



Crl.RC.No.461 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

Crl.RC.No.461 of 2022

R.Rajendran

...Petitioner

Vs.

1. The State,
Rep. by the Public Prosecutor,
Coimbatore.
2. M/s. Rashi Peripherals Pvt. Ltd.,
Rep. by its Authorized Representative and
Area Sales Manager Mr.John Cecil Christopher,
Having registered Office at Aristo House,
5th Floor, Corner of Telli Galli, Andheri(East),
Mumbai – 400 069 and Branch Office at
No.35, Bharathi Park,
8th Cross, Saibaba Colony, Coimbatore – 641 011. ...Respondents

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C.,
to call for the records in respect of the impugned order dated 25.10.2021 of
the Hon'ble IV Additional District and Sessions Judge at Coimbatore in
Crl.A.No.152 of 2019 dismissing the appeal and consequentially confirming
the judgment dated 04.03.2019 of Judicial Magistrate, Fast Track Court
(Magisterial Level-II) at Coimbatore in CC.No.146 of 2016 and set aside the
same and allow the revision petition.



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For Petitioner : Mr.M.Venkadesh Kumar

For Respondents : Mr.A.Gopinath,
Government Advocate(Crl. Side), for R1
: Mr.B.Mohan, for R2

ORDER

This Criminal revision has been filed seeking quashment of the order dated 25.10.2021 passed in Crl.A.No.152 of 2019 on the file of the IV Additional District and Sessions Judge, Coimbatore, confirming the judgment dated 04.03.2019 made in CC.No.146 of 2016 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level-II) at Coimbatore.

2. The petitioner is the accused and the 2nd respondent is the 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 CC.No.146 of 2016 before the Judicial Magistrate, Fast Track Court (Magisterial Level-II) at Coimbatore, against the accused alleging that the complainant is a company registered under the Companies Act, 1956 and it is a distributor of Samsung Mobile Phones and



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the accused being a retail seller, purchased Samsung Mobile Phones from the complainant on credit basis and as on 25.05.2015, the amount due to the complainant from the accused is Rs.12,12,408/-, which was also confirmed by the accused himself. Towards discharge of the said liability, the accused issued a cheque bearing No.313283 dated 25.05.2015 for a sum of Rs.12,12,408/- and when the said Cheque was presented for collection, the same was returned with an endorsement "Funds Insufficient". Thereby, the complainant issued legal notice dated 05.06.2015 and despite receiving the same on 16.06.2015, the accused failed to discharge the above said liability. Hence, the above complaint.

4. After elaborate discussions, the trial Court convicted the accused/ petitioner under Section 138 of the Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for six months and the accused was ordered to pay a compensation of Rs.12,12,408/- with interest @ 6% per annum and in default to undergo further one month of simple imprisonment. Challenging the same, the petitioner filed an appeal in CrI.A.No.152 of 2019 and the learned IV Additional District and Sessions Judge, Coimbatore, vide order dated 25.10.2021, dismissed the appeal and



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confirmed the conviction and sentence imposed by the trial court. Aggrieved by the same, the present revision has been filed.

5. Learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner/accused and the 2nd respondent/complainant arrived at a compromise and the petitioner paid the entire compensation amount of Rs.12,12,408/- to the 2nd respondent. The learned counsel appearing for the 2nd respondent/complainant also ratifies the same and the 2nd respondent/complainant has consented for compounding the offence under Section 138 of the NI Act and filed a compromise memo dated 31.07.2024 to that effect before this Court today.

6. 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:



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"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 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."

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

case, it is only a money transaction and the petitioner has already paid the entire cheque amount of Rs.12,12,408/- to the 2nd respondent and in this regard a memo of compromise has also been jointly filed by the accused and the complainant. 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.

8. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the memo of compromise filed by the parties, this Court is of the view that the Judgment in CC.No.146 of 2016 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level-II) at Coimbatore is liable to be set aside.

9. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in CC.No.146 of 2016 dated 04.03.2019 on the file of the



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Judicial Magistrate, Fast Track Court (Magisterial Level-II) at Coimbatore

which was confirmed by the learned IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.152 of 2019 dated 25.10.2021 are set aside and this criminal revision is allowed. The revision petitioner/accused is acquitted from all the charges levelled against him.

10. This Criminal revision case is accordingly **allowed** in terms of compromise. The joint memo of compromise dated 31.07.2024 filed by the parties before this Court today shall form a part and parcel of this order.

01.08.2024

skt

Speaking Order : Yes/ No
Index : Yes/ No
Internet : Yes/ No

To

1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate, Fast Track Court (Magisterial Level-II),
Coimbatore.
3. The Public Prosecutor,

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High Court of Madras.

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M.DHANDAPANI, J.

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