

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.62 of 2017

and

Crl.M.P.Nos.653 and 655 of 2017

P.Duraisamy

..Petitioner/Sole Accused

Vs.

M/s.Anangoor Textile Mills (P) Ltd.
represented by its Authorised Person

T.Kalimuthu

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned II Additional District and Sessions Judge, Tirupur, passed in C.A.No.82 of 2015 on 31.08.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Tirupur, passed in C.C.No.112 of 2012 on 04.08.2015.

For Petitioner : Mr.R.Sathishkumar

For Respondent : Mr.P.M.Duraiswamy

O R D E R

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 S.I. and fine of Rs.1,000/- i/d 1 month S.I.

2. Respondent/complainant moved a prosecution informing that there were business dealings between respondent/complainant and petitioner/accused and cheque bearing Nos.263717 dated 17.09.2009 in a sum of Rs.2,31,680/- and 263716 dated 26.09.2009 in a sum of Rs.4,00,000/- drawn on Syndicate Bank, Palladam Road, Tiruppur, stood issued to respondent/complainant towards payment of outstandings, which upon presentation were returned unpaid for the reason "insufficient funds". Respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

3. Before the trial Court, respondent/complainant examined himself and marked thirteen exhibits. Petitioner/accused

examined himself and marked one exhibit.

4. On appreciation of materials before it, trial Court, under judgment dated 04.08.2015, convicted the petitioner and sentenced him to 1 year S.I. and fine of Rs.1,000/- i/d 1 month S.I. The appeal preferred by petitioner in C.A.No.82 of 2015 on the file of learned II Additional District and Sessions Judge, Tirupur, came to be dismissed under judgment dated 31.08.2016. Hence, this revision.

5. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials on record.

6. Learned counsel for petitioner placed reliance on the judgment of Apex Court in State Bank of Travancore v. Kingston Computers India Private Limited [2011 (11) SCC 524], wherein it had been held thus:

"14. In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K.Shukla was appointed as a Director of the Company and a resolution was passed by the Board of Directors of the Company to file a suit against the appellant and authorised Shri Ashok K.Shukla to do so. The letter of authority issued by Shri Raj K.Shukla, who described himself as the Chief Executive Officer of the Company, was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to Shri Raj K.Shukla to authorise another person to file a suit on behalf of the Company."

7. In the instant case, the extract of a Board Resolution of the Company passed on 26.11.2009 has been produced on the letter head of the Company and attested by one, who is a Director of the Private Limited Company. Therefore, such document marked as Ex.P1 cannot be treated as a mere scrap of paper. If, indeed the petitioner wished to question the authenticity thereof, petitioner ought to have moved an appropriate application before the Court below towards production of the Minutes Book of the Company. Further contention of petitioner is that the authorised officer did not have personal knowledge of the transaction. Ex.P1 itself informs the authorised person to be the Manager of the Company. In his very chief-examination, he has deposed to knowledge of the transaction. It is not even necessary to refer to the presumption that arises u/s.118 and 139 of the Negotiable Instruments Act to hold against the petitioner since under registered letter dated 28.09.2009, caused by petitioner/accused to respondent/ complainant, petitioner/accused has sought time

for payment of the cheque amounts. Such letter was marked as Ex.P6.

The Criminal Revision Case is dismissed. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

gm

To

1.The II Additional District and Sessions Judge,
Tirupur.

2.The Judicial Magistrate,
Fast Track Court,
Tirupur.

+1 cc to M/s.P.M.Duraiswamy Advocate sr 12849

+1 cc to M/s.R.Sathish Kumar Advocate sr 13313

Crl.R.C.No.62 of 2017

sal(co)
aa24/04/2017

सत्यमेव जयते

WEB COPY