



Crl.RC.No.82 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.RC.No.82 of 2022

Razaak

...Petitioner

Vs.

Rahamathullah

...Respondent

Prayer: Criminal Revision Case filed under Section 397 (1) r/w 401 of Cr.P.C. to set aside the judgment made in C.A.No.29 of 2018, on the file of the Additional District and Sessions Court, Mayiladuthurai, dated 05.03.2020, confirming the judgment of conviction and sentence passed in S.T.C.No.224 of 2016 on the file of the Judicial Magistrate, Srikali, dated 10.05.2018.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.C.Prabakaran

ORDER

This Criminal Revision Case has been filed to set aside the judgment dated 05.03.2020 passed in Crl.A.No.29 of 2018 on the file of



Crl.RC.No.82 of 2022

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the Additional District and Sessions Court, Mayiladuthurai, confirming the order passed in STC.No.224 of 2016 dated 10.05.2018 on the file of the Judicial Magistrate, Sirkali.

2. The petitioner is the accused and the respondent is the *de-facto* complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The complainant initiated proceedings u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') in STCNo.224 of 2016 before the learned Judicial Magistrate, Sirkali, against the accused stating that the accused borrowed a sum of Rs.1,00,000/- from the complainant on 20.01.2016. On 25.02.2016, when the complainant demanded the accused to repay the amount, the accused has issued a cheque bearing No.018264, dated 29.02.2016. When the cheque was presented for collection on 02.03.2016, the same was returned with an Endorsement 'funds insufficient'. Thereafter, the complainant issued statutory notice to the accused on 24.03.2016,



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however, the accused has neither come forward to repay the said amount nor sent any reply to the said notice.

4. After elaborate discussions, the trial court convicted the accused u/s. 138 of the N.I. Act and sentenced him to undergo simple imprisonment for six months and to pay a compensation of Rs.1,00,000/- to the complainant. Challenging the same, the accused has filed an appeal in Criminal Appeal No.29 of 2018, before the Additional District and Sessions Court, Mayiladuthurai, and the learned Sessions Judge, vide judgment dated 05.03.2020, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate, Sirkali. 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 are ready to settle the case amicably and the respondent has consented for compounding the offence u/s 138 of the N.I. Act. He further submitted that, the petitioner had given a sum of Rs.1,10,000/- to the respondent/complainant.



6. Mr.Rahamathullah/the complainant, Party-in-person appeared before this Court and received the amount of Rs.1,10,000/- and has no objection for compounding the offence.

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,



WEB COPY



Crl.RC.No.82 of 2022

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 accused has also given a sum of Rs.1,10,000/- to the 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 N.I. Act also empowers this



Crl.RC.No.82 of 2022

WEB COPY

Court to compound the offence under section 138 of the N.I. Act.

9. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the fact that the petitioner paid the amount of Rs.1,10,000/- and the respondent received the same and he has no objection for compounding the offence, this Court is of the view that the Judgment in Crl.A.No.29 of 2018 on the file of the Additional District and Sessions Court, Mayiladuthurai, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in STC.No.224 of 2016 on the file of the learned Judicial Magistrate, Sirkali, which was confirmed in Criminal Appeal No.29 of 2018 by the learned Additional District and Sessions Judge, Mayiladuthurai, is set aside and the revision petitioner/ accused is acquitted from all the charges levelled against him.



Crl.RC.No.82 of 2022

11. This Criminal Revision Case stands allowed accordingly.

19.07.2024

ssb

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Additional District and Sessions Court, Mayiladuthurai.
2. The Judicial Magistrate, Srikali.



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Crl.RC.No.82 of 2022

M.DHANDAPANI, J.

ssb

Crl.RC.No.82 of 2022

19.07.2024