IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM :

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

Crl.R.C.No.575 of 2021
and
Crl.M.P.Nos.9572 & 12866 of 2021

R.K.Gupta ... Petitioner

Vs.

Marimuthu ... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, 1973, praying to set aside judgement dated 12.04.2021, passed in Crl. Appeal No.30 of 2017 on the file of the III Additional Sessions Judge at Puducherry, confirming the judgment dated 29.08.2017 passed in C.C.No.302 of 2008 on the file of the II Additional District Munsif, Puducherry and allow the revision.

For Petitioner : Mr.E.Anbarasan

For Respondent : Notice served through Mr.K.S.Mohandass APP(P)

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ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgement dated 12.04.2021, passed in Crl. Appeal No.30 of 2017 on the file of the III Additional Sessions Judge at Puducherry, confirming the judgment dated 29.08.2017 passed in C.C.No.302 of 2008 on the file of the II Additional District Munsif, Puducherry and allow the revision.

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 C.C.No.302 of 2008 before the learned II Additional District Munsif, Puducherry against the accused stating that the accused had borrowed a sum of Rs.1,00,000/- on 11.04.2005 from him for his family expenses and the accused had issued a Cheque bearing No.01190 dated 16.06.2005 for the said amount drawn on State Bank of India, Main Branch, Pondicherry, in

favour of the complainant and on the same day i.e., 16.06.2005, the complainant had presented the above cheque through his banker and the same was returned on 18.06.2006 for the reason "Account Closed". Thereafter, the complainant issued lawyer notice to the accused on 30.06.2005 to repay the cheque amount and inspite the service of notice on 06.07.2006, 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 4 months and to pay a compensation of Rs.1,00,000/- to the complainant and in default to pay the compensation, the accused shall also undergo simple imprisonment for further period of 1 month. Challenging the same, the accused has filed an appeal in Criminal Appeal No.30 of 2017 before the learned III Additional Sessions Judge, Puducherry and the learned Sessions Judge, vide judgment dated 12.04.2021, dismissed the appeal by confirming the conviction and sentence passed by the learned II Additional District Munsif, Puducherry. Aggrieved by the same, the present revision is filed.

5. The petitioner has filed a petition in Crl.M.P.No.12866 of 2021 to record the compromise memo arrived between the petitioner and the complainant and to dispose the revision as compounded by setting aside the conviction passed in C.C.No.302 of 2008. The relevant portion of the same reads as follows :-

> *"6. The petitioner further states that compromise arrived between petitioner the respondent regarding the disputed amount of Rs.1,00,000/- (one lakh rupees) on 02.10.2021. Further petitioner taken demand draft No.105388 from State Bank of India Drawee Branch, Pondichery full and final amount of Rs.1,00000/- (One Laksh rupees) in the name of Respondent/complainant as such the respondent received demand draft on the same day in the presence of their counsel Mr.Srinevasan.*
>
> *It is therefore, prayed that this Hon'ble Court may be pleased to record the compromise memo arrived between the petitioner and the complainant and to dispose the revision petition as compounded by setting aside the conviction passed in C.C.No.302 of 2008 on the file of the II Additional District Munsif, Puducherry, on 29/8/2017 and confirming the judgment dated 12/4/2021, passed in*

Crl.Appeal.No.30/2017 on the file of the III Additional Sessions Judge at Puducherry, and pass such other suitable orders and thus render justice."

6. On 18.07.2024, the learned counsel for the petitioner submitted that the entire cheque amount was paid by the petitioner and a compromise memo has also been filed by the petitioner and the petitioner has appeared before this court through video conferencing, however the respondent has not appeared before this court. Therefore, in order to ascertain whether any settlement has been arrived between the parties, this court, vide order, dated 18.07.2024, had directed the learned Public Prosecutor (Puducherry) to give necessary instruction to the jurisdictional police authorities to ensure the presence of the respondent before this court.

7. When the matter is taken up for hearing today, as per the order passed by this court, the learned Additional Public Prosecutor (Puducherry) filed the status report of Station House Officer, Mangalam Police Station, Puducherry, dated 30.07.2024, in which, it is stated that

he met the respondent and the respondent has stated that he received an amount of Rs.1,00,000/- from the petitioner and no similar case pending in that issues and the case was pending long period without his knowledge and his counsel one Srinivasan had informed that the case is closed. Further, the respondent also stated that he is an aged person and his legs are contusion for a prolonged and under treatment till date, due to which, he was not travelling, thereby, he is unable to appear before this court.

8. 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 offencs 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 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 likes 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."

9. With the above principles in mind, if this Court see the present case, it is only a money transaction and the petitioner has also given the cheque amount of Rs.1,00,000/- to the respondent. 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.

10. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the petition filed by the petitioner and the status report filed by the law enforcing agency, dated 30.07.2024 and

also considering the fact that both the petitioner as well as the respondent are senior citizens, this Court is of the view that the Judgment in Crl.A.No.30 of 2017 on the file of III Additional Sessions Judge, Puducherry is liable to be set aside, since no useful purpose will be served in keeping this matter pending.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.302 of 2008 on the file of the learned II Additional District Munsif, Puducherry and confirmed in Criminal Appeal No.30 of 2017 by the learned III Additional Sessions Judge at Puducherry, are set aside and the revision petitioner/accused is acquitted from all the charges levelled against him.

12. This Criminal Revision Case stands allowed accordingly and the petition in Crl.M.P.No.12866 of 2021 is ordered. Consequently, the connected criminal miscellaneous petition is closed.

31.07.2024

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

NCC : Yes / No

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M.DHANDAPANI, J.

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To

1.The III Additional Sessions Judge, Puducherry.
2.The II Additional District Munsif, Puducherry.

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