

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2017

CORAM:

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

Crl.R.C.No.1183 of 2016

and

Crl.M.P.No.10551 of 2016

K.Chinnasamy
S/o.Kuppusamy

... Petitioner

Vs.

Harsavardhan Cotton and Synthatics (P) Ltd.,
Having office at R.R.G.F.Complex,
693/1A Dharapuram Road,
Tiruppur - 641 608.
represented by R.Vijayakumar
S/o.K.Rengasamy

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned I Additional District and Sessions Judge, Tiruppur, passed in C.A.No.112 of 2015 on 03.08.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Tiruppur, passed in C.C.No.277 of 2013 on 18.11.2015.

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For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.C.Deivasigamani
for Mr.P.Kalimuthu

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

2. Respondent/complainant moved a prosecution informing that petitioner/accused purchased yarn on credit basis and towards discharge of liability, issued cheque bearing No.057773 dated 19.10.2012 drawn on Federal Bank Limited in a sum of Rs.2,50,000/-, which upon presentation was returned unpaid for the reason “exceeds arrangement”. 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 eight exhibits. Petitioner/accused examined himself and no exhibits were marked.

4. On appreciation of materials before it, the trial Court, under judgment dated 18.11.2015, convicted the petitioner and sentenced him to 6 months S.I. and fine of Rs.1,000/- i/d 1 month S.I. The appeal preferred by petitioner in C.A.No.112 of 2015 on the file of learned I Additional District and

Sessions Judge, Tirupur, came to be dismissed under judgment dated 03.08.2016. Hence, this revision.

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

6. It is the case of petitioner/accused that the cheque giving rise to the action was one of two left with one Dhandapani @ Mani, a yarn broker, who did not supply yarn and failed to return the cheque issued by petitioner as security. It is petitioner/accused's case that first cheque had been misused towards preferring the complaint. The said position is informed in Ex.P8, reply notice caused by petitioner/accused. Be that as it may, the complainant is a company and the complaint has been preferred through its Account Assistant informed to have been authorised under a resolution of the Board of Directors of the Company. He has been examined as PW-1 and in his cross-examination he has admitted to not knowing whether any purchase order was received from the accused concern, the invoices not informing the nature of yarn supplies, not knowing where the yarn was delivered and in fact, not knowing anything regards the matter. He has admitted to not knowing the date of purchase of yarn by petitioner/accused or where the cheque was issued. The decision of Supreme Court in *A.C.Narayanan v State of Maharashtra and another* [2014

(1) **LW Crl. 154]** informs that the Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the Power of Attorney holder must have witnessed the transaction as an agent of the transaction/payee in due course or possess due knowledge regarding the said transaction. Finding that PW-1 falls way short of the said yardstick, this revision succeeds.

The Criminal Revision Case shall stand allowed. The judgment of learned I Additional District and Sessions Judge, Tirupur, passed in C.A.No.112 of 2015 on 03.08.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Tirupur, passed in C.C.No.277 of 2013 on 18.11.2015, shall stand set aside. Petitioner/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bond, if any, executed shall stand cancelled.

07.03.2017

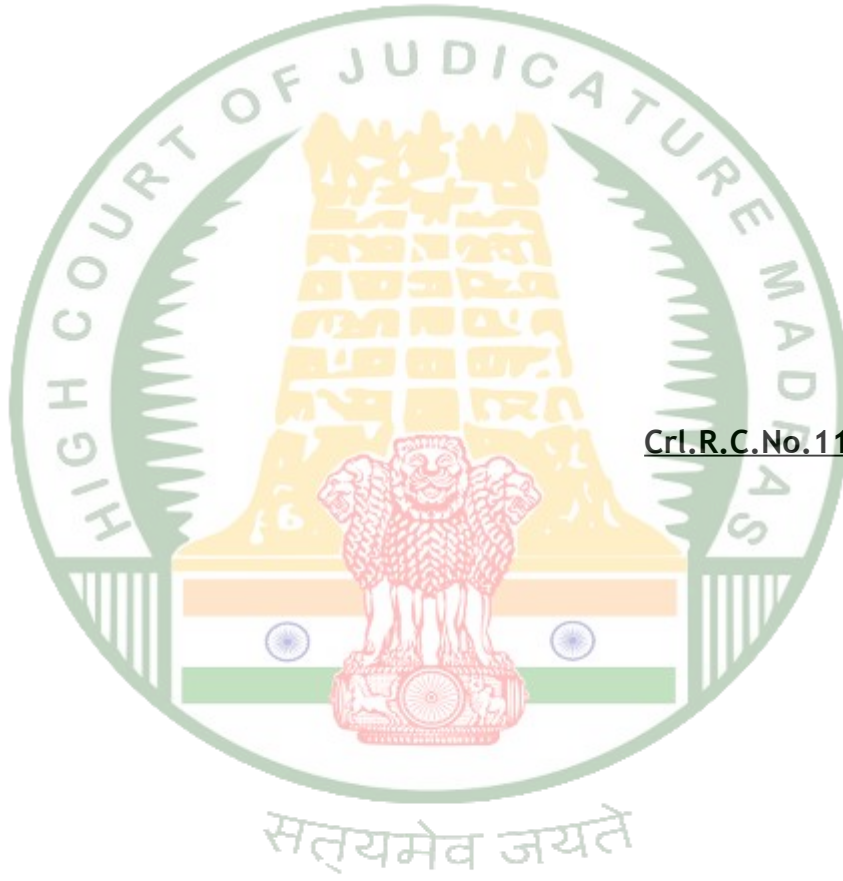
Index: Yes/No
Internet: Yes
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To

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

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

C.T. SELVAM, J
gm



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