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Crl.RC.No.1166 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

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

Crl.RC.No.1166 of 2024

1. M.Nachi Muthu
2. M/s. VJS Associates,
Rep. by its Proprietor
Mr.M.Nachi Muthu
No.65, Sudharsan Nagar,
5th Street, Madambakkam,
Chennai – 600 126.

...Petitioners

Vs.

Praveen Arunkumar

...Respondent

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the judgment in CA.No.357 of 2022 dated 18.08.2023 and set aside the judgment and sentence by the Hon'ble XXIII Additional Judge, City Civil Court, Chennai in CA.No.357 of 2022 dated 18.08.2023 confirming the judgment and sentence passed by the Hon'ble Metropolitan Magistrate, Fast Track Court No.I, Egmore-Allikulam, Chennai, the trial court in CC.No.1507 of 2014 dated 20.10.2022 convicting the petitioners/appellants for an alleged offence under Section 138 of Negotiable Instruments Act and sentencing the petitioners/appellants to undergo 2 years simple imprisonment and also to pay a compensation double of the cheque amount shall be paid to the respondent/respondent/complainant within one month in default accused shall undergo simple imprisonment of 6 months.



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For Petitioners : Mr.B.Senthilkumar

For Respondent : Mr.P.Karunakaran

ORDER

This Criminal revision case has been filed seeking quashment of the order passed by the learned XXIII Additional Judge, City Civil Court, Chennai in CA.No.357 of 2022 dated 18.08.2023 confirming the sentence imposed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Allikulam, Chennai in CC.No.1507 of 2014 dated 20.10.2022.

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 CC.No.1507 of 2014 before the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore-Allikulam, Chennai, against the accused alleging that the complainant with an intention to develop his residential plot situated at Plot No.249, Maharaja Nagar, Grand Line, Puzhal, Chennai measuring an extent of 1800 sq. ft., engaged



the services of one Sathish Moses, who introduced the complainant to the 1st accused, who is a building contractor carrying on business in the name and style of VJS Associates, Civil Engineers & Contractors, the 2nd accused and it was agreed between the parties that the 1st accused on behalf of the 2nd accused would undertake the construction activity in the said residential plot and it was further agreed between the parties that the total project cost shall be Rs.17,00,000/- and based on the said oral agreement, the complainant handed over the site to the 1st accused and he also paid a sum of Rs.14,00,000/-, which is almost 82% of the agreed total project cost. However, despite receiving the amount, the accused completed only 37% of the work and the expenditure towards the same was worked out to Rs.6,29,000/- and the accused agreed to return the balance amount of Rs.7,71,000/- to the complainant. Towards part discharge of the said liability, the 1st accused representing the 2nd accused issued a cheque bearing No.856815 dated 15.12.2013 for a sum of Rs.4,86,000/- and when the said Cheque was presented for collection, the same was returned with an endorsement “Insufficient funds”. Thereby, the complainant issued legal notice dated 05.01.2014 and despite receiving the same on 07.01.2014, the accused neither sent a reply nor discharged the above said liability. Hence,



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the above 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 1st petitioner to undergo simple imprisonment for two years and a compensation of double the cheque amount was ordered and in default of payment, the 1st petitioner was sentenced to undergo further six months of simple imprisonment. Challenging the same, the petitioners filed an appeal in Crl.A.No.357 of 2022 and the learned XXIII Additional Judge, City Civil Court, Chennai, vide order dated 18.08.2023, dismissed the appeal and confirmed the conviction and sentence imposed by the trial court. Aggrieved by the same, the present revision has been filed.

5. Learned counsel for the petitioners submitted that during the pendency of this revision, the petitioners and the respondent arrived at a compromise and in the total cheque amount of Rs.4,86,000/-, the petitioners have already paid a sum of Rs.1,50,000/- to the respondent and also handed over a Demand Draft bearing No.649907 drawn at Union Bank, Chennai dated 23.07.2024 for a sum of Rs.75,000/- to the respondent and the



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petitioners have expressed their consent for disbursement of the sum of Rs.2,00,000/- deposited by them before the trial court in favour of the complainant. The respondent/complainant also acceded to the same and has consented for compounding the offence under Section 138 of the NI Act and filed a compromise memo dated 30.07.2024 before this Court today.

6. To that extent, Compromise Memo dated 30.07.2024 duly signed by the petitioners and the respondent as well as by the learned counsel for the petitioners and the learned counsel appearing for the respondent has been filed by the parties before this Court today.

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



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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."

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."



8. With the above principles in mind, if this Court see the present case, it is only a money transaction and the petitioners have already paid a sum of Rs.1,50,000/- to the respondent and the respondent/complainant has also received a Demand draft bearing bearing No.649907 drawn at Union Bank, Chennai dated 23.07.2024 for a sum of Rs.75,000/- from the petitioners/accused and a sum of Rs.2,00,000/- having been deposited by the petitioners before the trial court and in this regard a memo of compromise has also been jointly filed by the petitioners and the complainant. 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 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 by the parties, this Court is of the view that the Judgment in CC.No.1507 of 2014 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Allikulam, Chennai is liable to be set aside.



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10. Accordingly, the conviction and sentence imposed on the revision petitioners/accused in CC.No.1507 of 2014 dated 20.10.2022 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Allikulam, Chennai which was confirmed by the learned XXIII Additional Judge, City Civil Court, Chennai in Crl.A.No.357 of 2022 dated 18.08.2023 are set aside and this criminal revision is allowed. The revision petitioners/accused are acquitted from all the charges levelled against them. The respondent/complainant shall withdraw the amount of Rs.2,00,000/- deposited by the petitioners/accused before the trial court by making appropriate application.

11. This Criminal revision case is accordingly **allowed** in terms of compromise. The joint memo of compromise dated 30.07.2024 filed by the parties before this Court today shall form a part and parcel of this order.

30.07.2024

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



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M.DHANDAPANI, J.

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To

1. The XXIII Additional Judge, City Civil Court,
Chennai.
2. The Metropolitan Magistrate, Fast Track Court No.I,
Egmore-Allikulam, Chennai.

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30.07.2024