

(2009) 11 SC CK 0038

In the Supreme Court Of India

Case No : Review Petition (Criminal) No. 355 of 2009 in Special Leave Petition (Criminal) No. 6974 of 2008

K. Subramanian

APPELLANT

Vs

R. Rajathi rep. by P.O.A. P. Kaliappan

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320
Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2009) 11 SC CK 0038

Hon'ble Judges : J. M. Panchal, J; Cyriac Joseph, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By filing this petition, the petitioner has prayed to review and recall order dated September 11, 2008 passed by this Court dismissing SLP (Crl.) No. 6974 of 2008 @ Crl. M.P. No. 14586 of 2008, on the ground that the amount of Rs. 4,52,289/- payable by the petitioner to the original complainant, i.e. the respondent herein, is already paid pursuant to the compromise between the parties and the petitioner be permitted to compound the offence. The petitioner has filed Crl. M.P. No. 12801 of 2009, to condone delay of 39 days, caused in filing review application and Crl. M.P. No. 12803 of 2009 to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal Case No. 726 of 2003 by the learned Judicial Magistrate Karur. The petitioner has filed another Crl. M.P. No. 12804 of 2009 with a prayer to permit him to produce affidavit sworn by him stating that pursuant to compromise between him and the respondent, he has paid Rs. 4,52,289/- to the respondent as well as affidavit sworn by P. Kaliappan, power of attorney holder of R. Rajathi stating that pursuant to the compromise, he has received a sum of Rs. 4,52,289/- as additional documents.

2. This Court has heard the learned Counsel for the petitioner and considered the

documents forming part of SLP (Crl) No. 6974 of 2008 and this application.

3. From the record, it is evident that the petitioner purchased yarn from Dharani. A. Traders of R. Rajathi, on credit basis. The petitioner had to pay a sum of Rs. 4,52,289/- to R. Rajathi. In discharge of his debt, the petitioner issued three cheques each dated March 7, 2003 for a sum of Rs. 1,51,600/-, Rs. 1,17,302/- and Rs. 1,83,360/- respectively. The respondent presented the cheques in bank for realisation on March 7, 2003, but they were returned unpaid with remark "exceeding of arrangements".

4. The respondent after serving statutory notice on the petitioner filed complaint in the Court of Learned Judicial Magistrate, Karur u/s 138 of Negotiable Instruments Act.

5. The Trial Court by Judgment dated September 21, 2004 convicted the petitioner u/s 138 and sentenced him to Simple Imprisonment for one year and fine of Rs. 5000/- in default Simple Imprisonment for 3 months. Feeling aggrieved, the petitioner preferred Criminal Appeal No. 107 of 2004 before Sessions Court which was dismissed on 24.12.2004. Thereupon, the petitioner filed Criminal Revision Application No. 179 of 2005 before the Madurai Bench of Madras High Court which was dismissed on January 30, 2008. Therefore, the petitioner filed SLP (Crl) No. 6974 of 2008 @ CRL. M.P. No. 14586 of 2008 which was also dismissed on September 11, 2008. Thereafter a compromise was entered into and petitioner claims that he has paid Rs. 4,52,289/- to respondent. In support of this claim, the petitioner has produced affidavit sworn by him on December 1, 2008. The petitioner has also produced affidavit sworn by P. Kaliappan, Power of Attorney holder of R. Rajathi on December 1, 2008 mentioning that he has received a sum of Rs. 4,52,289/- due under the dishonoured cheques in full discharge of the value of cheques and he is not willing to prosecute the petitioner. The Learned Counsel for the petitioner states at the bar that the petitioner was arrested on July 30, 2008 and has undergone the sentence imposed on him by the Trial Court and confirmed by Sessions Court, High Court as well as by this Court. The two affidavits sought to be produced by petitioner as additional documents would indicate that indeed a compromise has taken place between petitioner and the respondent and the respondent has accepted the compromise offered by petitioner pursuant to which he has received a sum of Rs. 4,52,289/-. In the affidavit filed by the respondent a prayer is made to permit the petitioner to compound the offence and close the proceedings.

6. Having regard to the salutary provisions of Section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him u/s 138 of the Code.

7. For the foregoing reasons CRL. M.P. No. 12801 of 2009 in which prayer to

condone the delay of 39 days caused in filing review application is allowed and delay is condoned. The Review Petition succeeds. The Order dated September 11, 2008 dismissing SLP (Crl) No. 6974 of 2008 @ CRL. M.P. No. 14586 of 2008 is recalled. The said SLP is restored on file with its original number.

8. The CRL. M.P. No. 12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is allowed. CRL. M.P. No. 12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 u/s 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are hereby set aside and petitioner is acquitted of the charge leveled against him. All the applications including Review Petition accordingly stand disposed of as also SLP (Crl.) No. 6974 of 2008 @ CRL. M.P. No. 14586 of 2008 in terms of this Order.