



Crl.R.C.No.461 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM :

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

Crl.R.C.No.461 of 2021

Devaraj

... Petitioner

Vs.

Venkatesan

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, 1973, praying to set aside the judgement passed in Crl.A.No.4 of 2020 dated 26.04.2021 on the file of the III Additional Sessions Judge at Kallakurichi in confirming the order of conviction dated 29.01.2020 passed in S.T.C.No.25 of 2018 on the file of the Judicial Magistrate (Fast Track Court) at Kallakurichi and sentencing the petitioner to undergo one year simple imprisonment under Section 138 read with Section 142 of the Negotiable Instruments Act, 1882 and to pay compensation of Rs.20,00,000/- within period of 2 months from the date of order under Section 357(3) of the Criminal Procedure Code, 1973 and in default, simple imprisonment for 3 months by allowing the present Criminal Revision Petition.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.K.Chandrasekaran



Crl.R.C.No.461 of 2021

WEB COPY

ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgement passed in Crl.A.No.4 of 2020 dated 26.04.2021 on the file of the III Additional Sessions Judge at Kallakurichi in confirming the order of conviction dated 29.01.2020 passed in S.T.C.No.25 of 2018 on the file of the Judicial Magistrate (Fast Track Court) at Kallakurichi.

2. The petitioner is the accused and the respondent is the *de-facto* complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The complainant initiated proceedings u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') in S.T.C.No.25 of 2018 before the learned Judicial Magistrate (Fast Track Court) at Kallakurichi against the accused stating that the accused borrowed a sum of Rs.20,00,000/- on 15.07.2018. On 15.07.2018, the accused issued Cheque bearing number '000074' dated 01.08.2018 drawn on Lakshmi



Crl.R.C.No.461 of 2021

WEB COPY

Vilas Bank, Kallakurichi Branch for a sum of Rs.20,00,000/-. When the said Cheque was presented on 01.08.2018 for collection, the same was returned on 03.08.2018 as 'Refer to Drawer'. Thereafter, the complainant issued legal notice to the accused on 13.08.2018 and inspite the service of notice on 24.08.2018, the accused has neither come forward to repay the said amount nor sent any reply to the said notice.

4. After elaborate discussions, the trial court convicted the accused u/s 138 of the N.I. Act and sentenced him to undergo simple imprisonment for one year and to pay a compensation of Rs.20,00,000/- to the complainant. Challenging the same, the accused has filed an appeal in Criminal Appeal No.4 of 2020 before the learned III Additional Sessions Judge at Kallakurichi and the learned Sessions Judge, vide judgment dated 26.04.2021, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate (Fast Track Court) at Kallakurichi. Aggrieved by the same, the present revision is filed.



Crl.R.C.No.461 of 2021

WEB COPY

5. The learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner and the respondent arrived at a compromise and settled the case amicably and the respondent has consented for compounding the offence u/s 138 of the N.I. Act.

6. To that extent, a joint memo of compromise dated 29.03.2024 has been filed before this court, which has been signed by the petitioner and the respondent and also by the learned counsel for the parties. The relevant portion of the same reads as follows :-

“1. The petitioner had filed the above Criminal Revision Petition in Crl.R.C.No.461 of 2021 before this Hon'ble Court seeking to set aside the Judgement passed in Crl.A.No.4 of 2020 dated 26.04.2018 on the file of the III Additional Sessions Judge at Kallakurichi in confirming the order of conviction dated 29.01.2020 passed in S.T.C.No.25 of 2018 on the file of the Judicial Magistrate (Fast Track Court) at Kallakurichi and the same is pending adjudication before this Hon'ble Court.

2. The petitioner and the respondent states that as per the order of this Hon'ble Court dated 24.02.2022 in Crl.M.P.No.1708 of 2022, the



Crl.R.C.No.461 of 2021

petitioner had deposited a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 14.03.2022 and the petitioner had deposited another sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 13.04.2022 before the learned Judicial Magistrate (Fast Track Court) at Kallakurichi in S.T.C.No.25 of 2018. The petitioner had deposited totally a sum of Rs.10,00,000/- in S.T.C.No.25 of 2018. The petitioner has handed over the above deposited original payment receipts to the respondent herein. The petitioner has no objection for withdrawal of the above sum of Rs.10,00,000/- by the respondent with the interest accrued therein. The respondent has no objection for compounding the offence against the petitioner herein.

3. The petitioner and the respondent most respectfully states that they have entered into this compromise on their own volition and without any coercion and settle the case amicably in the above terms.

Hence, the petitioner and the respondent prays that this Hon'ble Court may be pleased to compound the offence under Section 138 of the Negotiable Instruments Act, 1882 and acquit the petitioner and pass the order in the above terms in Crl.R.C.No.461 of 2021 and thereby render justice."



WEB COPY

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 .-- 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



WEB COPY



CrI.R.C.No.461 of 2021

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."



Crl.R.C.No.461 of 2021

WEB COPY

8. With the above principles in mind, if this Court see the present case, it is only a money transaction and the accused has also deposited a sum of Rs.10,00,000/- before the trial court and in this regard a joint memo of compromise dated 29.03.2024 has also been filed by the parties. 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 N.I. Act also empowers this Court to compound the offence under section 138 of the N.I. Act.

9. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the joint memo of compromise filed by the parties, this Court is of the view that the Judgment in Crl.A.No.4 of 2020 on the file of III Additional Sessions Judge at Kallakurichi, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in S.T.C.No.25 of 2018 on the file of the



Crl.R.C.No.461 of 2021

learned Judicial Magistrate (Fast Track Court) at Kallakurichi and confirmed in Criminal Appeal No.4 of 2020 by the learned III Additional Sessions Judge at Kallakurichi, are set aside and the revision petitioner/accused is acquitted from all the charges levelled against him.

11. This Criminal Revision Case stands allowed accordingly. The terms of joint memo of compromise dated 29.03.2024 shall form part of the records.

30.04.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

- 1.The III Additional Sessions Judge at Kallakurichi.
- 2.The Judicial Magistrate (Fast Track Court) at Kallakurichi.



WEB COPY



Crl.R.C.No.461 of 2021

M.DHANDAPANI, J.

sp

Crl.R.C.No.461 of 2021

30.04.2024