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Crl.R.C.No.535 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.R.C.No.535 of 2024

and

Crl.M.P.Nos.4971 & 4975 of 2024

Chandrasekar

... Petitioner

Vs.

Karthikeyan

... Respondent

Prayer : Criminal Revision Case filed under Section 397 & 401 Cr.P.C, 1973, praying to set aside the conviction imposed in the judgement dated 10.01.2024 made in Crl.A.No.282 of 2022 on the file of the XX Additional Sessions Court, at Chennai confirming the conviction imposed in judgment dated 11.10.2022 made in C.C.No.1763 of 2015 on the file of the Metropolitan Magistrate, Fast Track Court – IV, George Town, Chennai sentenced to 3 month of simple imprisonment with compensation of amount 1,00,000/- as contemplated under section 357(3) of Cr.P.C. r/w 138 of N.I. and he shall undergo three month of simple imprisonment for the offence under section 138 of N.I. Act compensation of sum of Rs.One Lakh shall be paid to the complainant calculating in the complaint within 2 month and the same is imposed u/s 255(2) of Cr.P.C., by allowing this criminal revision petition.



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For Petitioner : Mr.R.Thirumoorthy

For Respondent : Mr.K.Manimaran

ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the conviction imposed in the judgement dated 10.01.2024 made in Crl.A.No.282 of 2022 on the file of the XX Additional Sessions Court, at Chennai confirming the conviction imposed in judgment dated 11.10.2022 made in C.C.No.1763 of 2015 on the file of the Metropolitan Magistrate, Fast Track Court – IV, George Town, Chennai.

2. The petitioner is the accused and the respondent is the *de-facto* complainant. 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.282 of 2022 before the learned Metropolitan Magistrate, Fast Track Court – IV, George Town, Chennai against the accused stating that the accused is a



well known person to the complainant and due to the relationship, the accused approached and requested the complainant to advance hand loan.

As per request, the complainant advance a sum of Rs.1,00,000/- by way of cash on 28.01.2014 and the accused agreed to repay the same together with interest at the rate of 12% p.a. The accused issued Cheque/Ex.P.1 bearing No.027191 dated 18.11.2014 for a sum of Rs.1,00,000/- drawn on Axis Bank, Triplicane Branch, Chennai, in favour of the complainant towards part payment on principal and interest due and payable by the accused to the complainant and the complainant had presented the cheque for collection through his banker on 18.11.2014 and the same was returned on the same day with an endorsement that 'funds insufficient'. Thereafter, the complainant issued legal notice to the accused on 26.11.2014 and inspite the service of notice on 27.11.2014, the accused has neither come forward to repay the said amount nor sent any reply to the said notice.

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 3 months and to pay a compensation of Rs.1,00,000/- to the complainant. Challenging the same, the accused has filed an appeal



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in Criminal Appeal No.282 of 2022 before the learned XX Additional Sessions Judge, City Civil Court, Chennai and the learned Sessions Judge, vide judgment dated 10.01.2024, dismissed the appeal by confirming the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court – IV, George Town, Chennai. Aggrieved by the same, the present revision is filed.

5. When the matter is taken up for hearing today, the learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner and the respondent arrived at a compromise and settled the case amicably and the respondent has consented for compounding the offence u/s 138 of the N.I. Act.

6. To that extent, a petition u/s 147 of N.I. Act dated 23.07.2024 has been filed before this court, which has been signed by the petitioner and the respondent and also by the learned counsel for the parties. The relevant portion of the same reads as follows :-

“1. It is submitted that the petitioner filed above said Criminal Revision Petition against the Judgment order dated 10.01.2024 made in Crl.A.No.282 of 2022 on the file of the XX Additional



Sessions Court, at Chennai confirming the conviction imposed in judgment dated: 11.10.2022 made in C.C.No.1763 of 2015 on the file of the Judicial Magistrate, Fast Track Court – IV, George Town, Chennai.

2. It is submitted that petitioner/accused and respondent/complainant have decided to amicably settle the issue where of the respondent/complainant agree to receive cheque amount of rupees 1,00,000/- and agree to adjust sum of rupees 20,000/- which was already deposited before the trial court at the time of filing appeal. Today the petitioner is giving 80,000/- by cash and the respondent/complainant will get back 20,000/- from the trial court. The petitioner/accused and respondent/complainant agreed to compound the offence and thereby filing this compound application.

For above state reason it is therefore prayed that this Hon'ble may be pleased to allow this application and compound the offence and thus render the justice.”

7. This Court also enquired both the parties and was satisfied that the parties have come to an amicable settlement between themselves. The parties have reiterated that they have arrived at compromise and the respondent submitted that he received a Rs.80,000/- by way of cash and



he has no objection for compounding the offence. Further, the respondent submitted that he may be permitted to withdraw a sum of Rs.20,000/-, which has already been deposited before the trial court by the petitioner.

8. 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



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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."



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9. With the above principles in mind, if this Court see the present case, it is only a money transaction and the accused has also deposited a sum of Rs.20,000/- before the trial court and in this regard a petition u/s 147 of the N.I. Act dated 23.07.2024 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 N.I. Act also empowers this Court to compound the offence under section 138 of the N.I. Act.

10. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the petition u/s 147 of the N.I. Act filed by the parties, this Court is of the view that the Judgment in Crl.A.No.282 of 2022 on the file of XX Additional Sessions Judge at Chennai, is liable to be set aside.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.1763 of 2015 on the file of the learned Metropolitan Magistrate, Fast Track Court – IV, George Town, Chennai and confirmed in Criminal Appeal No.282 of 2022 by the



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learned XX Additional Sessions Judge at Chennai, are set aside and the revision petitioner/accused is acquitted from all the charges levelled against him. The respondent/complainant is permitted to withdraw a sum of Rs.20,000/-, which has already been deposited by the petitioner/accused before the trial court.

12. This Criminal Revision Case stands allowed accordingly. The petition filed u/s 147 of the N.I. Act dated 23.07.2024 shall form part of the records. Consequently, the connected criminal miscellaneous petitions are closed.

23.07.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

- 1.The XX Additional Sessions Court, Chennai.
- 2.The Metropolitan Magistrate, Fast Track Court – IV, George Town Chennai.



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M.DHANDAPANI, J.

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