

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1291 of 2016

and

Crl.M.P.Nos.11549 and 11551 of 2016

M.Selvakumar
Authorised Signatory,
M/s.Supraja Traders,
3/31-D, Sivanandapuram,
Saravanampatty Post,
Coimbatore - 641 035.

... Petitioner

Vs.

1.The State represented by
Public Prosecutor

2.M/s.Sambandam Spinning Mills Ltd.,
represented by its Depot Agent,
R.Rajagopal

... Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned III Additional District and Sessions Judge, Coimbatore, passed in C.A.No.51 of 2014 on 02.09.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court I, Coimbatore, passed in C.C.No.193 of 2011 on 28.03.2014.

For Petitioner	:	Mr.J.Kingsly Solomon
For Respondents	:	Mr.M.Mohammed Riyaz
		Government Advocate [Crl.side][R1]
		Mr.B.Vijaya kumar [R2]

ORDER

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 1 year R.I. and fine of Rs.5,000/- i/d 3 months S.I.

2. Second respondent/*de facto* complainant preferred a complaint informing that the petitioner and another purchased cotton yarn on credit basis for a value of Rs.6,81,741/- and issued eight postdated cheques drawn on Tamil Nadu Mercantile Bank Ltd., DB Road, R.S.Puram Branch, Coimbatore. Second respondent presented a cheque bearing No.329620 dated 02.12.2009, which was returned unpaid for the reason 'insufficient funds'. Thereafter, upon the request of accused, second respondent presented all the cheques. Of eight cheques, four became stale and the remaining four have been returned for the reason 'payment stopped by drawer'. Second respondent caused statutory notice, followed the procedure envisaged under section 138 of the Negotiable Instruments Act and preferred the complaint. The case was tried in C.C.No.193 of 2011 on the file of learned Judicial Magistrate, Fast Track Court I, Coimbatore.

3. Before the trial Court, second respondent examined one witness and marked twenty three exhibits. On behalf of the defence, no one were

examined, however, one exhibit was marked. On appreciation of materials before it, the trial Court, under judgment dated 28.03.2014, convicted the petitioner/accused and sentenced him to 1 year R.I. and fine of Rs.5,000/- i/d 3 months S.I. The appeal preferred by petitioner/accused in C.A.No.51 of 2013 on the file of learned III Additional District and Sessions Judge, Coimbatore, came to be dismissed under judgment dated 02.09.2016. Hence, this revision.

4. Heard learned counsel for petitioner, learned Government Advocate [crl.side] for first respondent and learned counsel for second respondent.

5. It is seen that the second respondent has proved the debt by producing statement of accounts as also invoices in proof of dealings between the parties. The contention of learned counsel for petitioner that second respondent/PW-1 had admitted to receiving payments from the accused and hence, the sum of Rs.6,69,187/- was found as due in Ex.P2. The statement of accounts does not carry forward the defence case. The case of the second respondent is that eight cheques were issued towards the dues of the petitioner, four of them have become stale and the complaint primarily is based on the four other cheques which were returned unpaid. It is open to the second respondent to adjust the payments received

towards earlier dues. Unless, it is specifically shown that payments admitted to have been received by second respondent were towards amounts due under the cheques in question, the petitioner cannot escape liability.

The Criminal Revision Case shall stand dismissed. Connected miscellaneous petitions are closed.

16.12.2016

Index:yes/no
Internet:yes/no
gm

To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court I,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

C.T.SELVAM, J

gm

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