



Crl.R.C.No.1140 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

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

Crl.RC.No.1140 of 2022

and

Crl.MP.No.8309 of 2024

Kavitha

...Petitioner

Vs.

Malarvizhi Radha Krishnan

...Respondent

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to set aside the judgment dated 04.07.2022 passed by the learned I Additional District and Sessions Judge, Salem in C.A.No.49 of 2019 by confirming the conviction and sentence imposed by the learned Judicial Magistrate No.6, Salem, in S.T.C.No.64 of 2018 dated 11.02.2019 under Section 138 of Negotiable Instruments Act, sentencing the petitioner to undergo three months simple imprisonment and to pay a fine of Rs.5,000/-, in default, one month simple imprisonment and pay a sum of Rs.4,00,000/- as compensation to the complainant by allowing the criminal revision petition.



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For Petitioner : M/s.J.Prithvi

For Respondent : Mr.S.Rajendrakumar

ORDER

Though the miscellaneous petition in Crl.MP.No.8309 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 04.07.2022 passed in C.A.No.49 of 2019 on the file of the learned I Additional District and Sessions Judge, Salem, confirming the judgment dated 11.02.2019 made in S.T.C.No.64 of 2018 on the file of the Judicial Magistrate No.6, Salem.

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'.



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4. The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in S.T.C.No.64 of 2018 before the learned Judicial Magistrate No.6, Salem, against the accused alleging that the accused borrowed a sum of Rs.4,00,000/- from the complainant and agreed to repay the same and issued a cheque bearing No.000111 dated 16.03.2018. When the said Cheque was presented for collection, the same was returned with an endorsement "Funds Insufficient". Thereby, the complainant issued legal notice and despite receiving the same, the accused 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 three months and imposed a fine of Rs.5,000/-, in default, the accused shall undergo simple imprisonment for one month and directed the accused to pay the cheque amount of Rs.4,00,000/- to the complainant towards compensation. Challenging the same, the petitioner preferred an appeal in C.A.No.49 of



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2019 before the learned I Additional District and Sessions Judge, Salem and it was dismissed vide judgment dated 04.07.2022. 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.4,00,000/- to the credit of S.T.C.No.64 of 2018 before the learned Judicial Magistrate No.VI, Salem 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.



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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. 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.4,00,000/- to the credit of S.T.C.No.64 of 2018 before the learned Judicial Magistrate No.VI, Salem, and the respondent also agreed to withdraw the same, this Court is inclined



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to record the compromise and further compound the offence.

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9. Accordingly, recording the compromise entered into between the 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 S.T.C.No.64 of 2018 on the file of the learned Judicial Magistrate No.VI, Salem, vide judgment dated 11.02.2019, which was confirmed by the learned I Additional District and Sessions Judge, Salem, in Crl.A.No.49 of 2019 vide judgment dated 04.07.2022. 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.8309 of 2024 also stands ordered.

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

To

1. The learned I Additional District and Sessions Judge, Salem
2. The learned Judicial Magistrate No.6, Salem,
3. The Public Prosecutor,
High Court of Madras.



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M.DHANDAPANI, J.

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