



Crl.R.C.Nos.201 and 203 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.Nos.201 and 203 of 2022

And

Crl.M.P.Nos.10490 and 10494 of 2024

1.M/s.Bajrang Knitters
Rep. by its Partner
D.Rajammal

2.D.Rajammal ... Petitioners in both the Crl.R.Cs.

Vs.

M/s.Sri Saravana Spinning Mills Private Ltd.,
Rep. by their Authorised person and Executive – Marketing
S.Augustin Suresh
Now R.Ganesh, Senior Manager
substituted as per the order of this Court
in Cr.M.P.Nos.2565 and 2564/2015
dt.24.08.2016 ... Respondent in both the Crl.R.Cs.

Common Prayer:

Criminal Revision Cases filed under Sections 397 and 401 of Criminal Procedure Code, seeking to set aside the judgment of the learned Principal and Sessions Judge at Tiruppur in C.A.Nos.122 and 123 of 2021 respectively, dated 09.02.2022 confirming the conviction and modifying the sentence passed by the learned The Fast Track Court at Magisterial Level, Tiruppur in S.T.C.Nos.51 and 50 of 2012 respectively, by judgment dated 09.12.2021 and allow these criminal revision cases.



WEB COPY



Crl.R.C.Nos.201 and 203 of 2022

For Petitioners : Mr.J.Franklin
For Respondent : Mr.V.Anandhamoorthy

COMMON ORDER

The criminal revision cases have been filed seeking to set aside the judgment of the learned Principal and Sessions Judge at Tiruppur in C.A.Nos.122 and 123 of 2021 respectively, dated 09.02.2022 confirming the conviction and modifying the sentence passed by the learned Fast Track Court at Magisterial Level, Tiruppur in S.T.C.Nos.51 and 50 of 2012 respectively, by judgment dated 09.12.2021.

2.The petitioners are 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.Nos.51 and 50 of 2012 respectively before the learned Fast Track Court at Magisterial Level, Tiruppur, against the accused stating that the complainant is carrying on business of production of sale of cotton yarn, knitted fabrics, dyed fabrics and yarn products and there were business transaction inbetween the complainant and the accused.



Crl.R.C.Nos.201 and 203 of 2022

WEB COPY

4.The accused purchased yarn materials from the complainant and there was a due of Rs.6,18,598/- and the accused issued two Cheque bearing numbers '296997' dated 06.04.2010 drawn on State Bank of India, Commercial Branch, Tiruppur for a sum of Rs.2,03,856/- and '968047' dated 22.05.2011 drawn on State Bank of India, Commercial Branch, Tiruppur for a sum of Rs.2,26,675/- towards discharge in part of the outstanding amount due. When the said Cheques were presented on 19.04.2011 for collection, the same were returned on 19.04.2011 as 'funds insufficient'. Thereafter the complainant issued legal notice to the accused on 27.06.2011 and since the accused failed to comply with the demand notice, filed the complaint in S.T.C.No.51 of 2012.

5.The accused purchased yarn materials from the complainant and there was a due of Rs.6,18,598/- and the accused issued three Cheque bearing numbers '296931' dated 25.10.2010 drawn on State Bank of India, Commercial Branch, Tiruppur for a sum of Rs.79,530/-, '296938' dated 25.10.2010 drawn on State Bank of India, Commercial Branch, Tiruppur for a sum of Rs.14,832/- and '296979' dated 25.10.2010 drawn on State Bank of India, Commercial Branch,



Crl.R.C.Nos.201 and 203 of 2022

Tiruppur for a sum of Rs.1,50,720/- towards discharge in part of the outstanding amount due. When the said Cheques were presented on 31.05.2011 for collection, the same were returned on 01.06.2011 as 'funds insufficient'. Thereafter the complainant issued legal notice to the accused on 27.06.2011 and since the accused failed to comply with the demand notice, filed the complaint in S.T.C.No.50 of 2012.

6.After elaborate discussions, the trial Court convicted the petitioners under Sections 138 and 141 of the Negotiable Instruments Act and sentenced as under:

(i)A1 is the firm. A2 being the partner of firm shall undergo simple imprisonment for six months and both the accused shall pay the cheque amount of Rs.4,30,531/- to the complainant as compensation in default the second accused shall undergo simple imprisonment for one month in S.T.C.No.51 of 2012.

(ii)A1 is the firm. A2 being the partner of firm shall undergo simple imprisonment for six months and both the accused shall pay the cheque amount of Rs.2,45,082/- to the complainant as compensation in default the second accused shall undergo simple imprisonment for one month in S.T.C.No.50 of 2012.

(iii)If any period of detention already undergone by the accused



Crl.R.C.Nos.201 and 203 of 2022

was ordered to be set off and the sentence imposed in both the cases were ordered to run concurrently.

7.Challenging the same, the petitioners filed appeals in C.A.Nos.122 and 123 of 2021 respectively, before the learned Principal and Sessions Judge at Tiruppur and the learned Sessions Judge, vide judgment dated 09.02.2022, dismissed the appeals and confirmed the conviction and modified the sentence passed by the trial Court as under:

In C.A.No.122 of 2021:

'1)Considering the deposit of cheque amounts being made by the accused before the trial Court, sentence is modified from 6 months simple imprisonment to ITRC.

2)With respect to the compensation ordered by the trial Court, it is confirmed in the appeal and towards interest and cost on the amount due in addition to the earlier compensation ordered by the trial Court, the appellants are directed to pay Rs.2,00,000/- (Rupees Two Lakhs only) to the respondent, within 15 days, on failure, the 2nd appellant has to undergo simple imprisonment for three months.

3)The appellants shall deposit the compensation in one week and on failure to deposit, the trial Court shall order notice to the appellants



Crl.R.C.Nos.201 and 203 of 2022

for appearance and on recovery of the compensation amount now being ordered, the trial Court shall pay the same along with earlier compensation amount deposited in the Court account to the respondent.'

In C.A.No.123 of 2021:

'1)Considering the deposit of cheque amounts being made by the accused before the trial Court, sentence is modified from 6 months simple imprisonment to ITRC.

2)With respect to the compensation ordered by the trial Court, it is confirmed in the appeal and towards interest and cost on the amount due in addition to the earlier compensation ordered by the trial Court, the appellants are directed to pay Rs.2,00,000/- (Rupees Two Lakhs only) to the respondent, within 15 days, on failure, the 2nd appellant has to undergo simple imprisonment for three months.

3)The appellants shall deposit the compensation in one week and on failure to deposit, the trial Court shall order notice to the appellants for appearance and on recovery of the compensation amount now being ordered, the trial Court shall pay the same along with earlier compensation amount deposited in the Court account to the respondent.'

Aggrieved by the same, the present revisions are filed.



Crl.R.C.Nos.201 and 203 of 2022

WEB COPY

8.The learned counsel for the petitioners submitted that during the pendency of these revisions, the petitioners and the respondent settled the matter amicably and the respondent/ complainant has consented for compounding the offence.

9.To that extent, petitions in Crl.M.P.Nos.10490 and 10494 of 2024 have been filed before this Court and the relevant portion of the same reads as follows :

Crl.M.P.No.10490 of 2024:

"3.The petitioner state that as against the order of the appellate judge the above the above Criminal revision was preferred, while the matter is pending before this Hon'ble court, on negotiation the matter has been settled amicably, in the following terms.

(a) The petitioner has no objection to withdraw the compensation amount a sum of Rs.4,30,531/- by the complainant, which has been deposited by the petitioner before Fast Track Court at magisterial Level, Tiruppur.

(b) Further the petitioner will pay a sum of Rs.50,000/- by way of



WEB COPY



Crl.R.C.Nos.201 and 203 of 2022

DD.No.087699 dated 20.07.2024.

(c) The Respondent also has no objection to compound the offence."

Crl.M.P.No.10494 of 2024:

"3.The petitioner state that as against the order of the appellate judge the above the above Criminal revision was preferred, while the matter is pending before this Hon'ble court, on negotiation the matter has been settled amicably, in the following terms.

(a) The petitioner has no objection to withdraw the compensation amount a sum of Rs.2,45,082/- by the complainant, which has been deposited by the petitioner before Fast Track Court at magisterial Level, Tiruppur.

(b) Further the petitioner will pay a sum of Rs.50,000/- by way of DD.No.087698 dated 20.07.2024.

(c) The Respondent also has no objection to compound the offence."

10.In the case of **Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663]**, the Full Bench of the Hon'ble



Crl.R.C.Nos.201 and 203 of 2022

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: 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***



WEB COPY



Crl.R.C.Nos.201 and 203 of 2022

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 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."

11. With the above principles in mind, if this Court see the



Crl.R.C.Nos.201 and 203 of 2022

present case, it is only a money transaction and 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.

12.In view of the ratio laid down by the Honourable Supreme Court of India and also considering the averments in Crl.M.P.Nos.10490 and 10494 of 2024, this Court is of the view that the Judgment in S.T.C.Nos.51 and 50 of 2012 respectively, on the file of Fast Track Court at Magisterial Level, Tiruppur, are liable to be set aside.

13.Accordingly, the conviction and sentence imposed on the revision petitioners/accused in S.T.C.Nos.51 and 50 of 2012 respectively, on the file of the learned Judicial Magistrate Court, Fast Track Court at Magisterial Level, Tiruppur and modified in C.A.Nos.122 and 123 of 2021 respectively, by the learned Principal and Sessions Judge at Tiruppur, are set aside and these criminal revisions are disposed of. The revision petitioners/ accused are acquitted from all



Crl.R.C.Nos.201 and 203 of 2022

the charges levelled against them.

WEB COPY

14.The criminal miscellaneous petitions are ordered. The criminal revisions are accordingly disposed of.

24.07.2024

pri

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

- 1.The Principal and Sessions Judge at
Tiruppur.
- 2.The Judicial Magistrate Court,
Fast Track Court at Magisterial Level,
Tiruppur.



WEB COPY



Crl.R.C.Nos.201 and 203 of 2022

M.DHANDAPANI,J.
pri

Crl.R.C.Nos.201 and 203 of 2022
And
Crl.M.P.Nos.10490 and 10494 of 2024