



Crl.R.C.No.1047 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.R.C.No.1047 of 2024

T.S.Muralidharan

... Petitioner

Vs.

T.Vadivel

... Respondent

Prayer : Criminal Revision Case filed under Section 397 & 401 Cr.P.C, 1973, praying to set aside the judgment and conviction dated 23.05.2022 made in C.A.No.54 of 2021 on the file of the Special Court for Trial of case registered under SC/ST (POA) Act, Namakkal confirming the judgment and conviction dated 04.03.2021 made in S.T.C.No.238 of 2018 on the file of the Judicial Magistrate (FTC) at Thiruchengode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.S.Kolandasamy



Crl.R.C.No.1047 of 2024

WEB COPY

ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgment dated 23.05.2022 made in C.A.No.54 of 2021 on the file of the Special Court for Trial of case registered under SC/ST (POA) Act, Namakkal confirming the judgment and conviction imposed in S.T.C.No.238 of 2018 dated 04.03.2021 on the file of the learned Judicial Magistrate (FTC) at Thiruchengode by allowing the revision petition.

2. The petitioner is the accused and the 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 u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') in S.T.C.No.238 of 2018 before the learned Judicial Magistrate (FTC) at Thiruchengode against the accused stating that the accused is a well known person to the



Crl.R.C.No.1047 of 2024

WEB COPY

complainant for the past several years and the accused borrowed a sum of Rs.3,00,000/- as hand loan on 12.03.2018 for his urgent business and family expenses. To discharge his liability, the accused issued a cheque bearing No.000002 dated 26.03.2018 for a sum of Rs.3,00,000/- drawn on Karur Vysya Bank, Tiruchengode branch in favour of the complainant. On the request of the accused, the complainant presented the said cheque to his bank for collection on 23.03.2018 and the same was returned by the return memo with an endorsement 'Funds Insufficient'. Again, on personal request of the accused, the complainant presented the said cheque to his bank for collection on 04.05.2018 and the same was returned by the return memo with an endorsement "item listed twice" on 08.05.2018. Thereafter, the complainant issued legal notice to the accused on 15.05.2018 and inspite the service of notice on 16.05.2018, the accused has neither come forward to repay the said amount nor send any reply notice to the complainant.

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 6 months and to pay a compensation of Rs.3,00,000/-



Crl.R.C.No.1047 of 2024

to the complainant. Challenging the same, the accused has filed an appeal in Criminal Appeal No.54 of 2021 before the learned Special Court for Trial of case registered under SC/ST (POA) Act, Namakkal and the lower appellate court, vide judgment dated 23.05.2022, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate (FTC) at Thiruchengode. Aggrieved by the same, the present revision is filed.

5. When the matter is taken up for hearing today, both the petitioner as well as the respondent have appeared before this court along with their respective counsel and 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, an unsigned memo of compromise dated 06.03.2024 has been filed before this court. The relevant portion of the same reads as follows :-

“2. The petitioner submits that in the



Crl.R.C.No.1047 of 2024

mean time we arrived for compromise and in the same the respondent received the amount from the petitioner and hence he has no objection to allow this Crl.R.C.

Hence it is prayed that this Hon'ble Court may be pleased to record the above compromise memo and pass suitable orders in this regard and thus render 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 the amount and he has no objection for compounding the offence.

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



Crl.R.C.No.1047 of 2024

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."



Crl.R.C.No.1047 of 2024

WEB COPY

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."

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



Crl.R.C.No.1047 of 2024

WEB COPY

case, it is only a money transaction and the accused has paid the amount to the complainant and in this regard an unsigned memo of compromise dated 06.03.2024 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 memo of compromise filed by the parties, this Court is of the view that the Judgment in Crl.A.No.54 of 2021 on the file of Special Court for Trial of cases registered under SC/ST (POA) Act, Namakkal is liable to be set aside, since no useful purpose will be served in keeping the matter pending.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.238 of 2018 on the file of the learned Judicial Magistrate (FTC) at Thiruchengode and confirmed in Criminal Appeal No.54 of 2021 by the learned Special Court for Trial of



Crl.R.C.No.1047 of 2024

case registered under SC/ST (POA) Act, Namakkal are set aside and the revision petitioner/accused is acquitted from all the charges levelled against him.

12. This Criminal Revision Case stands allowed accordingly. The unsigned memo of compromise dated 06.03.2024 shall form part of the records.

19.06.2024

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

To

1.The Special Court for Trial of case registered under SC/ST (POA) Act, Namakkal.

2.The Judicial Magistrate (FTC) at Thiruchengode.



WEB COPY



Crl.R.C.No.1047 of 2024

M.DHANDAPANI, J.

sp

Crl.R.C.No.1047 of 2024

19.06.2024