IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.RC.No.1254 of 2022

Krishnan ...Petitioner

Vs.

1. Chellammal
2. Kanagam
3. Krishnamoorthy ...Respondents

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to call for the records in Crl.A.No.10 of 2021 on the file of III Additional Sessions Judge, Villupuam @ Kallakurichi confirming the conviction judgment dated 13.07.2021 passed in C.C.No.46 of 2017 on the file of Judicial Magistrate Fast Track Court (Magistrate Level) Kallakurichi and set aside the same.

For Petitioner : Mr.M.Subash

For Respondents : Mr.N.Manokaran

ORDER

This Criminal Revision Case has been filed seeking quashment of the order dated 13.07.2021 passed in Crl.A.No.10 of 2021 on the file of theIII Additional Sessions Judge, Villupuam @ Kallakurichi, confirming the order passed in C.C.No.46 of 2017 on the file of the Judicial Magistrate Fast Track Court (Magistrate Level) Kallakurichi.

2. The petitioner is the accused and the respondents are the *de-facto* complainants. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The complainant initiated proceedings u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') in C.C.No.46 of 2017 before the learned Judicial Magistrate Fast Track Court, Kallakurichi against the accused stating that the accused borrowed a sum of Rs.5,00,000/- from the complainant for his family and business expenditure. In order to repay the liability, the accused had issued a cheque bearing No.000521 in favour of the first respondent on 17.10.2016 for a sum of Rs.5,00,000/- drawn on Central Bank of India at Kallakurichi Branch. When the said Cheques were presented for collection on 17.10.2016, the same was returned with an Endorsement

'stopped by drawer'. Thereafter, the complainant issued legal notice to the accused on 24.10.2016 and inspite the service of notice on the accused, he has neither come forward to repay the said amount nor sent any reply to the said notice. Further during the trial the complainant died after his evidence was recorded and subsequently the respondents were impleaded as parties.

4. After elaborate discussions, the trial court convicted the accused u/s. 138 of the N.I. Act and sentenced him to undergo simple imprisonment for one year and to pay a compensation of Rs.5,00,000/- to the complainant, in default to undergo two months simple imprisonment vide order dated 13.07.2021 in C.C.No.46 of 2017. Challenging the same, the accused has filed an appeal in Criminal Appeal No.10 of 2021 before the Judicial Magistrate Fast Track Court (Magistrate Level) Kallakurichi and the learned Judicial Magistrate, vide judgment dated 23.12.2021, dismissed the appeal by confirming the conviction and sentence passed by the trial Court. Aggrieved by the same, the present revision is filed.

5. The learned counsel for the petitioner submitted that during the pendancy of this revision, the petitioner and the respondents arrived at a compromise and are ready to settle the case amicably and the respondents have consented for compounding the offence u/s 138 of the N.I. Act. He further submitted that, the petitioner has already given a sum of Rs.4,00,000/- to the de facto complainant by way of cash and he also deposited a sum of Rs.1,00,000/- before the appellate Court and he has no objection for disbursing the same to the respondents.

6. To that extent, Compromise Memo dated 26.07.2024 duly signed by the petitioner and the respondents has been filed by the parties before this Court today.

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 offencs 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 likes 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 accused has also paid a sum of Rs.4,00,000/- by way of cash to the defacto complainant, and a sum of Rs.1,00,000/- was already deposited in Crl.A.No.10 of 2021 and the respondents have no objection for withdrawing the remaining Rs.1,00,000/- lying in the lower appellate Court. 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 N.I. Act also empowers this Court to compound the offence under section 138 of the N.I. Act.

9. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the fact that the petitioner has already paid a sum of Rs.4,00,000/- by way of cash to the de facto complainant and deposited the remaining sum of Rs.1,00,000/- in Crl.A.No.10 of 2021 on the file of learned III Additional Sessions Judge, Villupuram @

Kallakurichi, this Court is of the view that the Judgment in Crl.A.No.10 of 2021 on the file of the learned III Additional Sessions Judge, Villupuram @ Kallakurichi, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.46 of 2017 on the file of the learned Judicial Fast Track Court, Kallakurichi which was confirmed in Criminal Appeal No.10 of 2021 by the learned III Additional Sessions Judge, Villupuram @ Kallakurichi is set aside and the revision petitioner/ accused is acquitted from all the charges levelled against him. The respondents are permitted to withdraw the sum of Rs.1,00,000/- deposited by the petitioner before the appellate Court by filing an undertaking affidavit.

11. This Criminal Revision Case stands allowed accordingly.

02.08.2024

rap
Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

M.DHANDAPANI, J.

rap

To

1. The Additional Sessions Judge, Villupuam @ Kallakurichi

2. The Judicial Magistrate Fast Track Court
(Magistrate Level) Kallakurichi.

Crl.RC.No.1254 of 2022