

# K.Nalini vs S.M.Senthilkumar on 14 October, 2024

**Author: G.Jayachandran**

**Bench: G.Jayachandran**

CrI. O.P.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.OP.No.24893 of 2024

and

CrI.MP.No.13941 of 2024

K.Nalini

.. Petitione

Vs.

S.M.Senthilkumar

.. Responde

Prayer: Criminal Original Petition is filed under Section 528 of BN call for the records pertaining to the case in S.T.C.No.4948 of 202 the file of learned Metropolitan Magistrate FTC-II, Allikulam, Chen and quash the same.

For Petitioner : Mr.N.S.Amogh Simha

ORDER

The petitioner herein is an accused in a complaint under Section 138 of Negotiable Instruments Act. The proceedings is pending before the learned Metropolitan Magistrate FTC-II, Egmore at Allikulam, Chennai in S.T.C.No.4948 of 2024.

2. Pending trial, the petitioner/accused has come forward to <https://www.mhc.tn.gov.in/judis> compound the offence by invoking Section 147 of Negotiable Instruments Act. The offer made by the accused not accepted by the complainant and therefore, the application filed under Section 147 of Negotiable Instruments Act dismissed by the trial Court. Being aggrieved, the present Criminal Original Petition is filed.

3. The learned counsel appearing for the petitioner states that by invoking the inherent power vested with this Court, the Court shall accept the proposal of the accused without consent of the complainant and compound the offence.

4. In support of his arguments, the learned counsel appearing for the petitioner has referred the Judgement of Bombay High Court as well as the recent judgement of the Hon'ble Supreme Court, wherein the Supreme Court has distinguished the compounding of offence under Sections 320 of Cr.P.C and compounding of offence under Section 147 of Negotiable Instruments Act and held that the consent of the complainant not required in the given circumstances of the facts.

5. As per Section 147 of Negotiable Instruments Act, all offences punishable under the Negotiable Act are compoundable. However, unlike Section 320 of Cr.P.C, the Negotiable Instruments Act does not elaborate upon the manner in which offences should be compounded. To fill up this <https://www.mhc.tn.gov.in/judis> legislative gap, three Judges Bench of the Hon'ble Supreme Court in Damodar S. Prabhu Vs. Sayed Babalal H. (2010) 5 SCC 663, framed guidelines under Article 142 of the Constitution of India regarding compounding of offence under Section 138 of Negotiable Instruments Act.

6. In Meters and Instruments Private Limited and another Vs. Kanchan Mehta (2018) 1 SCC 560 after discussing the earlier judgments, the Hon'ble Supreme Court observed that even in the absence of 'consent' of the complainant Court can close criminal proceedings against an accused in cases of Section 138 of Negotiable Instruments Act if accused has compensated the complainant.

7. Recently in Raj Reddy Kallem-Vs. The State of Haryana (2024 InSC 347), the Hon'ble Supreme Court, eventhough complainant unwilling to compound the case, considering the totality of facts and circumstances of the case in their considered view held that the proceedings must come to an end and compounded the offence under Section 138 of Negotiable Instruments Act, exercising its power under Article 142 of the Constitution.

<https://www.mhc.tn.gov.in/judis>

8. Contrarily, the case in hand, the complainant has not come forward to accept the offer of the accused. Without consent of the complainant, compounding of offence is not permissible, particularly under Section 147 of Negotiable Instruments Act, offence can be compounded at any stage and therefore the opportunity to compound the offence is not foreclosed for the accused herein and she can avail the opportunity at any stage later.

9. As far as the order of the trial Court dismissing the application, this Court does not find no infirmity to interfere, Hence, this Criminal Original Petition stands dismissed without prejudice to the rights of the petitioner to seek redressal under Section 147 of Negotiable Instruments Act in future. Consequently, the connected miscellaneous petition is closed.

14.10.2024 Vv To

1. The Metropolitan Magistrate FTC-II, Allikulam, Chennai
2. The Public Prosecutor, High Court of Madras.

<https://www.mhc.tn.gov.in/judis> Dr.G.JAYACHANDRAN,J.

Vv 14.10.2024 <https://www.mhc.tn.gov.in/judis>