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CrI.R.C.No.446/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

CrI.R.C.No.446 of 2022

&

CrI.M.P.No.14572 of 2024

M. Selvaraj
Proprietor
Sri Abirami Auto Service
Door No.1/425, Avinashi Road,
Chinniyampalayam, Coimbatore ... Petitioner

/vs/

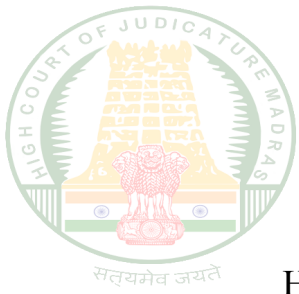
R. Kandasamy ... Respondent

Prayer : Criminal Revision Petition filed under section 397 and 401 of Cr.P.C. To set aside the conviction and sentence passed in C.A.No.303 of 2017 dated 11.02.2022 on the file of the IV Addl. District and Sessions Court, Coimbatore, confirming the conviction and sentence made in C.C.No.366 of 2013, dated 18.09.2017 on the file of the Judicial Magistrate Fast Track Court No.1, Coimbatore.

For Petitioner ... Mr.K.S.Karthik Raja

For Respondent Mr.T.R.Sundaram

ORDER

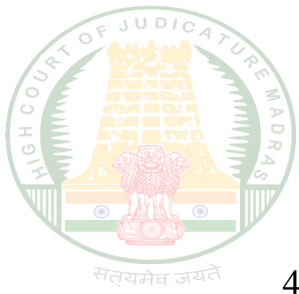


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Heard Mr.K.S. Karthik Raja, learned counsel appearing for the Revision Petitioner and Mr.T.R.Sundaram, learned counsel appearing for the respondent and also this Court has taken the assistance of Mr.A.Gopinath, learned Govt. Advocate (crl.side).

2. The instant Criminal Revision Case has been filed challenging the conviction and sentence passed in C.A.No.303 of 2017 dated 11.02.2022 by the learned IV Addl. District and Sessions Court, Coimbatore, confirming the conviction and sentence made in C.C.No.366 of 2013, dated 18.09.2017 passed by the learned Judicial Magistrate Fast Track Court No.1, Coimbatore.

3. The learned trial Judge has convicted the Revision Petitioner/accused under section 138 of Negotiable Instruments Act and sentenced him to undergo SI for a period of six months and also directed him to pay a compensation of Rs.5,41,000/- within two months from the date of judgment, in default, to undergo SI for two months. The conviction and sentence imposed by the trial court was also confirmed by the First Appellate Court.



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4. The facts of the case in brief are that the respondent/complainant is an authorised dealer for TVS mopeds, motor cycles and spare parts and the complaint in C.C.No.366 of 2014 was filed through its General Manager who has been given power of attorney. The Revision Petitioner is one of the authorised sub dealer for TVS mopeds, motorcycles, spare parts and all other allied products. The Revision Petitioner purchased goods on credit basis from the complainant to various dates and as per the statement of account, the accused has to pay a sum of Rs.5,47,085/-. After repeated demands, the Revision Petitioner issued a cheque bearing No.010792, dated 15.08.2006 for Rs.5,41,000/- drawn on Indian Bank, Chinnampalayam, Coimbatore in favour of the respondent. As per the instructions of the accused, the cheque was presented by the respondent with his banker UTI Bank Ltd., Coimbatore Branch. The cheque was returned with an endorsement “insufficient funds” on 13.02.2007 and the same was intimated to the respondent by banker's memo dated 14.02.2007. Therefore, the respondent issued a statutory notice dated 13.03.2007 calling upon the Revision Petitioner to pay the cheque amounts within 15 days. The Revision Petitioner received the notice on 15.03.2007 and thereafter he did not repay the cheque amount. Hence the complaint for the offence of section 138 of the Negotiable Instruments Act



has been filed by the respondent.

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5. After recording the sworn statement of the respondent and after being satisfied that *prima facie* case has been made out to proceed further against the Revision Petitioner for the offence under section 138 of NI Act, the trial Court has issued summon to the Revision Petitioner. On the appearance of the Revision Petitioner, copies have been furnished and the substance of allegation has been put to him. The Revision Petitioner has denied the allegation and has claimed to be tried.

6. After considering the arguments, the learned trial court has found the Revision Petitioner guilty of the offence under section 138 of the Negotiable Instruments Act and the Revision Petitioner has been convicted and sentenced to undergo Simple Imprisonment for a period of six months and also to pay a compensation of Rs.5,41,000/- to the complainant within two months from the date of judgment and in default, to undergo a sentence of Simple Imprisonment of two months.

7. Aggrieved by the judgment, the Revision Petitioner has preferred the appeal before the Principal District Court, Coimbatore in C.C.No.303 of



2017 and the learned Principal District Judge, Coimbatore has suspended the sentence of Simple Imprisonment till the disposal of the appeal.

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8. Thereafter, the first appellate court dismissed the appeal vide judgment and order dated 11.02.2022 by confirming the judgment of conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court I, Coimbatore in C.C.No.366 of 2014 and it directed to secure the Revision Petitioner to undergo the sentence and to pay the compensation amount. Challenging the conviction and sentence passed by the both courts below, the Revision Petitioner has preferred the present Criminal Revision Case before this Court.

9. During the pendency of the present Criminal Revision, the parties have entered into a Memorandum of Compromise dated 08.12.2023, which is taken on record and as per the terms of the Compromise, the following conditions were laid down between the parties which are quoted as under;

1. *That the petitioner/accused agrees to pay a sum of Rs.5,41,000/- to the respondent being the cheque amount/and compensated amount towards full amount claimed in C.C.No.366 of 2014.*
2. *That the Respondent agreed to receive the said*



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amount of Rs.5,41,000/- from the petitioner towards full and final satisfaction of his claim in C.C.No.366 of 2014 which is pending in the form of Criminal Revision No.446 of 2022.

3. In view of the receipt of payment of Rs.5,41,000/- vide Demand Draft No.189591 dated 08.12.2023 drawn on Bank of Baroda, Coimbatore received by the Respondent/Complainant in the above case in full and final settlement this respondent had no objection to allow the Criminal Revision No.446 of 2022 on the file of this Hon'ble Court and thereby acquit the Revision Petitioner from all charges and thus render justice.”

10. Learned counsel for the Revision Petitioner submits that pending Criminal Revision, both the parties have entered into a Joint Memorandum of Compromise dated 08.12.2023 to the effect that the Criminal Revision case shall be settled in accordance with the terms and conditions as contained therein.

11. Learned counsel for the Revision Petitioner further submits that in terms of Joint Memorandum of Compromise dated 08.12.2023, the respondent received payment of Rs.5,41,000/-, vide Demand Draft

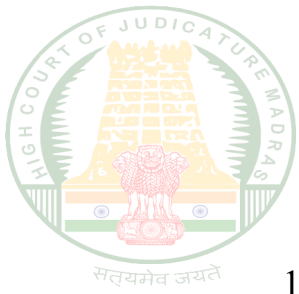


No.189591, dated 07.12.2023 drawn at Bank of Baroda and thus, no amount is due against the Revision Petitioner.

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12. Mr.T.R.Sundaram, the learned counsel for the respondent submits that his client has already received the payment of Rs.5,41,000/-, vide Demand Draft No.189591, dated 07.12.2023 drawn at Bank of Baroda and has received the entire amount and no amount is due against the Revision Petitioner.

13. Learned counsel for the Revision Petitioner further submits that the present Revision has been filed on 10.03.2022 before this Court and on the basis of change in circumstances, as the parties have entered into Memorandum of Compromise, it was prayed to this Court to compound the offence. It was further argued by the learned counsel for the Revision Petitioner that this Court has inherent powers to compound the offence, so that, ends of justice could be secured as the object of Negotiable Instruments Act is primarily compensatory and not punitive and moreover Section 147 of NI Act would have an overriding effect on section 320 Cr.P.C. Irrespective of which stage, the parties are compromising with the kind leave of this Hon'ble Court.



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14. In support of his arguments, learned counsel for the Revision Petitioner has submitted that in the case of **Damodar S. Prabhu vs. Sayed Babalal H** reported at **2010 (2) SCC (Cri) 1328**, the Hon'ble Apex Court had formulated the guidelines for compounding the offence under section 138 N.I. Act wherein in para 21, it was pleased to observe as under :

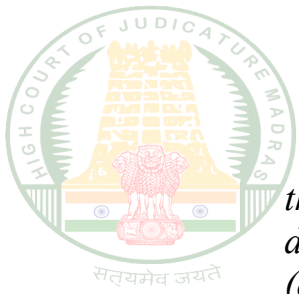
"With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with



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the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

15. Learned counsel for the Revision petitioner also submitted that in the case of *M/s Meters and Instruments Private Limited and another vs. Kanchan Mehta reported at 2017 (7) Supreme 558*, the Hon'ble the Apex Court in para 18, was pleased to observe as under :

i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate



compensation as may be found acceptable to the parties or the Court.

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(iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

(iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

(v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances'.

16. Learned counsel for the Revision Petitioner further has relied upon



the judgment of Gujarat High Court in the case of ***Kripal Singh Pratap Singh***

Ori vs. Salvinder Kaur Hardip Singh reported at ***2004 Crl. L. J. 3786***

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wherein, the Gujarat High Court was pleased to observe as under:-

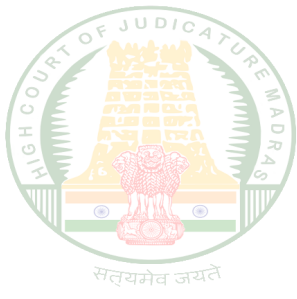
31. In the circumstances, it is hereby declared that the compromise arrived between the parties to this litigation out of court is accepted as genuine and the order of conviction and sentence passed by the learned JMFC, Vadodara and confirmed in appeal by the learned Sessions Judge, Fast Track Court, Vadodara, therefore, on the given set of facts are hereby quashed and set aside as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. Obviously the order disposing Revision Application would not have any enforceable effect."

17. Learned counsel for the Revision Petitioner has also relied upon the judgment of Hon'ble the Apex Court in the case of ***Vinay Devanna Nayak vs. Ryot Seva Sahkari Bank Limited*** reported at ***AIR 2008 SC 716***

wherein the Hon'ble Apex Court was pleased to observe as under :

"18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank



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towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him."

18. Learned counsel for the Revision Petitioner has argued that the law regarding compounding of offences under the N.I. Act is very clear and is no more resintegra and the offences under the N.I. Act can be compounded even at any stage of the proceedings. He submits that in terms of the aforesaid law laid down by the Hon'ble Supreme Court, the parties may be permitted to compound the offence and the conviction of the petitioner be set aside.

19. Per contra, Mr.A.Gopinath, the learned Govt. Advocate (crl.side) who appeared for the State and assisted this Court in the matter, has vehemently opposed the submissions made by the learned counsel for the Revision Petitioner and submits that the Revision Petitioner has already been convicted by the learned trial court and the conviction order had already been upheld by the Appellate Court in the appeal.

21. The learned Govt. Advocate (crl.side) also further submitted that the appeal has been rejected on merit and the Revision Petitioner was convicted, then where the parties or any one of them can be permitted to



place compromise and to get the order of acquittal from the Court is the question. He further submitted that the present case is nothing, but a gross misuse of the process of law and thus sentence cannot be compounded on the basis of compromise as filed by the parties.

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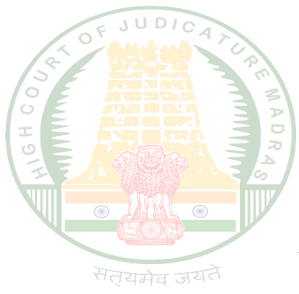
22. I have heard the learned counsel for the Revision Petitioner, learned counsel for the respondent and learned Govt. Advocate (crl.side) appearing for the State and perused the materials placed on record.

23. Considering the facts as narrated above, the following question arose for consideration.

'Whether the order passed by the Appellate Court confirming the conviction of the trial court under section 138 of Negotiable Instruments Act can be nullified by the High Court on the basis of compromise entered between the parties'

24. Before answering the aforesaid question as framed, I shall examine the relevant provision of the Cr.P.C., as well as the Negotiable Instrument Act. I may extract Section 320 of Cr.P.C., and section 147 of Negotiable Instruments Act.

Section 320 Cr.P.C. - Compounding of Offences -



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1) *The offences punishable under the sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table -*

2) *The offences punishable under the Sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending be compounded by the persons mentioned in the third column of that Table -*

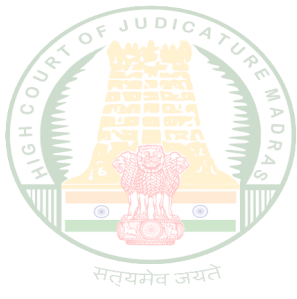
3) *When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.*

4) (a) *When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.*

(b) *When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.*

5) *When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.*

6) *A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.*



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7) *No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.*

8) *The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.*

9) *No offence shall be compounded except as provided by this section.*

Section 147 of the Negotiable Instrument Act :'

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

25. I have to refer the compromise deed which is on the record for proper adjudication :-

JOINT MEMORANDUM OF COMPROMISE

1. The Petitioner and the Respondent submit that the respondent had filed Complaint in C.C.No.366 of 2014 on the file of the Judicial Magistrate Fast Track Court No.1, Coimbatore against the petitioner herein for an offence committed by the Petitioner U/s.138 of Negotiable Instrument Act. The Complaint was contested and the Petitioner herein was found guilty for offence U/S 138 of the Negotiable Instrument Act. Hence the Judicial Magistrate Fast Track Court No.1 was pleased to convict and sentence the Revision Petitioner to undergo a simple imprisonment for a period of six months and to pay a sum of Rs.5,41,000/- as compensation to the Respondent/Complainant herein



within a period of 2 months and in default to undergo imprisonment for two months.

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2. The Appeal preferred in C.A.No.303 of 2017 before the Hon'ble IV Additional District and Sessions Judge, Coimbatore by the Petitioner/Accused also dismissed by Judgment dated 11.02.2022.

3. The Petitioner herein has preferred the present Criminal Revision No.446 of 2022 before this Hon'ble Court. During the pendency of the above Criminal Revision both the petitioner and respondent herein have mutually agreed to settle the dispute in the following terms and conditions:

'(1) That the petitioner/accused agrees to pay a sum of Rs.5,41,000/- to the respondent being the cheque amount/and compensated amount towards full amount claimed in C.C.No.366 of 2014.

(2) That the Respondent agreed to receive the said amount of Rs.5,41,000/- from the petitioner towards full and final satisfaction of his claim in C.C.No.366 of 2014 which is

(3) pending in the form of Criminal Revision No.446 of 2022.

(3) In view of the receipt of payment of Rs.5,41,000/- vide Demand Draft No.189591 dated 08.12.2023 drawn on Bank of Baroda, Coimbatore received by the Respondent/ Complainant in the above case in full and final settlement this respondent had no objection to allow the Criminal Revision No.446 of 2022 on the file of this Hon'ble Court and thereby acquit the Revision Petitioner from all charges and thus render justice."

26. It is well settled that inherent power of the Court can be exercised only when no other remedy is available to the litigants and nor a specific



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remedy as provided by the statute. It is also well settled that if an effective, alternative remedy is available, the High Court will not exercise its inherent power, especially when the Revision Petitioner may not have availed of that remedy. The power can be exercised by the High Court to secure the ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code or Act, depending upon the facts of the given case. This Court can always take note of any miscarriage of justice and prevent the same by exercising its power. These powers are neither limited, nor curtailed by any other provision of the Code or Act. However, such inherent powers are to be exercised sparingly and with caution

27. In the instant case, it is true that the appeal was dismissed and the conviction and sentence was upheld by the appellate court, but it cannot be lost sight of the fact that this Court has power to intervene in exercise of its power only with a view to do the substantial justice or to avoid a miscarriage and the spirit of compromise arrived at between the parties. This is perfectly justified and legal too.

28. I have considered the judgments cited by the learned counsel for the

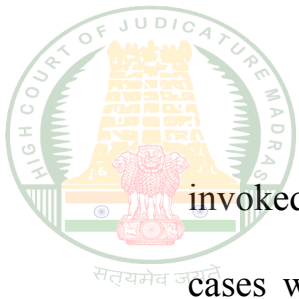


Revision Petitioner as well as by the learned Counsel for the State and other decisions of the Hon'ble Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings.

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29. In the instant case, the Revision Petitioner is invoking the inherent power of this court after dismissal of the appeal confirming his conviction and sentence. In these circumstances, I have to examine as to whether for entertaining the aforesaid case, any special circumstances are made out or not, so it can be legitimately argued and inferred and held that in all cases where the Revision Petitioner is able to satisfy this Court that there are special circumstances which can be clearly spelt out subsequent proceeding invoking inherent power of this court can be modified and cannot be thrown away on that technical argument as to its sustainability once the contesting parties entered into subsequent compromise.

30. In the case of *Krishan Vs. Krishnaveni*, reported in (1997) 4 SCC 241, Hon'ble the Apex Court has held that though the inherent power of the High Court is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the applicant is shown to have already



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invoked the revisional jurisdiction under section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may in its discretion prevent the abuse of process or miscarriage of justice by exercising its power.

31. In the case of **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

32. For adjudicating the instant case, the facts as stated hereinabove are very relevant. Here, the Revision Petitioner has attempted to invoke the jurisdiction of this court.

33. I am not in agreement that when the adjudication of a criminal offence has reached to the state of revisional level, there cannot be any



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compromise without permission of the court in all case including the offence punishable under 'N.I. Act' or the offence mentioned in Table-1 (one) can be compounded only if High Court or Court of Sessions grants permission for such purpose. The Court presently, concerned with an offence punishable under 'N.I. Act'.

34. 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 I can refer to the following extracts from an academic commentary [Cited from : K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, 5th Edition :

"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 recognize some of them as compoundable offences and some others as compoundable only with the permission of the court..."

35. Section 147 of NI Act begins with a non obstante clause and



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such clause is being used in a provision to communicate that the provision shall prevail despite anything to the contrary in any other or different legal provisions. So, in light of the compass provided, a dispute in the nature of complaint under section 138 of N.I. Act, can be settled by way of compromise irrespective of any other legislation including Cr.P.C. In general and section 320 (1)(2) or (6) of the Cr.P.C. in particular. The scheme of section 320 Cr.P.C. deals mainly with procedural aspects; but it simultaneously crystallizes certain enforceable rights and obligation. Hence, this provision has an element of substantive legislation and therefore, it can be said that the scheme of section 320 does not lay down only procedure; but still, the status of the scheme remains under a general law of procedure and as per the accepted proposition of law, the special law would prevail over general law. For the sake of convenience, I would like to quote the observations of Hon'ble the Apex Court in the case of *Municipal Corporation, Indore vs. Ratnaprabha* reported in (AIR 1977 SC 308) which reads as under :

"As has been stated, clause (b) of section 138 of the Act provides that the annual value of any building shall "notwithstanding anything contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year" While therefore, the requirement of the law is that the



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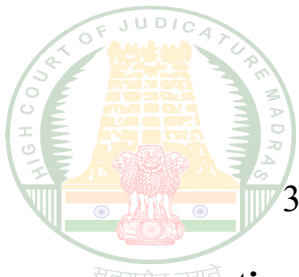


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reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under Section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the non-obstante clause in clause (b) with due regard to its other provision that the letting value should be "reasonable"

36. The expression 'special law' means a provision of law, which is not applicable generally but which applies to a particular or specific subject or class of subjects. Section 41 of Indian Penal Code stands on the same footing and defines the phrase special law. In this connection I would like to quote the well accepted proposition of law emerging from various observations made by the Hon'ble Apex Court in different decisions as a gist of the principle and it can be summarised as under:

"When a special law or a statute is applicable to a particular subject, then the same would prevail over a general law with regard to the very subject, is the accepted principle in the field of interpretation of statute."



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37. *In reference to offence under section 138 of N.I. Act read with section 147 of the said Act, the parties are at liberty to compound the matter at any stage even after the dismissal of the revision/appeal. Even a convict undergoing imprisonment with the liability to pay the amount of fine imposed by the court and/or under an obligation to pay the amount of compensation if awarded, as per the scheme of N.I. Act, can compound the matter. The complainant i.e. person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking jurisdiction of this court. If the parties are asked to approach the Apex Court then, what will be situation, is a question which is required to be considered in the background of another accepted progressive and pragmatic principle accepted by our courts that if possible, the parties should be provided justice at the door step. The phrase "*justice at the door step*" has taken the court to think and reach to a conclusion that it can be considered and looked into as one of such special circumstances for the purpose of compounding the offence under section 147 of the N. I. Act.*

39. It is also well settled that the operation or effect of a general Act may be curtailed by special Act even if a general Act contains a non obstante



clause. But here is not a case where the language of section 320 Cr.P.C.

would come in the way in recording the compromise or in compounding the offence punishable under section 138 of the N.I. Act. On the contrary provisions of section 147 of N.I. Act though starts with a non obstante clause, is an affirmative enactment and this is possible to infer from the scheme that has overriding effect on the intention of legislature reflected in section 320 Cr.P.C.

40. Merely because the litigation has reached to a revisional stage or that even beyond that stage, the nature and character of the offence would not change automatically and it would be wrong to hold that at revisional stage, the nature of offence punishable under Section 138 of the N.I. Act should be treated as if the same is falling under table-II of Section 320 IPC. I would like to reproduce some part of the statement of objects and reasons of the Negotiable Instruments (Amendment & Miscellaneous Provisions) Act, 2002

"The Negotiable Instrument Act 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instrument Act, 1981, namely Section 138 to 142 in Chapter XVII have been found



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deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under Sections 138 and 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act, pending in various courts, a Working Group was constituted to review Section 138 of the Negotiable Instruments Act, 181 and make recommendations as to what changes were needed to effectively achieve the purpose of that Section.

3.

4. Keeping in view the recommendations of the Standing Committee on finance and other R/SCR.A/2491/2018 ORDER representations, it has been decided to bring out, inter alia the following amendments in the Negotiable Instrument Act 1881, namely.

(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant.

(v) xxxxxx

(vi) xxxxxx

(vii) to make the offences under the Act compoundable.

5. xxxxxx

6. The Bill seeks to achieve the above objects."

41. In a commentary the following observations have been made with



regard to offence punishable under section 138 of the N.I. Act. [Cited from :

Arun Mohan, Some thoughts towards law reforms on the topic of Section 138

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Negotiable Instrument Act -Tackling an avalanche of cases] :

"... .. Unlike that for other forms of crime, the punishment here (in so far 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 seeing 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. If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

42. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect.

43. So the intention of the legislature and object of enacting "Banking", Public Financial Institutions and the Negotiable Instrument Laws (Amended Act) 1988 and subsequent enactment, i.e., Negotiable Instruments (Amendment & Miscellaneous Provisions Act 2002 leads this Court to a conclusion that the offence made punishable under Section 138 of N.I. Act is not only an offence qua property but it is also of the nature of an economic



offence, though not covered in the list of statutes enacted in reference to Section 468 of Cr.P.C. Thus, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage even after the dismissal of the proceedings.

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44. In the instant case, the problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute, furthermore, the arguments on behalf of the Govt. Advocate (crl.side) on the fact that unlike Section 320 Cr.P.C., Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court.

45. I am also conscious of the view that judicial endorsement of the above quoted guidelines as given in the case of Damodar S. Prabhu (supra) could be seen as an act of judicial law making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. I have already explained that the scheme contemplated under Section 320 of the Cr.P.C. cannot be followed in the strict sense.



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46. In view of the aforesaid discussion, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage. The complainant i.e. the person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking inherent jurisdiction of this Court.

47. Generally, the powers available would not have been exercised when a statutory remedy under the law is available, however, considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to the court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and the inherent powers of this court can always be invoked for imparting justice and bringing a quietus to the issue between the parties.

48. As discussed above, the court is inclined to hold accordingly only



because there is no formal embargo in section 147 of the N.I. Act. This principle would not help any convict in any other law where other applicable independent provisions are existing as the offence punishable under section 138 of the N.I. Act is distinctly different from the normal offences made punishable under Chapter XVII of IPC (i.e. the offences qua property).

49. In view of the observations and in view of the guidelines as laid down in the case of **Damodar S. Prabhu (Supra)** and also in view of the observations made in the judgment referred above and taking into account the fact that the parties have settled the dispute amicably by way of compromise, this Court is of the view that the compounding of the offence as required to be permitted.

50. Accordingly, the present Criminal Revision Case is disposed of in terms of Memorandum of Compromise arrived at between the parties to this litigation out of Court. The impugned conviction and sentence passed in C.A.No.303 of 2017, dated 11.02.2022 by the learned IV Addl. District and Sessions Court, Coimbatore, confirming the conviction and sentence made in C.C.No.366 of 2013, dated 18.09.2017 by the learned Judicial Magistrate Fast Track Court No.1, Coimbatore are hereby **modified**. The conviction and sentence under section 138 of the Negotiable Instruments Act in C.C.No.366



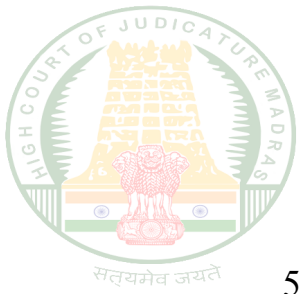
of 2013 **stands annulled** as this Court intends, otherwise to secure the ends of

justice. The Revision Petitioner shall be treated as **acquitted** on account of

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compounding of the offence with the complainant/person affected.

51. While disposing of this Criminal Revision Case by recording the Joint Memorandum of Compromise entered into between the parties, the learned counsel for the Revision Petitioner submitted that earlier, this Court, by order dated 13.04.2022 in CrI.M.P.Nos.4609 and 4955 of 2022 in CrI.R.C.No.446 of 2022, granted suspension of sentence to the Revision Petitioner on condition that he shall deposit 50% of the cheque amount (Rs.5,41,000/-) before the learned Judicial Magistrate, fast Track Court No.I, Coimbatore and on deposit of such amount the abovesaid court was directed to redeposit such amount in a fixed deposit account in any nationalised bank. Accordingly, he complied with the court order by depositing 50% of the cheque amount. He further submitted that since the Revision Petitioner had already paid the disputed cheque amount of Rs.5,41,000/- to the respondent/complainant, by way of Demand Draft as recorded in the Joint Memorandum of Compromise dated 08.12.2023, he requests this Court to issue a direction to the trial court to refund the 50% of the cheque amount deposited by him to the credit of C.C.No.366 of 2014 before the trial court.



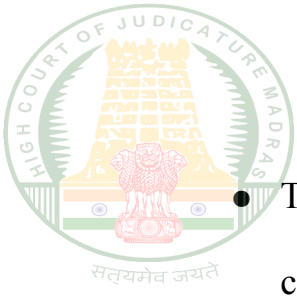
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52. In view of the above, the trial court is directed to refund 50% of the cheque amount already deposited by the Revision Petitioner in C.C.No.366 of 2014 within a period of three weeks from the date of receipt of a certified copy of this order along with appropriate application

53. Office is directed to communicate this order to the learned trial court concerned immediately.

54. In the result,

- The Criminal Revision Case is disposed of in terms of Joint Memorandum of Compromise dated 08.12.2023. CrI.M.PNo.14572 of 2024 stands ordered.
- The impugned conviction and sentence passed in C.A.No.303 of 2017 dated 11.02.2022 by the learned IV Addl. District and Sessions Judge, Coimbatore, confirming the conviction and sentence made in C.C.No.366 of 2013, dated 18.09.2017 by the learned Judicial Magistrate, Fast Track No.I, Coimbatore are hereby **modified**.
- The conviction and sentence imposed on the Revision Petitioner by both the courts below stands **annulled**.



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- The Revision Petitioner shall be treated as **acquitted** on account of compounding of the offence with the complainant/respondent.

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- The trial Court is directed to refund 50% of the cheque amount already deposited by the Revision Petitioner in C.C.No.366 of 2014 within a period of three weeks from the date of receipt of a certified copy of this order to the Revision Petitioner, M.Selvaraj.

24.10.2024

msr

Index:yes/no

Internet: Reportable

To

1. The IV Addl. District and Sessions Court, Coimbatore,
2. Judicial Magistrate Fast Track Court No.1, Coimbatore.



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SHAMIM AHMED, J.

msr

CrI.R.C.No.446 of 2022
&
CrI.M.P.No.14572 of 2024

24.10.2024