



Crl.R.C.No.1202 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

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

Crl.RC.No.1202 of 2022

and

Crl.MP.No.8310 of 2024

Subhashini

...Petitioner

Vs.

Raja

...Respondent

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to set aside the judgment dated 25.07.2022 passed by the learned Additional District (Fast Track Court), Mettur, in C.A.No.34 of 2021, by confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Mettur, in C.C.No.192 of 2018 dated 19.03.2021 under Section 138 of Negotiable Instruments Act, sentencing the petitioner to undergo one year simple imprisonment and to pay a fine of Rs.6,00,000/- as compensation to the complainant within two months, in default, six months simple imprisonment by allowing the criminal revision petition.



Crl.R.C.No.1202 of 2022

For Petitioner : M/s.J.Prithvi

For Respondent : Mr.Swathi Alagappan

ORDER

Though the miscellaneous petition in Crl.MP.No.8310 of 2024 filed seeking to compound the offence has been listed today, in view of the consent expressed by the learned counsel on either side, the main revision itself is taken up for final disposal.

2. The Criminal revision case has been filed seeking quashment of the judgment dated 25.07.2022 passed in C.A.No.34 of 2021 on the file of the learned Additional District (Fast Track Court), Mettur, confirming the judgment dated 19.03.2021 made in C.C.No.192 of 2018 on the file of the Judicial Magistrate No.I, Mettur.

3. 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'.



Crl.R.C.No.1202 of 2022

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4. The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.192 of 2018 before the learned Judicial Magistrate No.I, Mettur, against the accused alleging that the accused borrowed a sum of Rs.6,00,000/- from the complainant and agreed to repay the same and issued a post dated cheque bearing No.000132. When the said Cheque was presented for collection, the same was returned with an endorsement "Funds Insufficient". Thereby, the complainant issued legal notice, but the accused has given a false reply and failed to discharge the above said liability. Hence, the above complaint.

5. After elaborate discussions, the trial Court convicted the accused/ petitioner under Section 138 of the Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for one year and directed the accused to pay the cheque amount of Rs.6,00,000/- as compensation to the complainant within a period of two months from today (19.03.2021), failing which, the accused shall undergo simple imprisonment for six months. Challenging the same, the petitioner preferred an appeal in



Crl.R.C.No.1202 of 2022

C.A.No.34 of 2021 before the learned Additional District (Fast Track Court), Mettur and it was dismissed vide judgment dated 25.07.2022. Aggrieved by the same, the present revision has been filed.

6. Learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner/accused and the respondent/complainant arrived at a compromise and the petitioner deposited the entire cheque amount of Rs.6,00,000/- to the credit of C.C.No.192 of 2018 before the learned Judicial Magistrate No.I, Mettur and the respondent also agreed to withdraw the same and a compromise memo dated 30.04.2024 has also been filed to that effect. Learned counsel appearing for the respondent/complainant also ratifies the same and the respondent/complainant has consented for compounding the offence under Section 138 of the NI Act.

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



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Crl.R.C.No.1202 of 2022

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. In view of the fact that the accused and the complainant have entered into a joint memo of compromise and the complainant has no objection to compound the offence in view of the fact that the petitioner has deposited the entire cheque amount of Rs.6,00,000/- to the credit of C.C.No.192 of 2018 before the learned Judicial Magistrate No.I, Mettur, and the respondent also agreed to withdraw the same, this Court is inclined to record the compromise and further compound the offence.

9. Accordingly, recording the compromise entered into between the



Crl.R.C.No.1202 of 2022

parties, the sentence imposed on the revision petitioner stands compounded and the revision petitioner is acquitted by setting aside the conviction and sentence imposed on the revision petitioner in C.C.No.192 of 2018 on the file of the learned Judicial Magistrate No.I, Mettur, vide judgment dated 19.03.2021, which was confirmed by the learned Additional District (Fast Track Court) Mettur, in Crl.A.No.34 of 2021 vide judgment dated 25.07.2022. The revision petitioner/accused is acquitted from all the charges levelled against her.

10. Accordingly, the revision petition is allowed in the aforesaid terms and consequently, the connected Criminal miscellaneous petition in Crl.MP.No.8310 of 2024 also stands ordered.

01.07.2024

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(2/3)

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



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Crl.R.C.No.1202 of 2022

To

1. The learned Additional District (Fast Track Court) Mettur.
2. The learned Judicial Magistrate No.I, Mettur.
3. The Public Prosecutor,
High Court of Madras.



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Crl.R.C.No.1202 of 2022

M.DHANDAPANI, J.

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Crl.RC.No.1202 of 2022
and
Crl.MP.No.8310 of 2024

01.07.2024
(2/3)