



Crl.RC.No.799 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.RC.No.799 of 2024

and

Crl.MP.No.7344 of 2024

Rajalamarji

...Petitioner

Vs.

Royappan

...Respondent

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to call for the records relating to judgment dated 14.02.2023 passed in Crl.A.No.3 of 2022 on the file of the Principal District and Sessions Court, Perambalur in confirming the order dated 01.03.2022 passed in STC.No.576 of 2020 on the file of the Judicial Magistrate Court No.1, Perambalur, set aside the same.

For Petitioner : Mr.P.Mani

For Respondent : Mr.Royappan (Party-in-Person)

ORDER

This Criminal Revision Case has been filed seeking quashment of



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the order dated 14.02.2023 passed in Crl.A.No.3 of 2022 on the file of the Principal District and Sessions Court, Perambalur, confirming the order passed in STC.No.576 of 2020 dated 01.03.2022 on the file of the Judicial Magistrate Court No.1, Perambalur.

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.576 of 2020 before the learned Judicial Magistrate Court No.1, Perambalur against the accused stating that the accused borrowed a sum of Rs.1,87,000/- from the complainant during the month of February 2017. On 20.02.2019, the accused issued two Cheques bearing No.635354 for a sum of Rs.1,00,000/- and another cheque bearing No.635359 for a sum of Rs.87,000/- drawn on State Bank of India, Venkatesapuram, Perambalur. When the said Cheques were presented for collection on 20.04.2019, the



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same were returned with an Endorsement 'Funds insufficient'. Thereafter, the complainant issued legal notice to the accused on 02.05.2019 and inspite the service of notice on 04.05.2019, 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.1,77,000/- to the complainant. Challenging the same, the accused has filed an appeal in Criminal Appeal No.3 of 2022 before the learned Principal District and Sessions Court, Perambalur and the learned Sessions Judge, vide judgment dated 01.02.2023, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate Court No.1, Perambalur. 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 already deposited a sum of



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Rs.10,000/- and the same was disbursed in favour of the respondent and he also deposited a further sum of Rs.50,000/- before the trial court on 11.03.2022 and he has no objection for disbursing the same to the respondent and the petitioner is ready to pay the balance amount of Rs.1,27,000/- to the respondent by way of cash today.

6. Mr.Royappan /the complainant, Party-in-person appeared before this Court and received the balance amount of Rs.1,27,000/- and has no objection for compounding the offence and he also made an endorsement to that effect in the petition 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



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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. With the above principles in mind, if this Court see the present



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case, it is only a money transaction and the accused has also deposited a sum of Rs.60,000/- before the trial court, in which a sum of Rs.10,000/- was already disbursed to the respondent and the petitioner has no objection for disbursing the remaining Rs.50,000/- in favour of the respondent and the petitioner paid the balance amount of Rs.1,27,000/- to the respondent by way of cash before this court today. 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 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 balance amount of Rs.1,27,000/- 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.3 of 2022 on the file of the Principal District and Sessions Court, Perambalur, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the



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revision petitioner/accused in STC.No.576 of 2020 on the file of the learned Judicial Magistrate Court No.I, Perambalur which was confirmed in Criminal Appeal No.3 of 2022 by the learned Principal District and Sessions Court, Perambalur is set aside and the revision petitioner/accused is acquitted from all the charges levelled against him. The respondent is permitted to withdraw the sum of Rs.50,000/- deposited by the petitioner before the trial court.

11. This Criminal Revision Case stands allowed accordingly. Consequently, the connected Miscellaneous petition is closed.

24.06.2024

skt

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

To

1. The Principal District and Sessions Court, Perambalur.
2. The Judicial Magistrate Court No.1, Perambalur.

M.DHANDAPANI, J.



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