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CrI.R.C.No.298 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

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

CrI.RC.No.298 of 2021

and

CrI.MP.No.9455 of 2024

Ravi

...Petitioner

Vs.

W.P.Magesh Raghavan

...Respondent

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to call for the records pertaining to the judgment in C.A.No.164 of 2018 dated 12.03.2020 passed by the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District, modifying the judgment and sentence passed in C.C.No.50 of 2015 dated 26.11.2018 passed by the learned Judicial Magistrate No.II, Walajapet, Vellore District and, set aside the same.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.D.Ashok Kumar



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ORDER

Though the miscellaneous petition in Crl.MP.No.9455 of 2024 filed seeking to compound the offence has been listed today, in view of the consent expressed by the learned counsel on either side, the main revision itself is taken up for final disposal.

2. The Criminal revision case has been filed seeking quashment of the order dated 12.03.2020 passed in C.A.No.164 of 2018 on the file of the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District, confirming the judgment dated 26.11.2018 made in C.C.No.50 of 2015 on the file of the Judicial Magistrate No.II, Walajapet, Vellore District.

3. 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'.



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4. The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.50 of 2015 before the Judicial Magistrate No.II, Walajapet, Vellore District, against the accused alleging that the accused borrowed a sum of Rs.5,00,000/- from the complainant on 16.11.2013 and has executed promissory note in favour of the complainant agreeing to pay the interest at 24% per annum for Rs.100/-. When the complainant approached the accused, the accused issued a Cheque No.006252 dated 16.03.2015 for a sum of Rs.6,60,000/- including the interest amount of Rs.1,60,000/-. When the said Cheque was presented for collection, the same was returned with an endorsement "Drawers Signature Differs". Thereby, the complainant issued legal notice dated 05.05.2015 and despite receiving the same on 06.05.2015, the accused failed to discharge the above said liability. Hence, the above complaint.

5. After elaborate discussions, the trial Court convicted the accused/ petitioner under Section 138 of the Negotiable Instruments Act and



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sentenced the accused to undergo simple imprisonment for one year and imposed a fine of Rs.5,000/-, in default, the accused shall undergo simple imprisonment for one month. Challenging the same, the petitioner filed an appeal in C.A.No.164 of 2018 and the complainant has preferred C.A.No.167 of 2018 and the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District, dismissed the appeal preferred by the petitioner in C.A.No.164 of 2018 confirming the conviction and sentence imposed by the trial court and partly allowed the appeal preferred by the complainant modifying the sentence imposed on the petitioner/accused to the effect that the petitioner/accused shall undergo simple imprisonment for a period of six months and pay compensation of Rs.6,60,000/- under Section 357 Cr.P.C within two months, in default, to undergo simple imprisonment for a period of three months. Aggrieved by the same, the present revision has been filed.

6. Learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner/accused and the respondent/



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complainant arrived at a compromise and the petitioner offered to pay a sum of Rs.3,80,000/- as one time settlement and the respondent also accepted his offer. Learned counsel appearing for the respondent/complainant also ratifies the same and the respondent/ complainant has consented for compounding the offence under Section 138 of the NI Act.

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



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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."



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8. In view of the fact that the accused and the complainant have entered into a joint memo of compromise and the complainant has no objection to compound the offence in view of the fact that the the petitioner offered to pay a sum of Rs.3,80,000/- as one time settlement, this Court is inclined to record the compromise and further compound the offence.

9. Accordingly, recording the compromise entered into between the parties, the sentence imposed on the revision petitioner stands compounded and the revision petitioner is acquitted by setting aside the conviction and sentence imposed on the revision petitioner in C.C.No.50 of 2015 on the file of the learned Judicial Magistrate No.II, Walajapet, Vellore District vide judgment dated 26.11.2018, which was confirmed by the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District in Crl.A.No.164 of 2018 vide judgment dated 12.03.2020. The revision petitioner/accused is acquitted from all the charges levelled against him.



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10. Accordingly, the revision petition is disposed of in the aforesaid terms and consequently, the connected Criminal miscellaneous petition in Crl.MP.No.9455 of 2024 also stands ordered.

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

To

1. The learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District.
2. The Judicial Magistrate No.II, Walajapet, Vellore District.
3. The Public Prosecutor,
High Court of Madras.



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M.DHANDAPANI, J.

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