 on the file of the learned Principal Sessions Judge, Kanyakumari District at Nagercoil, confirming the conviction and sentence imposed upon the petitioner in C.C.No.4 of 2010 on the file of the learned II Additional District Munsif, Nagercoil, Kanyakumari District, dated 16.11.2011 and acquit the petitioner.

For Petitioner : Mr.N.Subramani

For R – 1 : Mr.N.Dilip KUMar

For R – 2 : Mr.K.Sanjai Gandhi
Government Advocate (Criminal Side)



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ORDER

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This revision has been filed to set aside the Judgment passed in Crl.A.No.127 of 2011, on the file of the learned Principal Sessions Judge, Kanyakumari District at Nagercoil, dated 07.06.2018, confirming the conviction and sentence imposed upon the petitioner in C.C.No.4 of 2010, on the file of the learned II Additional District Munsif, Nagercoil, Kanyakumari District, dated 16.11.2011.

2.The petitioner is an accused in the complaint lodged by the first respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The case of the first respondent is that the petitioner availed a loan to the tune of Rs.1,50,000/- for social development. Thereafter, the petitioner failed to repay the said loan amount. After issuance of the demand notice, the petitioner agreed to settle the loan amount and towards discharge of his liability, he issued a cheque for a sum of Rs.50,000/-. The said cheque was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged the complaint.



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4.On the side of the first respondent, she herself was examined as P.W.1 and also marked Exs.P.1 to P.6 and on the side of the petitioner, no one was examined and marked Ex.D.1 to Ex.D.7.

5.On perusal of the oral and documentary evidence, the trial Court convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo two months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.127 of 2011, on the file of the learned Principal Sessions Judge, Kanyakumari District at Nagercoil and the Appellate Court also dismissed the same confirming the order of the trial Court. Hence, the present revision.

6.The learned counsel appearing for the petitioner would submit that at the time of suspending the sentence, this Court, by order, dated 28.08.2018, directed the petitioner to deposit the entire cheque amount. Accordingly, the entire cheque amount was deposited to the credit of the trial Court.



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7.The learned counsel appearing for the first respondent would submit that the loan was availed by the petitioner in the year 2007 and the loan interest was not paid so far.

8.It is also stated that the first respondent also filed a suit for recovery of money and the same is pending. Therefore, whatever the interest and balance amount, the first respondent can very well realize the same in the suit filed against the petitioner. In so far as the present case is concerned, the entire cheque amount was already deposited by the petitioner to the credit of the trial Court.

9.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



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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 aforesaid 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



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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.

10. In view of the aforesaid, the judgment passed in Crl.A.No.127 of 2011, on the file of the learned Principal Sessions Judge, Kanyakumari District at Nagercoil, dated 07.06.2018, confirming the conviction and sentence imposed upon the petitioner in C.C.No.4 of 2010, on the file of the learned II Additional District Munsif, Nagercoil, Kanyakumari District, dated 16.11.2011, is set aside.



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11. Accordingly, the Criminal Revision Case is allowed.

The first respondent is permitted to withdraw the amount which was already deposited by the petitioner to the credit of the trial Court.

11.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1. The Principal Sessions Court,
Kanyakumari District at Nagercoil.
2. The II Additional District Munsif,
Nagercoil,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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