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Crl.R.C.Nos.1576 & 2002 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1576 & 2002 of 2023 and
Crl.M.P.No.18538 of 2023, 5360 & 5364 of 2024

S.Suba Krishnan ... Petitioner in Crl.R.C.No.1576 of 2023 &
Respondent in Crl.R.C.No.2002 of 2023

Vs.

U.Raja ... Respondent in Crl.R.C.No.1576 of 2023 &
Petitioner in Crl.R.C.No.2002 of 2023

PRAYER in Crl.R.C.No.1576 of 2023: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment dated 06.07.2023 in Crl.Appeal No.262 of 2022 on the file of XXI Additional Sessions Judge, City Civil Court, Chennai by confirming the C.C.No.1750 of 2018 on the file of Metropolitan Magistrate, Fast Track Court-III, Saidapet in so far as it reduces the sentence.

PRAYER in Crl.R.C.No.2002 of 2023: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 30/06/2023 made in Crl.A.No.262/2022 on the file of Learned XXI Additional Sessions Court at Chennai modifying the order dated 16/09/2022 in C.C.No.1750 of 2018 passed by the Learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

For Petitioner in Crl.R.C.No.1576 of 2023 &
Respondent in Crl.R.C.No.2002 of 2023 : Mr.S.Ramesh

For Respondent in Crl.R.C.No.1576 of 2023 &
Petitioner in Crl.R.C.No.2002 of 2023 : Mr.K.N.Nataraj



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COMMON ORDER

Crl.R.C.No.1576 of 2023 has been filed to set aside the judgment, dated 06.07.2023 in Crl.A.No.262 of 2022 passed by the learned XXI Additional Sessions Judge, City Civil Court, Chennai (lower appellate Court) confirming the judgment in C.C.No.1750 of 2018, dated 16.09.2022 passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet (trial Court) in so far as it reduces the sentence.

2.Crl.R.C.No.2002 of 2023 has been filed to set aside the judgment, dated 06.07.2023 in Crl.A.No.262 of 2022 passed by the learned XXI Additional Sessions Judge, City Civil Court, Chennai confirming the judgment in C.C.No.1750 of 2018, dated 16.09.2022 passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet.

3.For the sake of convenience and clarity, the petitioner in Crl.R.C.No.1576 of 2023 and respondent in Crl.R.C.No.2002 of 2023 is referred to as complainant and the respondent in Crl.R.C.No.1576 of 2023 and petitioner in Crl.R.C.No.2002 of 2023 is referred to as accused.



4.The background of the case is that the accused is the family friend of the complainant for the past ten years and the accused was running provision store in the name of M/s.Raja Stores, Adyar Chennai. The accused approached the complainant and sought financial assistance in order to tide over the financial crisis and to develop his business. The accused also agreed to pay the same with 24% interest. Therefore, the complainant lent a sum of Rs.20,00,000/- to the accused in regular installments from April 2015 to September 2015. The loan secured by promissory notes (Exs.P1 to P4) executed by the accused in favour of the complainant. The said loan amount of Rs.20,00,000/- is also recorded in the complainant's Income Tax Return for the assessment year 2016-2017. In discharge of the said liability, the accused issued two cheques bearing Nos.646748, dated 26.09.2016 for Rs.20,00,000/- and another cheque bearing No.646749, dated 26.09.2016 for Rs.4,80,000/- drawn on Indian Bank, Chennai towards full and final settlement. When the cheques were deposited for encashment, the same was dishonoured. Thereafter, statutory notice issued and the complaint was filed before the trial Court in C.C.No.1750 of 2018 following the statutory conditions.



5. During trial, on the side of the complainant, he examined himself as PW1 and marked 18 documents as Exs.P1 to P18. On the side of the defence no witness examined and no document marked. On conclusion of trial, the trial Court convicted the accused for offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to six months Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one month Simple Imprisonment and also directed the accused to pay Rs.30,00,000/- to the complainant as compensation. Challenging the same, the petitioner preferred an appeal before the lower appellate Court in Crl.A.No.262 of 2022 and the lower appellate Court *vide* judgment, dated 06.07.2023 partly allowed the appeal setting aside the sentence and modified to the effect that the accused shall undergo sentence of one month Simple Imprisonment and ordered to pay compensation of Rs.30,00,000/- to the complainant.

6. Now challenging the modification of the lower appellate Court in Crl.A.No.262 of 2022, dated 06.07.2023 confirming the judgment in C.C.No.1750 of 2018, dated 16.09.2022 passed by the trial Court, Crl.R.C.No.1576 of 2023 is filed by the complainant. Challenging the



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judgment, dated 06.07.2023 in Crl.A.No.262 of 2022 passed by the lower appellate Court confirming the judgment in C.C.No.1750 of 2018, dated 16.09.2022 passed by the trial Court, Crl.R.C.No.2002 of 2023 is filed the accused.

7.Though very many grounds raised by the learned counsel for the accused and the learned counsel for the complainant in their respective criminal revision cases, finally both the parties had come to an understanding to resolve the issues between them including the civil suit which has been filed by the complainant and obtained decree against the accused. The scanned reproduction of the memo of compromise memo is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Appellate Jurisdiction)

Crl. R.C. No. 1576 and 2002 of 2023

U. Raja, S/o Udayar Nadar,
New Raja Stores,
No.12, Barathy Nagar,
100 Feet Road,
Taramani, Chennai 600 113.

.. Respondent in Crl. R.C.No.1576 of 2023
Petitioner in Crl. R.C.No.2002 of 2023

Vs

Subha Krishnan, S/o Subbiah,
No.1, Dr. Ambedkar Street,
Kunagam, TTTI Por,
Chennai 600 113.

.. Petitioner in Crl. R.C.No.1576 of 2023
Respondent in Crl. R.C.No.2002 of 2023

MEMORANDUM OF COMPROMISE

1. It is respectfully submitted that the parties to the proceedings have entered into a Memorandum of Compromise, which is appended below. This Hon'ble Court may be pleased to consider the same and pass appropriate orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

MEMORANDUM OF COMPROMISE

This Memorandum of Compromise entered into at Chennai on this the
13th day of March 2024

BY AND BETWEEN

1. Mr. U. Raja, Son of Udayar Nadar, Hindu, aged about 72 years and carrying on business under the name and style of New Raja Stores, at No.12, Barathy Nagar,

[Signature]

[Signature]



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100 Feet Road, Taramani, Chennai 600 113, hereinafter called the PARTY OF THE FIRST PART

2. Mr. Subha Krishnan, S/o Subbiah, Hindu, aged about 73 years and residing at No.1, Dr. Ambedkar Street, Kanagam, TITI Post, Chennai 600 113, hereinafter called the PARTY OF THE SECOND PART

WHEREAS

The PARTIES hereto have financial transactions between them

Though the financial transactions were proper and prompt initially, but in due course there arose a dispute, resulting in filing of civil and criminal proceedings against the PARTY OF THE FIRST PART by the PARTY OF THE SECOND PART

The PARTY OF THE SECOND PART instituted a civil suit in C.S.No.20 of 2018 before the Hon'ble High Court of Madras as a summary suit, which was decreed ~~ex parte~~ on 28/04/2018 for a sum of Rs.33,18,144/- The decree was passed by the Learned Master against which an appeal was preferred before the Hon'ble Court, wherein ^{first party filed undertaking affidavit} a settlement was arrived at for a sum of Rs.12,80,000/- and a sum of Rs.3,00,000/- was paid on 10/03/2020 by demand draft directly to the PARTY OF THE SECOND PART

The PARTY OF THE SECOND PART filed E.P.No.195 of 2018 for attachment and sale of an immovable property and E.P.No.33 of 2022 for arrest, both of which were dismissed for default

In the meanwhile the PARTY OF THE SECOND PART filed Calendar Case in C.C. No.1750 of 2018 before the Learned FTC-III, Saidapet, Chennai for punishing the PARTY OF THE FIRST PART for the offence committed under Section 138 of Negotiable Instruments Act in dishonour of a cheque for Rs.30,00,000/- in which the PARTY OF THE FIRST PART was convicted to undergo 6 months' simple imprisonment and to pay fine of Rs.10,000/-, in default the accused shall under one month simple imprisonment and the accused was also

First Party

U. R. S. 7



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ordered to pay a sum of Rs.30,00,000/- to the complaint towards compensation under Section 357 (1) of Cr.P.C.

Assailing the aforesaid order of conviction, the PARTY OF THE FIRST PART preferred Crl. Appeal No.262 of 2022 before the Learned XXI Addl. Sessions Judge, Chennai and the appeal was partly allowed and the finding of the trial court in the Calendar Case is confirmed, however the sentence alone is set aside and modified to the effect that the accused shall undergo a sentence of one month simple imprisonment and is ordered to pay compensation of Rs.30,00,000/- to the PARTY OF THE SECOND PART, in default to undergo further simple imprisonment of one month

Aggrieved by the order of the Hon'ble Appellate Court, the PARTY OF THE SECOND PART preferred Crl. Revision in Crl.R.C.No.1576 of 2023 for enhancement of punishment

The PARTY OF THE FIRST PART also preferred revision against the order of the Hon'ble Appellate Court in Crl.R.C.No.2002 of 2023 for acquittal

The PARTIES hereto considering their advanced age, the length of the litigation and the consequential inconveniences have realized the reality and mutually discussed the pros and cons of continuing the litigations

Eventually the PARTIES hereto desire and decided to end the litigations by settling all the disputes between them, including the civil and criminal litigations for a sum of Rs.23,00,000/- to be paid by the PARTY OF THE FIRST PART to the PARTY OF THE SECOND PART, which sum is inclusive of the sum of Rs.13,00,000/- paid to the PARTY OF THE SECOND PART on various dates, which he admits and acknowledges and as on this day, the PARTY OF THE FIRST PART is liable to pay a sum of Rs.10,00,000/- which is agreed to be paid in 5 equal instalments of Rs.2,00,000/- each, the first such instalment commencing from 20th March 2024 and ends on 20th July 24. *W. R. S.*

சுய-உட்கொள்வல்



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The PARTIES hereto have mutually agreed and decided to reduce the terms and conditions into writing by these presents and submit it before the Hon'ble High Court of Madras seeking to record the same and praying for appropriate orders

NOW THIS DEED OF COMPROMISE WITNESSETH AS FOLLOWS:

Terms and Conditions:

1. That the PARTY OF THE SECOND PART is at liberty to withdraw the sum of Rs.6,00,000/- deposited by the PARTY OF THE FIRST PART to the credit of C.C.No.1750 of 2018 before the Learned FTC-III, Saidapet, Chennai, for which the PARTY OF THE FIRST PART has no objection whatsoever.
2. That the PARTY OF THE SECOND PART admits and acknowledges the receipt of the sum of Rs.3,00,000/- paid on 10/03/2020 in C.S.No.20 of 2018 by the PARTY OF THE FIRST PART for setting aside the ~~separate~~ decree in terms of earlier memo of compromise.
3. That the PARTY OF THE SECOND PART hereby admits and acknowledges the receipt of the sum of Rs.1,00,000/- Rs.1,80,000/- and Rs.1,20,000/- in all a sum of Rs.4,00,000/- paid directly to the PARTY OF THE SECOND PART on various dates while the CrI. R.Cs., are heard by the Hon'ble High Court of Madras.
4. That the PARTY OF THE SECOND PART in all admits and acknowledges the receipt of the sum of Rs.13,00,000/- paid on various dates mentioned hereinabove by the PARTY OF THE FIRST PART.
5. That the PARTY OF THE FIRST PART undertakes to pay a sum of Rs.10,00,000/- in 5 equal monthly instalments of Rs.2,00,000/- each, the first one commencing from 31st March 2024 and ends on July 20th 2024.

திரு. ச. சிவசுப்பிரமணியன்

U. K. S. S.

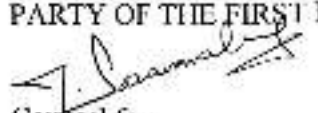


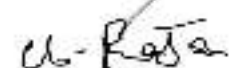
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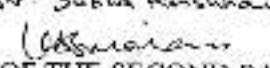
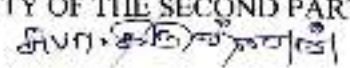
6. The PARTY OF THE SECOND PART herein specifically agrees for the said sum as full and final settlement of all his claims, whatsoever arising out of all the litigations that are pending, both civil and criminal.
7. The PARTIES hereto have agreed that they do not have any claim against each other whatsoever in all aspects, once the admitted amount is paid in full by the PARTY OF THE FIRST PART to the PARTY OF THE SECOND PART.
8. That the PARTY OF THE SECOND PART on receipt of the said sum shall take steps or will give no objection to raise the order of attachment made in E.P. proceedings before the jurisdictional Sub Registrar to remove the encumbrance over the property.
9. That in default or any eventuality, the PARTIES hereto shall be entitled and at liberty to proceed against the defaulting party in accordance with law.

In witness whereof, the PARTIES hereto have signed this Memorandum of Compromise on the day, month and year first above written in the presence of:


Counsel for
PARTY OF THE FIRST PART


Counsel for
PARTY OF THE SECOND PART


PARTY OF THE FIRST PART

for Subha Krishna

PARTY OF THE SECOND PART




8. After negotiation, the complainant considered the compensation to be paid by the accused. The plea of the accused is that, at present he is facing prosecution both under the Negotiable Instruments Act and a civil Court decree against him. Hence, he pleads that some concern may be shown and the amount to be reduced considering the past relationship between them, the inclination of the accused to pay the amount to the complainant and to give quietus to the litigations, both civil and criminal, pending between them.

9. Today, the accused appeared along with his counsel, produced the memo of compromise entered between the complainant and the accused wherein the accused has got no objection to the complainant to withdraw the amount of Rs.6,00,000/- deposited in C.C.No.1750 of 2018 without any notice to the accused. The complainant acknowledged the receipt of Rs.3,00,000/- paid on 10.03.2023 in civil suit in C.S.No.20 of 2018. Further, the complainant admits and acknowledges Rs.4,00,000/- directly received from the accused during hearing of the present criminal revision cases. In all, the complainant acknowledged the receipt of Rs.13,00,000/- paid by the accused. The accused undertakes to pay Rs.10,00,000/- in five equal installments of Rs.2,00,000/- each commencing from 31.03.2024 and complete the payment



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by July 2024. Hence, the accused as well as complainant prayed both the criminal revision cases can be disposed. To compound the offence, the complainant filed a petition under Section 147 of the Negotiable Instruments Act, 1881 in Crl.M.P.No.5364 of 2024 in Crl.R.C.No.2002 of 2023 to withdraw the complaint and the same is ordered.

10.Considering the submissions and on perusal of the materials, it is seen that the complainant and the accused appeared and confirmed the compromise between them. The accused gave undertaking that he would pay Rs.10,00,000/- in five equal installments of Rs.2,00,000/- from 31.03.2024 onwards and complete the same by July 2024 without any default. The complainant apprehends that from the year 2017 the accused had been delaying to honour the cheque despite suffering on civil suit filed against him in C.S.No.20 of 2018.

11.At this stage, the accused submitted that he is receiving rental income for every month and having business. Hence, he would make the payment without fail. He further undertakes that if any default occurs, he is solely responsible and shall abide by any action of this Court.



12. In view of the above development and in the interest of both the parties not to keep these proceedings pending since it will affect their future life, this Court accepts the compromise entered between them with the condition that the accused to make the payment of Rs.10,00,000/- in five installments of Rs.2,00,000/- each to the respondent. After payment of Rs.10,00,000/- by the accused, the complainant to withdraw the civil suit pending in C.S.No.20 of 2018.

13. The complainant is permitted to withdraw the amount of Rs.6,00,000/- credited by the accused in C.C.No.1750 of 2018 on the file of the trial Court. The trial Court to permit the complainant to withdraw the said amount without any notice to the accused.

14. It is made clear that in the event of the accused fails to make the payment of Rs.10,00,000/- and the undertaking given is not honoured, the present order of this Court stands cancelled and the criminal revision case gets restored to the file of this Court.



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15. In view of the above, Crl.R.C.No.1576 of 2023 filed by the complainant stands dismissed and Crl.R.C.No.2002 of 2023 filed by the accused stands allowed setting aside the judgment, dated 06.07.2023 in Crl.A.No.262 of 2022 passed by the lower appellate Court and judgment, dated 16.09.2022 in C.C.No.1750 of 2018 passed by the trial Court. Consequently, connected Criminal Miscellaneous Petition are closed.

19.03.2024

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes
Neutral Citation: Yes/No

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To

1. The XXI Additional Sessions Judge,
City Civil Court, Chennai.
2. The Metropolitan Magistrate,
Fast Track Court-III,
Saidapet, Chennai.



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M.NIRMAL KUMAR, J.

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19.03.2024