



Crl.R.C.No.271 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.271 of 2021

R.Boopathy

... Petitioner

Vs.

K.Palanisamy

... Respondent

PRAYER : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C., to set aside the conviction imposed in judgment dated 10.09.2020 made in C.A.No.65 of 2019 on the file of the I Additional District and Sessions Court, Erode, confirming the conviction imposed in judgment dated 30.01.2019 made in S.T.C.No.131 of 2018 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi by allowing this criminal revision.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.K.Karthikeyan

ORDER



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This criminal revision has been filed seeking to call for the entire records relating to the order passed by the learned I Additional District and Sessions Judge, Erode in C.A.No.65 of 2019 dated 10.09.2020, confirming the order passed in S.T.C.No.131 of 2018 dated 30.01.2019 by the learned District Munsif-cum-Judicial Magistrate, Kodumudi and to set aside the same.

2. The petitioner is the accused and the respondent is the defacto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in S.T.C.No.131 of 2018 before the learned District Munsif-cum-Judicial Magistrate, Kodumudi against the accused stating that the accused borrowed a sum of Rs.3,00,000/- for his urgent needs and agreed to repay the same and the accused also issued cheque bearing number No.151583 dated 21.01.2018 of Indian Overseas Bank,



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Karur Bank, Karur Branch for a sum of Rs.3,00,000/-. When the said cheque was presented on 22.01.2018 for collection, the same was returned on 23.01.2018 as 'funds insufficient'. Thereafter the complainant issued legal notice to the accused on 29.01.2018 and the same was received by the accused on 30.01.2018 and 01.02.2018, however, the accused neither gave any reply nor repaid the amount.

4. After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.3,00,000/- in default to undergo simple imprisonment for a further period of one month. Challenging the same, the accused filed appeal in C.A.No.65 of 2019 before the learned I Additional District and Sessions Judge, Erode and the learned I Additional District and Sessions Judge, Erode vide judgment dated 10.09.2020, dismissed the appeal and confirmed the conviction and sentence passed by the learned District Munsif-cum-Judicial Magistrate, Kodumudi. Aggrieved by the same,



the present revision is filed.

5. The learned counsel appearing for the petitioner submitted that this Court, on 06.05.2021, in Crl.M.P.o.5667 of 2021 in Crl.R.C.No.271 of 2021 has granted suspension of sentence to the petitioner / accused on condition to deposit a sum of Rs.1,00,000/- to the credit of S.T.C.No.131 of 2018 before the learned District Munsif-cum-Judicial Magistrate, Kodumudi. Pursuant to which, the accused deposited a sum of Rs.1,00,000/- before the said Court on 04.08.2021. He further submitted that during the pendency of this revision, the petitioner / accused and the respondent / complainant arrived at a compromise and the petitioner / accused paid the balance cheque amount of Rs.2,00,000/- by drawing a demand draft for the said sum in favour of the respondent / complainant vide D.D.No.147816627 dated 29.07.2024 drawn on the Indian Overseas Bank, Moolapalayam Branch, Erode. The respondent / complainant accepted and received the demand draft and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.

6. To that extent, compromise memo dated 30.07.2024 duly



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signed by the petitioner and the respondent has been filed by the parties before this Court. The petitioner / accused and respondent / complainant were also present in person before this Court and they were identified by the learned counsels.

7. In the case of ***Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663]***, the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

"16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow:



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Eastern Book Company, 2008) at p.444]

"17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court."

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act – Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

"...Unlike that for other forms of crime, the punishment here (insofar as the complainant



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is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque."

8. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant has also received the amount from the petitioner / accused and in this regard, a memo of compromise dated 30.07.2024 has also been jointly filed by the petitioner and respondent. Therefore, the complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. Further Section 147 of the Negotiable Instruments Act also empowers this Court to compound the offence under section 138 of the Negotiable Instruments Act.



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9. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the memo of compromise dated 30.07.2024 filed by the parties, this Court is of the view that, the judgment in S.T.C.No.131 of 2018 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner / accused in S.T.C.No.131 of 2018 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi and confirmed in C.A.No.65 of 2019 by the learned I Additional District and Sessions Judge, Erode, are set aside based on the compromise memo dated 30.07.2024 and the said compromise memo shall form part and parcel of the order. The revision petitioner / accused is acquitted from all the charges levelled against him. The learned District Munsif-cum-Judicial Magistrate, Kodumudi is directed to disburse a sum of Rs.1,00,000/- to the respondent / complainant lying in S.T.C.No.131 of 2018 within a period of two weeks from the date of receipt of a copy of this order



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11. With the above observations and directions, this Criminal

Revision is allowed.

30.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The learned District Munsif-cum-Judicial Magistrate,
Kodumudi.
2. The I Additional District and Sessions Judge,
Erode.
3. The Public Prosecutor,
Madras High Court.



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M.DHANDAPANI, J.

vji

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