

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

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

CrI.R.C.No.1281 of 2010

and

M.P.No.2 of 2010

1.M/s.Lakshmi Apparels
represented by its Partner,
Sundarrajan
10/205, NSK Nagar,
Opp. to Murugan Mills,
Palladam Road, Tiruppur.

2.Sundarrajan
S/o.Nanjan

.. Petitioner

L.Selvaraj
S/o.Lakshmanan

vs.

.. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Fast Track Court V, Tiruppur, passed in C.A.No.410 of 2008 on 26.08.2010 confirming the judgment of learned Judicial Magistrate II, Tiruppur, passed in S.T.C.No.3944 of 2006 on 18.11.2008.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.K.S.Karthick Raja

ORDER

Though learned counsel for petitioners had informed no instructions, he, upon request by this Court, has graciously assisted the Court. This Court records its appreciation.

2. This revision arises against two concurrent judgments of Courts below convicting the petitioners for offence u/s.138 of the Negotiable Instruments Act and sentencing second petitioner to 1 year S.I. and to pay compensation in a sum of Rs.3,00,0000/-.

3. Respondent/complainant moved a prosecution informing that the second petitioner, on behalf of first petitioner company, borrowed a sum of Rs.4,00,000/- from the complainant on 20.09.2000 and a cheque bearing No.024094 dated 28.05.2001 in a sum of Rs.4,57,000/- drawn on Indus Ind Bank, Avinashi, stood issued to him by petitioners towards repayment of borrowing, which upon presentation was returned unpaid for the reason 'funds insufficient'. Respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed. The complaint was taken on file in S.T.C.No.3944 of 2006 learned Judicial Magistrate II, Tiruppur.

4. Before trial Court, respondent/complainant examined one witness and marked nine exhibits. One witness was examined on the side of defence and three exhibits were marked.

5. On appreciation of materials before it, trial Court, under judgment dated 18.11.2008, convicted petitioners and sentenced second petitioner to 1 year S.I. and to pay compensation in a sum of Rs.3,00,000/-. There against, petitioners preferred C.A.No.410 of 2008 on the file of learned Additional District and Sessions Judge, Fast Track Court V, Tiruppur. Appellate Court, under judgment dated 26.08.2010, dismissed the appeal. There against, the present revision has been filed.

6. Heard learned counsel for petitioners and learned counsel for respondent. Perused the materials on record.

7. Learned counsel for petitioners submitted that both in Ex.P1 - consent letter of second petitioner and Ex.P5 - statutory notice, respondent/complainant had, instead of informing the cheque number, informed the bank account number and therefore, petitioners had not been properly informed of the instrument under which their liability arose. Learned counsel also referred to judgment in C.A.No.187 of 2003 marked as Ex.D2 towards submitting that

such Court had recorded the settlement arrived at between parties on an earlier occasion.

8. This Court has heard counsel for respondent and considered the rival submissions.

9. The contentions of learned counsel for petitioners would arise for consideration in a case of a series of transactions wherein doubt on which of the transactions the cheque stood issued, would arise. In the instant case of single transaction, there is no room for such doubt. The observation regards settlement found in Ex.D2 - judgment in C.A.No.187 of 2003 would have to be read as settlement arrived at partly by effecting payment of cash and partly by issue of cheque which has given rise to the action in S.T.C.No.3944 of 2006 learned Judicial Magistrate II, Tiruppur.

The Criminal Revision Case shall stand dismissed. Connected miscellaneous petition is closed.

Index:yes/no
Internet:yes/no
gm

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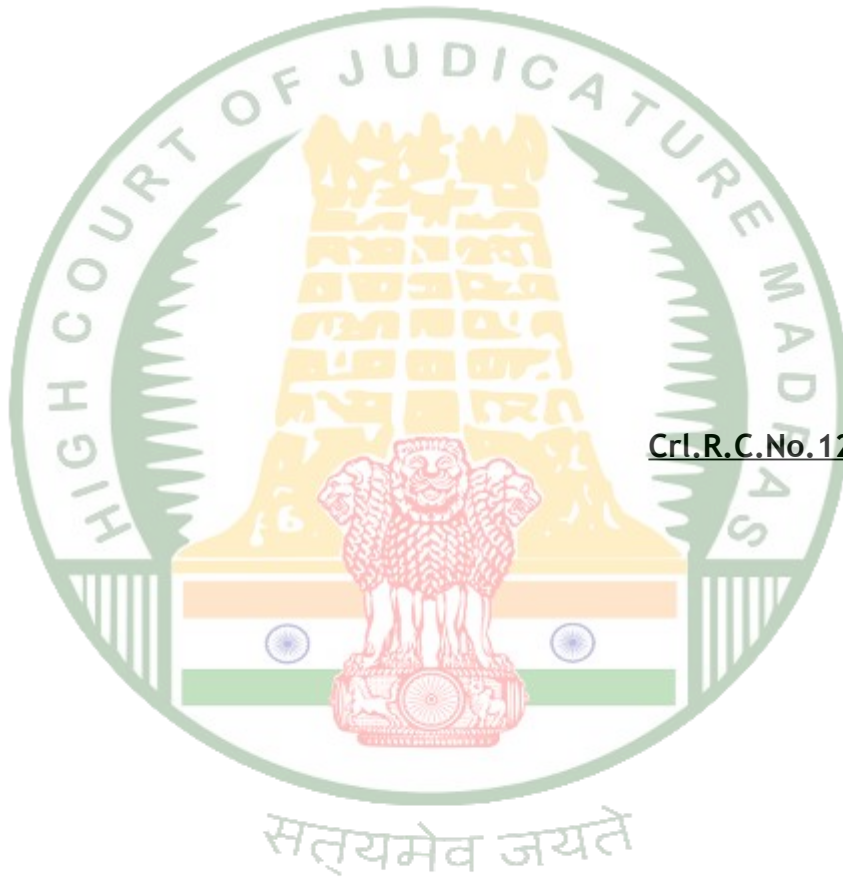
1.The Additional District and Sessions Judge,
Fast Track Court V,
Tiruppur.

2.The Judicial Magistrate II,
Tiruppur.



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C.T. SELVAM, J
gm



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