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Crl.R.C.No.793 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2024

CORAM:

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

Crl.R.C.No.793 of 2022

and

Crl.M.P.Nos.8177 & 8172 of 2022

and 11573 of 2023

G. Praveen Kumar

...Petitioner

Vs.

Nivedita

Rep by her Power of Attorney Agent,

P.Venkatesh.

...Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the impugned judgment passed by the XIX Metropolitan Magistrate, Allikulam, Egmore, Chennai in C.C.No.3839 of 2017 dated 27.02.2020 as confirmed by the XXI Additional Sessions Judge, Chennai in C.A.No.97 of 2020 dated 05.01.2022 and allow this Revision Petition.

For Petitioner : Mr.M.L.Joseph

For Respondent : Mr.F.Kamal Baig



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ORDER

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This Criminal Revision Case has been filed seeking to set aside the Judgement dated 27.02.2020 passed by the XIX Metropolitan Magistrate, Allikulam, Egmore, Chennai in C.C.No.3839 of 2017 as confirmed by the XXI Additional Sessions Judge, Chennai in C.A.No.97 of 2020 vide order dated 05.01.2022.

2. It is the case of the revision petitioner that he was convicted for the offence under section 138 of Negotiable Instruments Act and sentenced to undergo one year Simple imprisonment and directed to pay a compensation of Rs.15,00,000/- to the complainant vide Judgment dated 05.04.2022 in CC.No.3839 of 2017 by the XIX Metropolitan Magistrate, Allikulam, Egmore, Chennai which was subsequently confirmed by the XXI Additional Sessions Judge in C.A.No.97 of 2020. Challenging the order of conviction passed in C.C.No.3839 of 2017, the petitioner has filed the present revision case. Pending the same, the petitioner had filed Crl.M.P.No.8177 of 2022 in Crl.R.C.No.793 of 2022 seeking to exempt the petitioner from surrendering before the trial court in pursuance to the order



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of conviction however, the same was dismissed. As against the refusal of stay by this Court, the petitioner moved a petition before the Hon'ble Supreme Court in SLP (Crl.).No.8119/2022 in which, the Supreme Court had granted stay upon condition that the petitioner shall deposit a sum of Rs.12,00,000/- to the credit of C.C.No.3839 of 2017 and the said order was complied with by the petitioner.

3. When the matter is taken up, learned counsel for the petitioner submitted a Joint Comprise Memo dated 06.04.2024 stating that both the parties have agreed to settle their disputes in full and final settlement on payment of Rs.30,00,000/- made by the petitioner which was also received by the respondent. Hence, learned counsel for the petitioner prayed that in view of the amicable settlement arrived between the parties, the Judgment and conviction passed against the petitioner in C.C.No.3839/2017 confirmed in Crl.A.No.97/2020 may be set aside and the petitioner may acquitted.

4. Learned counsel appearing for the respondent has no objection in



setting aside the Judgment and conviction passed in C.C.No.3839/2017 on the file of learned XIX Metropolitan Magistrate, Allikulam, Egmore, Chennai and acquitting the petitioner.

5. 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



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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."

6. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant has also received the amount from the petitioner/ accused and in this regard an Affidavit dated 06.04.2024 has also been filed by the complainant. Therefore, the



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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.

7. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the affidavit filed by the respondent, this Court is of the view that the Judgment in C.C.No.3839 of 2017 on the file of the XIX Metropolitan Magistrate, Allikulam, Egmore, Chennai is liable to be set aside.

8. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No. 3839 of 2017 on the file of the XIX Metropolitan Magistrate, Allikulam, Egmore, Chennai and confirmed in Criminal Appeal No.97 of 2020 dated 05.01.2022 by the XXI Additional Sessions Judge, Chennai are set aside and this criminal revision is allowed. The revision petitioner/ accused is acquitted from all the charges levelled against him. However, it is made clear that a Joint Compromise Memo dated



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06.04.2024 shall form a part and parcel of the records relating to the above

Criminal Revision Case.

9. This criminal revision is accordingly allowed. Consequently, connected Miscellaneous Petitions are closed.

17.04.2024

NHS

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

To

- 1.The XIX Metropolitan Magistrate,
Allikulam, Egmore, Chennai
- 2.The XXI Additional Sessions Judge,
Chennai.



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M.DHANDAPANI, J.

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