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Crl.R.C.No.441 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.441 of 2023

M.Shanmugasundaram

... Petitioner

Vs.

E.Gopinath

... Respondent

Prayer:

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, to set aside the order dated 15.10.2022 made in Crl.A.No.510 of 2018, on the file of the XV Additional City Civil, Chennai, confirming the order of conviction and sentence imposed on the petitioner herein in C.C.No.2929 of 2011, on the file of the Metropolitan Magistrate, FTC I, Egmore, dated 11.09.2018 and acquit the petitioner.

For Petitioner : M/s.A.E.Ravi Chandran

For Respondent : Mr.A.P.Sathyamurthy

O R D E R

The criminal revision case has been filed seeking to set aside the order dated 15.10.2022 made in Crl.A.No.510 of 2018, on the file



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of the learned XV Additional Sessions Judge, City Civil and Sessions Court, Chennai, confirming the order of conviction and sentence imposed on the petitioner in C.C.No.2929 of 2011, on the file of the learned Metropolitan Magistrate, FTC I, Egmore, dated 11.09.2018.

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 C.C.No.2929 of 2011 before the learned Metropolitan Magistrate, Fast Track Court – I, Egmore at Allikulam, Chennai, against the accused stating that the accused borrowed a sum of Rs.3 Lakhs during June, 2008, for which, the accused issued Cheque bearing number '981403' drawn on ICICI Bank. When the said Cheque was presented for collection, the same was returned on 10.01.2011 as 'funds insufficient'. Thereafter the complainant issued legal notice to the accused on 03.02.2011 and the same was received by the accused on 05.02.2011, however, failed to repay the amount and hence the complainant filed the complaint.



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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 one year and to pay a compensation of Rs.3 Lakhs to the complainant in default to undergo simple imprisonment for four months. Challenging the same, the petitioner filed appeal in Criminal Appeal No.510 of 2018 before the learned XV Additional Sessions Judge, City Civil and Sessions Court, Chennai and the learned XV Additional Sessions Judge, vide judgment dated 15.10.2022, dismissed the appeal and confirmed the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court – I, Egmore at Allikulam, Chennai. Aggrieved by the same, the present revision is filed.

5.The learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner and the respondent arrived at a compromise and the petitioner paid the entire cheque amount to the respondent. The respondent/ complainant accepted and received the payment and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.



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6.To that extent, Joint Memorandum of Compromise dated 29.07.2024 duly signed by the petitioner and the respondent and also by their respective learned counsel has also been filed before this Court and the parties also appeared before this Court. The relevant portion of the Joint Memorandum of Compromise dated 29.07.2024 reads as follows:

"It is submitted that in the above Criminal Revision Petition the petitioner and the Respondent herein after a detailed discussion and deliberation, have decided to settle the dispute once for all, by way of entering into this Joint Memorandum of Compromise, on the condition that the petitioner/ Accused agreed to pay Rs.3,00,000/- (Rupees Three Lakhs Only) to the Respondent/ Complainant as full and final settlement.

It is submitted that the Petitioner paid Rs.3,00,000/- by way of Demand Draft No.669371 dated 26.07.2024 drawn on State Bank of India, Madras University Branch, Chennai and the same have been received and acknowledged by the Respondent as the full and final



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settlement.

It is submitted that this Joint Memorandum of Compromise is entered into between the parties voluntarily with their own free will and volition and this Joint Memorandum of Compromise will be binding on the parties herein, their respective Legal Heirs, successor, assigns and representatives.

It is therefore prayed that this Hon'ble Court may be pleased to order Joint Memorandum of Compromise to be recorded and acquit the petitioner herein from all charges and pass any such order or further order as the Hon'ble Court may think fit and proper considering the facts and circumstances of the case and thus render justice."

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: 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."

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



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case, it is only a money transaction and the complainant has also received the amount from the petitioner/ accused and in this regard a Joint Memorandum of Compromise dated 29.07.2024 has also been filed by the parties. 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.

9.In view of the ratio laid down by the Honourable Supreme Court of India and also considering the Joint Memorandum of Compromise filed by the parties, this Court is of the view that the Judgment in C.C.No.2929 of 2011 on the file of Metropolitan Magistrate, Fast Track Court – I, Egmore at Allikulam, Chennai, is liable to be set aside.

10.Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.2929 of 2011 on the file of the learned Metropolitan Magistrate, Fast Track Court – I, Egmore at Allikulam, Chennai and confirmed in Criminal Appeal No.510 of 2018



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by the learned XV Additional Sessions Judge, City Civil and Sessions Court, Chennai, are set aside and this criminal revision is allowed.

The revision petitioner/ accused is acquitted from all the charges levelled against him.

11.This criminal revision is accordingly allowed.

Consequently, the connected miscellaneous petition is closed.

29.07.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The XV Additional Sessions Judge, City Civil and Sessions Court, Chennai.

2.The Metropolitan Magistrate, Fast Track Court – I, Egmore at Allikulam, Chennai.



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M.DHANDAPANI,J.
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