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Crl.RC.Nos.1094 & 1120 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

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

Crl.RC.Nos.1253 and 1254 of 2024

and

Crl.M.P.Nos.10965 and 10966 of 2024

S.Muniyasamy

...Petitioner in both Crl.RC's.

Vs.

Dharani

...Respondent in both Crl.RC's.

Common Prayer: Criminal Revision Cases filed under Sections 397 r/w 401 of the Criminal Procedure Code to call for the records in Crl.A.Nos.9 and 10 of 2021 on the file of the Principal District and Sessions Court, Chengalpattu and set aside the judgment dated 28.03.2023 confirming the conviction ordered in C.C.No.114 of 2019 and 388 of 2018 dated 05.01.2021 passed by the Judicial Magistrate, Fast Track Court Alandur, Chennai and thereby acquit the petitioner herein.

In both Crl.RC's.:

For Petitioner : Mr.J.Deepak Gandhi

For Respondent : Party-in-Person



COMMOM ORDER

These Criminal revision cases have been filed seeking quashment of the judgment passed by the Principal District and Sessions Court, Chengalpattu in Crl.A.Nos.9 & 10 of 2021 dated 28.03.2023 confirming the order passed in C.C.No.114 of 2019 & 388 of 2018 dated 05.01.2021 by the learned Judicial Magistrate, Fast Track Court Alandur, Chennai.

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.114 of 2019 & 388 of 2018 before the learned Judicial Magistrate, Fast Track Court Alandur, Chennai, against the accused stating that the accused obtained hand loan from the complainant in order to complete his construction work and towards discharge of his liability, the accused issued three cheques for a sum of Rs.9,06,000/-. When the said Cheques were presented for collection, the same were returned for want of necessary funds. Thereafter, the complainant



issued legal notices dated 14.02.2019 and 17.10.2018 respectively and the same were received by the accused, however, the accused failed to repay the cheque amounts.

4. After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for three months and was ordered to pay a fine of Rs.21,000/- and in default to undergo two months simple imprisonment in C.C.No.388 of 2018 and sentenced him to undergo simple imprisonment for six months and was ordered to pay a fine of Rs.15,00,000/- and in default to undergo three months simple imprisonment in C.C.No.114 of 2019. Challenging the same, the petitioner filed appeals in Crl.A.Nos.9 and 10 of 2021 and the Principal District and Sessions Court, Chengalpattu, vide separate judgment dated 28.03.2023, dismissed the appeals and confirmed the conviction and sentences passed by the trial Court. Aggrieved by the same, the present revisions have been filed.

5. Learned counsel for the petitioner submitted that during the pendency of these revisions, the petitioner and the respondent arrived at a



compromise and the petitioner agreed to pay a sum of Rs.5,00,000/-. The respondent/complainant also acceded to the same and has consented for compounding the offence under Section 138 of the NI Act.

6. To that extent, Compromise Memo dated 06.07.2024 duly signed by the petitioner and the respondent has been filed by the parties before this Court today.

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



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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 a Demand draft bearing No.837778 dated 05.07.2024 drawn on Tamilnadu Mercantile Bank Ltd., Sayalgudi branch for a sum of Rs.5,00,000/- from the petitioner/accused and in this regard a memo of



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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 05.01.2021 in CC.Nos.388 of 2018 and 114 of 2019 on the file of the Judicial Magistrate Court, Fast Track Court (Magisterial Level), Alandur, Chennai is liable to be set aside.

10. It is reported that the revision petitioner is in jail in connection with this case. The Revision petitioner, who is presently detained in Central Jail I, Puzhal, is directed to be released forthwith unless his presence is required in connection with any other case.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.114 of 2019 and 388 of 2018 dated 05.01.2021



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on the file of the Judicial Magistrate Court, Fast Track Court (Magisterial Level), Alandur, Chennai which was confirmed by the Principal District and Sessions Court, Chengalpattu in Crl.A.Nos.9 & 10 of 2021 dated 28.03.2023 are set aside and these criminal revisions are allowed. The revision petitioner/accused is acquitted from all the charges levelled against him.

12. These Criminal revision cases are accordingly allowed. In view of the order passed in the above revision petitions, consequently connected miscellaneous petitions seeking suspension of sentence are closed.

02.08.2024

Note to Office: Issue order copy today ie.,02.08.2024

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Speaking Order : Yes/ No

Index : Yes/ No

Internet : Yes/ No

M.DHANDAPANI, J.

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To

1. The Principal District and Sessions Court, Chengalpattu

2. The Judicial Magistrate, Fast Track Court Alandur, Chennai

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