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Crl.R.C.No.849 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.R.C.No.849 of 2024 and
Crl.M.P.Nos.7554 and 7555 of 2024

Prince S.Sivakumar

... Petitioner

Vs.

P.Balakumar

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, 1973, praying to set aside the judgement of the appellate court made in C.A.No.20 of 2022 on the file of the learned Principal District and Sessions Judge at Perambalur, Perambalur District dated 12.07.2023 in dismissing the appeal filed by the appellant herein and confirming the conviction and sentence passed by the learned Judicial Magistrate No.1, Perambalur, Perambalur District in C.C.No.104 of 2021 in convicting the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo six months simple imprisonment and he was also directed to pay a compensation of Rs.1,00,000/- (Rupees One Lakh only) i.e., the cheque amount under Section 357(3) Cr.P.C and in default to pay the said compensation amount the accused is further sentenced to undergo two months simple imprisonment by judgment dated 29.06.2022.



CrI.R.C.No.849 of 2024

For Petitioner : Mr.S.Sivasakthi

For Respondent : Mr.G.Ilamurugu

ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgement passed in C.A.No.20 of 2022 dated 12.07.2023 on the file of the learned Principal District and Sessions Judge at Perambalur, Perambalur District in confirming the order of conviction dated 29.06.2022 passed in C.C.No.104 of 2021 on the file of the learned Judicial Magistrate 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 C.C.No.104 of 2021 before the learned Judicial Magistrate No.1, Perambalur against the



CrI.R.C.No.849 of 2024

accused stating that the accused borrowed a sum of Rs.1,00,000/- on 06.03.2021. When the complainant demanded the accused to repay the said sum, the accused issued Cheque bearing number '321176' dated 04.07.2021 for a sum of Rs.1,00,000/-. When the said Cheque was presented for collection, the same was returned on 02.08.2021 as 'Funds Insufficient'. Thereafter, the complainant issued legal notice to the accused on 09.08.2021 and inspite the service 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 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.20 of 2022 before the learned Principal District and Sessions Judge at Perambalur, Perambalur District, vide judgment dated 12.07.2023, dismissed the appeal by confirming the conviction and sentence passed by the learned Judicial Magistrate No.1,



Crl.R.C.No.849 of 2024

Perambalur. Aggrieved by the same, the present revision is filed.

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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 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 memo of compromise dated 03.07.2024 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 :-

“1. The above Criminal revision petition has been filed by the petitioner herein against the order dated 12.07.2023 passed in Crl.A.No.20 of 2023 on the file of the learned Principal District and Sessions Judge Perambalur District. Now both the parties are agreed to compound the case on the following terms:

a) The petitioner shall pay a sum of Rs.1,00,000/- to the respondent.

b) The petitioner already deposited a sum of Rs.50,000/- before the learned Judicial Magistrate I, Perambalur District permits to withdraw and no



CrI.R.C.No.849 of 2024

objection from the side of the Petitioner handover to the respondent.

c) The petitioner had taken DD dated 19.06.2024 in the name of the Respondent for a sum of Rs.50,000/- vide bearing No.336549 withdrawn on Karur Vysya Bank.

2.The petitioner has complied the above said conditions both are willing to compound the case before this Hon'ble Court.

In these circumstances, it is prayed that this Hon'ble Court may be pleased to records the compound petition and pass such further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

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:



WEB COPY



CrI.R.C.No.849 of 2024

"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 –



WEB COPY



CrI.R.C.No.849 of 2024

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 deposited a sum of Rs.50,000/- before the trial court and remaining sum of Rs.50,000/- by way of demand draft dated 19.06.2024 in favour of the respondent and in this regard a joint memo of compromise dated 03.07.2024 has also been filed by the parties. Therefore, the complainant's interest lies primarily in recovering the money rather than



CrI.R.C.No.849 of 2024

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 joint memo of compromise filed by the parties, this Court is of the view that the Judgment in C.A.No.20 of 2022 on the file of learned Principal District and Sessions Judge Perambalur, is liable to be set aside.

10. Accordingly, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.104 of 2021 dated 29.06.2022 on the file of the learned Judicial Magistrate No.1, Perambalur and confirmed in C.A.No.20 of 2022 dated 12.07.2023 on the file of the learned Principal District and Sessions Judge at Perambalur, Perambalur District, are 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.50,000/- which was already deposited before the trial Court as there is no objection on behalf of the complainant.



Crl.R.C.No.849 of 2024

WEB COPY

11. This Criminal Revision Case stands allowed accordingly.

The terms of joint memo of compromise dated 03.07.2024 shall form part of the records. Consequently, connected miscellaneous petitions are closed.

08.07.2024

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

- 1.The Judicial Magistrate No.1, Perambalur.
- 2.The Principal District and Sessions Judge
at Perambalur, Perambalur District



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Crl.R.C.No.849 of 2024

M.DHANDAPANI, J.

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Crl.R.C.No.849 of 2024

08.07.2024