



WEB COPY



Crl.R.C.No.2180 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.R.C.No.2180 of 2023

and

Crl.M.P.Nos.19680 of 2023 & 7930 of 2024

Subramaniyan

... Petitioner

Vs.

Krishnan

... Respondent

Prayer : Criminal Revision Case filed under Section 397 & 401 Cr.P.C, 1973, praying to set aside the judgment dated 26.09.2023 made in C.A.No.15 of 2023 on the file of the learned Additional District and Sessions Judge, Namakkal confirming the judgment and sentence imposed in C.C.No.226 of 2021 dated 19.12.2022 on the file of the learned Judicial Magistrate-I, Namakkal by allowing the revision petition.

For Petitioner : Mr.S.Varanesh

For Respondent : Mr.P.Asai Thambi

ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgment dated 26.09.2023 made in C.A.No.15 of 2023 on



Crl.R.C.No.2180 of 2023

the file of the learned Additional District and Sessions Judge, Namakkal confirming the judgment and sentence imposed in C.C.No.226 of 2021 dated 19.12.2022 on the file of the learned Judicial Magistrate-I, Namakkal by allowing the revision petition.

2. The petitioner is the accused and the respondent is the 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.226 of 2021 before the learned Judicial Magistrate-I, Namakkal against the accused stating that the accused is a well known person to the complainant for the past ten years and due to the relationship, the accused approached and requested the complainant to advance hand loan. As per request, the complainant advance a sum of Rs.12,00,000/- on 18.11.2019 and the accused agreed to repay the same within one month. The accused issued Cheques bearing Nos.000101 and 000102 dated 29.01.2020 for a sum of Rs.6,00,000/- each drawn on Karur Vysya Bank, Namakkal Branch, in favour of the complainant and the complainant had presented the said cheques for collection through his



banker on 30.01.2020 and the same was returned on 31.01.2020 with an endorsement that 'insufficient funds'. Thereafter, the complainant issued legal notice to the accused on 13.02.2020 and inspite the service of notice on 14.02.2020, the accused has not come forward to repay the said amount but sent reply notice on 29.02.2020 making false allegations against the complainant.

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 2 years and to pay a compensation of Rs.24,00,000/- to the complainant. Challenging the same, the accused has filed an appeal in Criminal Appeal No.15 of 2023 before the learned Additional District and Sessions Judge, Namakkal and the learned Sessions Judge, vide judgment dated 26.09.2023, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate-I, Namakkal. Aggrieved by the same, the present revision is filed.

5. When the matter is taken up for hearing today, both the petitioner as well as the respondent have appeared before this court along with their respective counsel and submitted that, during the pendancy of this revision,



the petitioner and the respondent arrived at a compromise and settled the case amicably and the respondent has consented for compounding the offence u/s 138 of the N.I. Act.

6. To that extent, a joint compromise memo dated 31.07.2024 has been filed before this court, which has been signed by the petitioner and the respondent and also by the learned counsel for the parties. The relevant portion of the same reads as follows :-

“3. Its further submitted that the petitioner and the respondent are close friends. Moreover, due to intervention of family members and other villagers, the complainant and accused had amicably resolved their dispute. Moreover, no undue influence has been made in arriving the compromise. Further, both the parties are willingly signed the compromise deed in the presence of Panchayathars on 08.07.24.

4. It is further submitted that that the petitioner has settled the amount of Rs.9,00,000/- to the respondent as per the compromise deed dated 08.07.2024 in full quit and the same has been acknowledged by the respondent.

5. It is further submitted that the respondent has given an undertaking that he is not interested in proceeding further in the above case and there was an out court compromise deed has been arrived between the petitioner and the respondent on 08.07.24. Its further



state that the respondent has no objection for withdrawing the deposit amount of Rs.4,80,000/- in C.C.No.226 of 2021 to the revision petitioner.

6.It is further submitted that the petitioner and the respondent have no claim against each other in any manner whatsoever and this Joint compromise memo settles the entire disputes between the parties. Moreover, no undue influence has been made in arriving the compromise. Further, both the parties are willingly signed the joint compromise in the presence of Panchayathars and willingly signed this joint compromise memo also.

It is humbly prayed that this Hon'ble Court may be pleased to set aside the order dated 26.09.2023 passed by the Additional District and Sessions Judge, Namakkal in C.A.No.15/2023 by confirming the order dated 19.12.2021 passed by the Judicial Magistrate No.1, Namakkal and thereby acquit the petitioner/accused."

7. This Court also enquired both the parties and was satisfied that the parties have come to an amicable settlement between themselves. The parties have reiterated that they have arrived at compromise and the respondent submitted that he received a Rs.9,00,000/- in full quit and he has no objection for compounding the offence. Further, the respondent



submitted that he has no objection for withdrawing the deposit amount of Rs.4,80,000/- in C.C.No.226 of 2020 to the petitioner, which has already been deposited before the trial court by the petitioner.

8. 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, 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."

9. With the above principles in mind, if this Court see the present case, it is only a money transaction and the accused has paid the agreed sum



Crl.R.C.No.2180 of 2023

of Rs.9,00,000/- to the complainant and in this regard a joint compromise memo dated 31.07.2024 has also been filed by the parties. 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.

10. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the joint compromise memo filed by the parties, this Court is of the view that the Judgment in Crl.A.No.15 of 2023 on the file of Additional District and Sessions Judge, Namakkal is liable to be set aside, since no useful purpose will be served in keeping the matter pending.

11. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.226 of 2021 on the file of the learned Judicial Magistrate – I, Namakkal and confirmed in Criminal Appeal No.15 of 2023 by the learned Additional District and Sessions Judge, Namakkal, are set aside and the revision petitioner/accused is acquitted from all the charges levelled against him. Further, the petitioner/accused is permitted to withdraw a sum of Rs.4,80,000/-, which has already been deposited by him



Crl.R.C.No.2180 of 2023

before the trial court.

WEB COPY

12. This Criminal Revision Case stands allowed accordingly. The joint compromise memo dated 31.07.2024 shall form part of the records. Consequently, the connected criminal miscellaneous petitions are closed.

31.07.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

- 1.The Additional District and Sessions Judge , Namakkal.
- 2.The Judicial Magistrate – I, Namakkal.



WEB COPY



Crl.R.C.No.2180 of 2023

M.DHANDAPANI, J.

sp

Crl.R.C.No.2180 of 2023

31.07.2024