



CrI.RC.No.720 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

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

CrI.RC.No.720 of 2024
and
CrI.M.P.No.10851 of 2024

R.Ramya
...Petitioner

Vs.

S.Ashok Kumar ...Respondent

Prayer: Criminal Revision Cases filed under Sections 397 r/w 401 of the Criminal Procedure Code to set aside the judgement dated 14.12.2021 passed by the learned III Additional District and Sessions Judge, Coimbatore in Criminal Appeal No.36 of 2020 confirming the judgement dated 30.12.2019 passed by the learned Judicial Magistrate No.6, Coimbatore in C.C.No.161 of 2017.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondent : Mr.C.Karthik

ORDER

This Criminal revision petition has been filed seeking quashment of



Crl.RC.No.720 of 2024

the judgement dated 14.12.2021 passed by the learned III Additional District and Sessions Judge, Coimbatore in Criminal Appeal No.36 of 2020 confirming the judgement dated 30.12.2019 passed by the learned Judicial Magistrate No.6, Coimbatore in C.C.No.161 of 2017.

2. The petitioner is the accused and the respondent is the 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.161 of 2017 before the learned Judicial Magistrate No.6, Coimbatore, against the accused stating that the accused obtained hand loan from the complainant in order to develop his business. Thereafter, the accused issued a cheque for a sum of Rs.1,50,000/- on 14.02.2017. When the said Cheque was presented for collection by the complainant, the same were returned with an endorsement “Payment Stopped by Drawer”. Thereafter, the complainant issued legal notice dated 28.02.2017 and the same were received by the accused, however, the accused failed to repay the cheque amount.

2/10



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4. After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for one year and was ordered to pay a fine of Rs.1,50,000/- and in default to undergo two months simple imprisonment in C.C.No.161 of 2017. Challenging the same, the petitioner filed an appeal in Crl.A.No.36 of 2020 and the learned III Additional District and Sessions Judge, Coimbatore, vide judgment dated 14.12.2021, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Aggrieved by the same, the present revision has been filed.

5. Learned counsel for the petitioner submitted that during the pendency of the revision, the petitioner and the respondent arrived at a compromise and the respondent agreed that the entire amount has been received by her and the respondent has consented for compounding the offence under Section 138 of the NI Act.

6. To that extent, Compromise Memo dated 01.08.2024 duly signed by the petitioner and the respondent has been filed by the learned counsel for the parties before this Court today and the parties appeared through



video conferencing. The relevant portion of the said memo is extracted

hereunder:

**MEMO ON THE PAYMENT AND
SETTLEMENT BETWEEN THE PARTIES**

The Petitioner above named humbly submits as follows; -

1. The Petitioner had preferred the above Criminal Revision Petition challenging the judgement dated 14.12.2021 passed by the learned III Additional District and Sessions Judge, Coimbatore, in Criminal Appeal No.36/ 2020 by confirming the judgement dated 30.12.2019 passed by the learned Judicial Magistrate No.6, Coimbatore in C.C.No.161/2017 which convicted the Petitioner under Section 138 of Negotiable Instrument Act and sentenced to undergo one-year rigorous imprisonment and the Petitioner directed to pay the cheque amount of Rs.1,50,000/- to the Respondent within three months from the date of judgement, failing which undergo two months simple imprisonment.

2. Similarly, the Respondent has filed a Complaint under Section 138 of N. I Act against the Petitioner's husband, Mr S.Sivakumar, for a cheque amount of Rs.5,00,000/-. The Petitioner's husband was convicted in the judgement dated 30.12.2019 passed by the learned Judicial Magistrate No.6, Coimbatore, in C.C.No.162/2017, and the conviction was confirmed by the learned IV Additional District and Sessions Judge, Coimbatore, in Criminal Appeal No.37/ 2020.

3. Pending the above Criminal Revision before this



Ctrl.RC.No.720 of 2024

Hon'ble Court, the Petitioner, her husband and the Respondent came into an amicable settlement through a memorandum of understanding signed on 19.07.2024. The Respondent agreed to receive Rs.7,80,000/- as the full and final statement for both cases. On that day, Rs.6,50,000/- was paid by the Petitioner and his husband to the Respondent through three demand drafts.

The particulars of the demand drafts are as follows:-

(I) D.D.No. 119498 dated 18.07.2024 – Rs.2,50,000/-

State Bank of India, Saibaba Colony Branch, Coimbatore

(II) D.D.No.119499 dated 18.07.2024 - Rs.2,50,000/-

State Bank of India, Saibaba Colony Branch, Coimbatore

(III) D.D.No.564021 dated 18.07.2024 – Rs.1,50,000/-

Kotak Mahindra Bank, Saibaba Colony Branch, Coimbatore

The Petitioner and her husband agreed to the withdrawal of Rs. 1,30,000/-by the Respondent, which was deposited before the trial court by them, as per the direction issued by the appellate court.

Therefore, it is prayed that this Hon'ble Court may be pleased to consider the payment and settlement between the parties and set aside the conviction imposed on the Petitioner and thus render Justice.

Dated at Chennai on this the 1st Day of August 2024

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 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 respondent/complainant has also received entire cheque amount from the petitioner 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 order dated 30.12.2019 in C.C.No.161 of 2017 on the file of the learned Judicial Magistrate No.6, Coimbatore is liable to be



CrI.RC.No.720 of 2024

set aside.

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10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.161 of 2017 dated 30.12.2019 on the file of the learned Judicial Magistrate No.6, Coimbatore which was confirmed by the learned III Additional District and Sessions Judge, Coimbatore in CrI.A.No.36 of 2020 dated 14.12.2021 are set aside and this criminal revision is allowed. The revision petitioner/accused is acquitted from all the charges levelled against her.

11. This Criminal revision case is accordingly allowed. In view of the order passed in the above revision petition, consequently connected miscellaneous petition is closed.

02.08.2024

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Speaking Order : Yes/ No

Index : Yes/ No

Internet : Yes/ No



Crl.RC.No.720 of 2024

To

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1. The III Additional District and Sessions Judge, Coimbatore
2. The Judicial Magistrate No.6, Coimbatore



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Crl.RC.No.720 of 2024

M.DHANDAPANI, J.

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Crl.RC.No.720 of 2024

02.08.2024