



CrI.RC.No.1645 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.RC.No.1645 of 2022

V.Kalasalingam

...Petitioner

Vs.

P.Chinnaraj
...Respondent

Prayer:- Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order of conviction dated 11.11.2022 passed by the VII Additional District and Sessions Court, Chennai, in C.A.No.93 of 2020 as confirmed by the order dated 16.03.2020 in C.C.No.838 of 2017 by the learned Metropolitan Magistrate, Fast Track Court, at Magisterial Level IV George Town, Chennai-600 001 and acquit the appellant by allowing the criminal revision case.

For Petitioner : Mr.A.Balasingh Ramanujam

For Respondent : Mr.S.T.Rajan

ORDER

This Criminal Revision Case has been filed seeking quashment of the order dated 11.11.2022 passed in C.A.No.93 of 2020 on the file of



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the VII Additional District and Sessions Court, Chennai, confirming the order passed in C.C.No.838 of 2017 dated 16.03.2020 on the file of the learned Metropolitan Magistrate, Fast Track Court, at Magisterial Level IV George Town, Chennai-600 001.

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 C.C.No.838 of 2017 before the learned Metropolitan Magistrate, Fast Track Court, at Magisterial Level IV George Town, Chennai, against the accused stating that the accused borrowed a sum of Rs.5,00,000/- from the complainant and the accused issued a Cheque bearing No.287723 for a sum of Rs.5,00,000/- in favour of the complainant towards full and final settlement of the loan borrowed. When the said Cheque was presented for collection on 10.02.2017, the same was returned with an Endorsement



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'Funds insufficient'. Thereafter, the complainant issued legal notice to the accused and inspite of receipt of notice, 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 ten months and to pay a compensation of Rs.4,43,500/- to the complainant. Challenging the same, the accused has filed an appeal in Criminal Appeal No.93 of 2020 before the VII Additional District and Sessions Court, Chennai and the learned Sessions Judge, vide judgment dated 11.11.2022, dismissed the appeal by confirming the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court, at Magisterial Level IV George Town, Chennai. 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



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compromise for a sum of Rs.4,20,000/- (Rupees Four Lakhs Twenty Thousand only) 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 Rs.4,20,000/- before the trial Court, out of the compensation amount of Rs.4,43,500/- and he has no objection for disbursing the same to the respondent.

6. The learned counsel appearing for the respondent submits that the respondent has consented for compounding the offence u/s 138 of the N.I. Act and seeks permission of this Court to withdraw the amount of Rs.4,20,000/- already deposited by the petitioner before the trial Court and he does not want any amount from the petitioner.

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



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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,



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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 deposited a sum of Rs.4,200,000/- before the trial court and has no objection for disbursing the said amount in favour of 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 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 deposited a sum of Rs.4,20,000/- before the trial Court and the respondent has no objection for compounding the offence, this Court is of the view that the Judgment



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in Crl.A.No.93 of 2020 on the file of the VII Additional District and Sessions Court, Chennai, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.838 of 2017 on the file of the learned Metropolitan Magistrate, Fast Track Court at Magisterial Level IV George Town, Chennai, which was confirmed in Criminal Appeal No.93 of 2020 by the learned VII Additional District and Sessions Court, Chennai, is set aside and the revision petitioner/ accused is acquitted from all the charges levelled against him. The respondent is permitted to withdraw a sum of Rs.4,20,000/- deposited by the petitioner before the trial court.

11. This Criminal Revision Case stands allowed accordingly.

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

To

1. The VII Additional District and Sessions Court, Chennai,
2. The learned Metropolitan Magistrate, Fast Track Court at Magisterial Level IV George Town, Chennai.



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Today, the matter is listed under the caption "for being mentioned".

2. The learned counsel appearing for both sides submitted that the matter has been settled between the petitioner and the respondent for a sum of Rs.4,20,000/- and since the petitioner has deposited a sum of Rs.88,700/- before the trial Court, the balance amount was paid to the respondent. However, in the order, it reveals that the entire amount has been deposited by the petitioner before the trial Court and to that extent, order may be modified appropriately.

3. Considering the submissions made by the learned counsel appearing for the respondent, paragraph Nos.5, 6, 8, 9 and 10 shall stand replaced as follows:-

" 5. The learned counsel for the petitioner



submitted that during the pendency of this revision, the petitioner and the respondent arrived at a compromise for a sum of Rs.4,20,000/- (Rupees Four Lakhs Twenty Thousand only) 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 Rs.88,700/- before the trial Court, out of the compensation amount of Rs.4,43,500/- and he has no objection for disbursing the same to the respondent.

6. The learned counsel appearing for the respondent submits that the respondent has consented for compounding the offence u/s 138 of the N.I. Act as he has agreed to have the matter settled for a sum of Rs.4,20,000/- of which he has received a sum of Rs.3,31,300/- and seeks permission of this Court to withdraw the amount of Rs.88,700/- which has already been deposited by the petitioner before the trial Court.

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 deposited a sum of Rs.88,700/-



before the trial court and has no objection for disbursing the said amount in favour of 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 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 respondent has already received a sum of Rs.3,31,300/- from the petitioner and has no objection for compounding the offence, this Court is of the view that the Judgment in Crl.A.No.93 of 2020 on the file of the VII Additional District and Sessions Court, Chennai, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.838 of 2017 on the file of the learned Metropolitan Magistrate, Fast Track Court at Magisterial Level IV George Town, Chennai, which was confirmed in Criminal Appeal No.93 of 2020 by the learned VII



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Additional District and Sessions Court, Chennai, is set aside and the revision petitioner/ accused is acquitted from all the charges levelled against him. The respondent is permitted to withdraw a sum of Rs.88,700/- deposited by the petitioner before the trial court."

11.11.2024

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