



WEB COPY



Crl.RC.Nos.1094 & 1120 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

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

Crl.RC.Nos.1094 & 1120 of 2024

Ravindranatha Sharma

...Petitioner in both Crl.RC's.

Vs.

Raveendranath

...Respondent in both Crl.RC's.

Common Prayer: Criminal Revision Cases filed under Sections 397 r/w 401 of the Criminal Procedure Code to set aside the common judgment of the XV Additional District & Sessions Judge, Chennai in Crl.A.Nos.397 & 396 of 2017 dated 30.11.2018, confirming the conviction under Section 138 of the Negotiable Instruments Act and sentence of one year Simple Imprisonment and compensation of Rs.26,96,780/- passed by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai by the judgment in CC.Nos.13607 & 13606 of 2008 dated 22.11.2017.

In both Crl.RC's.:

For Petitioner : Dr.M.Sathya Kumar

For Respondent : Mr.S.Baskaran



COMMOM ORDER

WEB COPY These Criminal revision cases have been filed seeking quashment of the common order passed by the learned XV Additional District & Sessions Judge, Chennai in Crl.A.Nos.396 & 397 of 2017 dated 30.11.2018 confirming the common order passed in CC.Nos.13606 & 13607 of 2008 dated 22.11.2017 by the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai.

2. The petitioner is 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.Nos.13606 & 13607 of 2008 before the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai, against the accused stating that during the course of business, the complainant supplied goods to the accused and towards discharge of his liability, the accused issued two cheques bearing



No.897190 dated 14.02.2008 for a sum of Rs.6,48,390/- and another cheque bearing No.897189 dated 12.02.2008 for a sum of Rs.7,00,000/-. When the said Cheques were presented for collection, the same were returned for want of necessary funds. Thereafter, the complainant issued legal notices dated 12.05.2008 and 09.05.2008 respectively and the same were received by the accused on 26.05.2015, however, the accused failed to repay the cheque amounts.

4. After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and was ordered to pay a fine of Rs.26,96,780/- and in default to undergo three months simple imprisonment. Challenging the same, the petitioner filed appeals in Crl.A.Nos.396 & 397 of 2017 and the learned XV Additional District & Sessions Judge, Chennai, vide common judgment dated 30.11.2018, dismissed the appeals and confirmed the conviction and sentence passed by the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai. Aggrieved by the same, the present revisions have been filed.



5. Learned counsel for the petitioner submitted that during the pendency of these revisions, the petitioner and the respondent arrived at a compromise and the petitioner agreed to pay a sum of Rs.23,48,390/-. The respondent/complainant also acceded to the same and has consented for compounding the offence under Section 138 of the NI Act.

6. To that extent, Compromise Memo dated 10.07.2024 duly signed by the petitioner and the respondent as well as by the learned counsel for the petitioner 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:



WEB COPY

"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."

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."



WEB.COM

8. With the above principles in mind, if this Court see the present case, it is only a money transaction and the respondent/complainant has also received a Demand draft bearing No.560293 dated 09.07.2024 drawn on Kotak Mahindra Bank, Thyagaraya Nagar Branch for a sum of Rs.10,00,000/- from the petitioner/accused and the disputed cheque amounts of Rs.13,48,390/- having been deposited by the petitioner before the first appellate court and in this regard a memo of compromise has also been jointly filed by the petitioner and 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 common Judgment in CC.Nos.13606 & 13607 of 2008 on the file of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai is liable to be set aside.



Crl.RC.Nos.1094 & 1120 of 2024

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in CC.Nos.13606 & 13607 of 2008 dated 22.11.2017 on the file of the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Allikulam, Chennai which was confirmed by the learned XV Additional District & Sessions Judge, Chennai in Crl.A.Nos.396 & 397 of 2017 dated 30.11.2018 are set aside and these criminal revisions are allowed. The revision petitioner/accused is acquitted from all the charges levelled against him. The respondent/complainant shall withdraw the cheque amount of Rs.13,48,390/- deposited by the petitioner/accused before the 1st appellate court on 26.06.2024 by making appropriate application.

11. These Criminal revision cases are accordingly allowed.

10.07.2024

skt

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

7/8



WEB COPY



Crl.RC.Nos.1094 & 1120 of 2024

M.DHANDAPANI, J.

skt

To

1. The XV Additional District & Sessions Judge,
Chennai.
2. The Metropolitan Magistrate, Fast Track Court No.II,
Egmore, Allikulam, Chennai.

Crl.RC.Nos.1094 & 1120 of 2024

10.07.2024

8/8