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Crl.R.C.No.931 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.R.C.No.931 of 2024
And
Crl.M.P.No.7894 of 2024**

1.E.Gomathi
2.Wayline Point

... Petitioners

Vs.

A.S.R.resin and Chemicals Co.
Represented by its Partner,
Arun S Rathore

... Respondent

Prayer:

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, to call for the records relating to the order dated 28.02.2023 passed by the learned Principal Sessions Judge at Chennai in Crl.M.P.No.18425 of 2023 in C.A.No.184 of 2022 and set aside the same.

For Petitioners : M/s.G.Mageshkumar
For Respondent : Ms.S.Deepika

O R D E R

The criminal revision case has been filed seeking to set aside the



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order dated 28.02.2023 passed by the learned Principal Sessions Judge at Chennai in CrI.M.P.No.18425 of 2023 in C.A.No.184 of 2022.

2.The petitioners are the accused and the respondent is the defacto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3.The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.268 of 2017 before the learned Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai against the accused stating that the accused had business relationship with the complainant. A1 is the Proprietrix of A2 concern. The complainant supplied goods to the accused and there was a remaining amount due with interest for default period of Rs.25,75,696/-. Inorder to discharge the said debt, the accused issued Cheque bearing number '200515' dated 25.01.2014 drawn on Syndicate Bank for a sum of Rs.25,75,696/-. When the said Cheque was presented on 25.01.2014 for collection, the same was returned on 27.01.2014 as 'funds insufficient'. Thereafter the complainant issued legal notice to the accused on 29.01.2014 and filed the complaint.



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4.After elaborate discussions, the trial Court convicted the petitioners under Section 138 of the Negotiable Instruments Act and sentenced the second accused to undergo simple imprisonment for two years and to pay double the cheque amount as compensation to the complainant within two months in default to undergo simple imprisonment for six months. Challenging the same, the petitioners filed appeal in C.A.No.184 of 2022 and also filed Crl.M.P.No.18425 of 2023 before the Sessions Court at Chennai under Section 391 of Cr.P.C. seeking to let in additional evidence and the said petition was dismissed. Aggrieved by the same, the present revision is filed.

5.The learned counsel for the petitioner submitted that during the pendency of this revision, the petitioners and the respondent arrived at a compromise. The parties also appeared before this Court and the respondent/ complainant has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.

6.To that extent, Memo of Compromise dated 29.07.2024 duly signed by the petitioner, respondent and also by their respective counsel has also been filed and the relevant portion of the same reads



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as follows :

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"6.In view of the above compromise

(a)The petitioner is paying a sum of Rs.7,50,000/- (Rupees Seven Lakhs fifty thousand) to the Respondent Mr.Arun S.Rathore and Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) to the respondent wife viz., Mrs.Roopal Rathore as directed by the respondent herein by way of issuance of two Demand Drafts No.477427 and 477426 of State Bank of India, Leather international Branch, Chennai dated 24/07/2024 in the name of above said persons respectively. The petitioner further submitted that the amount of Rs.4,69,722/- (Rupees Four Lakhs Sixty Nine Thousand Seven Hundred and Twenty Two Rupees only) has been handed over to the respondent as cash on hand on 29/07/2024.

(b)The sum of Rs.10,30,278/- (Rupees Ten Lakhs Thirty Thousand Two Hundred and seventy eight rupees only) is deposited already by the Petitioner in C.C.No.268/2017 before the Learned Metropolitan Magistrate, Fast Track Court, Egmore at Allikulam, Chennai in compliance with the order in suspension



of sentence petition. The said amount of Rs.10 Lakhs may be withdrawn by the Respondent herein and the petitioner agreed for the abovesaid withdrawal and suitable order may be passed by this Hon'ble Court.

(c)As such the total sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) have been settled totally by the petitioner herein to the Respondent herein and the Respondent also agreed for the same which is full and final settlement and no amount is due in the above case.

(d)Also the Respondent agreed to withdraw the complaint which was filed before Bar Council of Tamil Nadu and Puducherry against the Petitioner regarding this case.

(e)There is no other transaction or liability, whatsoever between the petitioner and the respondent herein. But it is agreed by the Respondent to return the interest amount if accrued with respect to the sum of Rs.10,30,278/- deposited already if any.

7.It is submitted that the Petitioner and the Respondent herein agreed for the above said compromise and settlement



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towards full and final settlement and the conviction and sentence imposed on the petitioner in the above C.C.No.268 of 2017 by the Learned Metropolitan Magistrate, Fast Track Court, Egmore at Allikulam, Chennai by the judgment dated may be set aside and acquit her."

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 Book Company, 2008) at p.444]

"17.2. Compounding of offences .--



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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.



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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."

8. With the above principles in mind, if this Court see the present case, it is only a money transaction and 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 Negotiable Instruments Act also empowers this Court to compound the offence under section 138 of the Negotiable Instruments Act.

9. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the Memo of Compromise filed, this Court is of the view that the Judgment in C.C.No.268 of 2017 on the file of the learned Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the



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revision petitioner/accused in C.C.No.268 of 2017 on the file of the learned Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai is set aside. The revision petitioners/ accused are acquitted from all the charges levelled against them. Since the order dated 29.07.2022 made in C.C.No.268 of 2017 by the learned Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai is set aside, no necessity arise for the petitioners to let in additional evidence and hence, no orders need to be passed in the said issue.

11.This criminal revision is accordingly disposed of. Consequently, the connected miscellaneous petition is closed.

29.07.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

- 1.The Principal Sessions Judge at Chennai.
- 2.The Metropolitan Magistrate,
Fast Track Court – I, Egmore @ Allikulam, Chennai.

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