



Crl.R.C.No.596 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.596 of 2021

and

Crl.M.P.No.9901 of 2021

Kalpana

... Petitioner

Vs.

Revathy

... Respondent

PRAYER : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C., to set aside the conviction imposed in judgment dated 22.03.2021 made in C.A.No.35 of 2019 on the file of the III Additional Sessions Court, Villupuram @ Kallakurichi confirming the conviction imposed in judgment dated 27.11.2018 made in C.C.No.31 of 2017 on the file of the Judicial Magistrate (Fast Court Level), Kallakurichi by allowing this criminal revision.

For Petitioner : Mr.K.Premkumar

For Respondent : Mr.I.Murugan



Crl.R.C.No.596 of 2021

WEB COPY

ORDER

This criminal revision has been filed seeking to call for the entire records relating to the order passed by the learned III Additional Sessions Judge, Villupuram @ Kallakurichi in C.A.No.35 of 2019 dated 22.03.2021, confirming the order passed in C.C.No.31 of 2017 dated 27.11.2018 by the learned Judicial Magistrate (Fast Court Level), Kallakurichi and to set aside the same.

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 C.C.No.31 of 2017 before the learned Judicial Magistrate (Fast Court Level), Kallakurichi against the accused stating that the accused borrowed a sum of Rs.5,00,000/- for her urgent



Crl.R.C.No.596 of 2021

WEB COPY

needs and agreed to repay the same and the accused also issued post-dated cheque bearing number No.024734 dated 01.07.2016 of Central Bank of India, Kallakurichi for a sum of Rs.5,00,000/-. When the said cheque was presented on 01.07.2016 for collection, the same was returned on 12.07.2016 as 'funds insufficient'. Thereafter the complainant issued legal notice to the accused on 15.07.2016 and the same was received by the accused on 18.07.2016, however, the accused neither gave any reply nor repaid the amount.

4. After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.5,00,000/- in default to undergo simple imprisonment for a further period of three months. Challenging the same, the accused filed appeal in C.A.No.35 of 2019 before the learned III Additional Sessions Judge, Villupuram @ Kallakurichi and the learned III Additional Sessions Judge, Villupuram @ Kallakurichi, vide judgment



Crl.R.C.No.596 of 2021

WEB COPY

dated 22.03.2021, dismissed the appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate (Fast Court Level), Kallakurichi. Aggrieved by the same, the present revision is filed.

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 that the petitioner / accused is agreed to pay a sum of Rs.4,75,000/- for compounding the offence. The respondent / complainant accepted the same and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.

6. To that extent, compromise memo dated 11.07.2024 duly signed by both parties and their respective counsel have been filed by the parties before this Court. The petitioner / accused and respondent / complainant were also present in person before this Court and they were identified by their learned counsel.



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 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



CrI.R.C.No.596 of 2021

*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 complainant has also received the amount from the petitioner / accused and in this regard, a memo of compromise dated 11.07.2024 has also been jointly filed by the petitioner and 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 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 Hon'ble Supreme Court of India and also considering the memo of compromise dated 11.07.2024 filed by the parties, this Court is of the view that, the judgment in C.C.No.31 of 2017 on the file of the Judicial Magistrate (Fast Court Level), Kallakurichi



Crl.R.C.No.596 of 2021

is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner / accused in C.C.No.31 of 2017 dated 27.11.2018 on the file of the Judicial Magistrate (Fast Court Level), Kallakurichi and confirmed in C.A.No.35 of 2019 by the learned III Additional Sessions Judge, Villupuram @ Kallakurichi dated 22.03.2021, are set aside based on the compromise memo dated 11.07.2024 and the said compromise memo shall form part and parcel of the order. The revision petitioner / accused is acquitted from all the charges levelled against her.

11. With the above observations, this Criminal Revision is allowed. Consequently, connected miscellaneous petition is closed.

11.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji



WEB COPY



Crl.R.C.No.596 of 2021

To

1. The Judicial Magistrate (Fast Court Level),
Kallakurichi.
2. The III Additional Sessions Judge,
Villupuram @ Kallakurichi.
3. The Public Prosecutor,
Madras High Court.



WEB COPY



Crl.R.C.No.596 of 2021

M.DHANDAPANI, J.

vji

**Crl.R.C.No.596 of 2021
and
Crl.M.P.No.9901 of 2021**

11.07.2024