

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

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

Cr1.R.C.No.852 of 2010

1. M/s.Simson Knit Garments
represented by its Partner
G.Nazar

2. G.Nazar
S/o.Govindara .. Petitioners/Petitioners 1 & 2/A1 & 2.

vs.

K.Selvaraj
S/o.Karuppasamy ... Respondent/Respondent/Complainant

Criminal Revision 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.20 of 2009 on 28.04.2010 confirming the judgment of learned Judicial Magistrate I, Tiruppur, passed in C.C.No.476 of 2004 on 21.01.2009.

For Petitioners : Mr.J.Pothiraj
For Respondent : Noappearance

O R D E R

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 the second petitioner to 1 year S.I. and to pay compensation in a sum of Rs.19,70,000/- along with accused 1 and 7 to the complainant.

2. Respondent/complainant moved a prosecution informing that first accused used to purchased cotton yarn on credit basis from him and there was an outstanding of Rs.21,18,723/- payable by first accused. Towards discharge of the said liability, second accused issued three cheques viz., (i) Cheque No.654656 dated 02.10.2003 in a sum of Rs.2,50,000/-, (ii) Cheque No.654657 dated 09.10.2003 in a sum of Rs.2,50,000/- and (iii) Cheque No.654659 dated 23.10.2003 in a sum of Rs.10,00,000/-. Upon presentation, the cheques were 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 examined himself and marked sixteen exhibits. Three witnesses were examined on behalf of the defence and ten exhibits were marked.

4. On appreciation of materials before it, trial Court, under judgment dated 21.01.2009, while acquitting accused 4, 5 and 6 convicted accused 1, 2 and 7 and sentenced the accused 2 and 7 to 1 year S.I. and directed accused 1, 2 and 7 to pay compensation in a sum of Rs.19,70,000/- to the complainant. There against, petitioners preferred C.A.No.20 of 2009 on the file of learned Additional District and Sessions Judge, Fast Track Court V, Tiruppur. Appellate Court, under judgment dated 28.04.2010, dismissed the appeal. There against, the present revision has been filed.

5. Heard learned counsel for petitioners. There is no representation for respondent. Perused the materials on record.

6. In arriving at a finding of conviction, Courts below have found that it has been established that accused 2 and 7 were in charge and responsible for the day-to-day affairs of the first accused company. In cross-examination, second accused has also admitted that they used to purchase cotton yarns from respondent/complainant, that there was an outstanding of Rs.19,70,000/-, that the subject cheques were issued towards discharge of the said liability and they have not replied to the statutory notice issued by respondent/complainant. Further, the contention of accused that they have paid the outstanding through another company by name 'Deepam Nit Garments' and the respondent/complainant has concealed the same, has been negated by Courts below on the reasoning that the respondent/complainant, in his deposition, has clearly stated that the accused have paid monies through 'Deepam Nit Garments' not for clearing dues in the present complaint but for payment of other debts. Once the respondent/complainant is disputing the payment towards clearance of dues in the present complaint, then it is for the accused to prove such contention by adducing oral and documentary evidence, which the accused have failed to do. While the second accused, in chief, deposed of his being a partner in the Deepam Nit Garments, in cross-examination, he has deposed that he is not a partner in such company. It was the evidence of DW-2, Bank Manager of State Bank of India, that Deepam Nit Garments is having account in their Bank, that it has issued cheques to the complainant company and the same were honoured. DW-2 further has deposed that he did not know who are all the partners of Deepam Nit Garments. Courts below have found

that the accused have not examined the Bank Officials of UCO Bank, where the complainant's company is having account, to prove their case. The non-examination of Bank Officials of UCO Bank by the accused revealed that the accused have purposely avoided to examine such officials since their examination might end in favour of respondent/complainant. On the above reasoning and for other reasons, Courts below have arrived at a finding of conviction. This Court finds no error in the judgments under challenge.

The Criminal Revision Case is dismissed.

-s/d-

Assistant Registrar (CS-II)

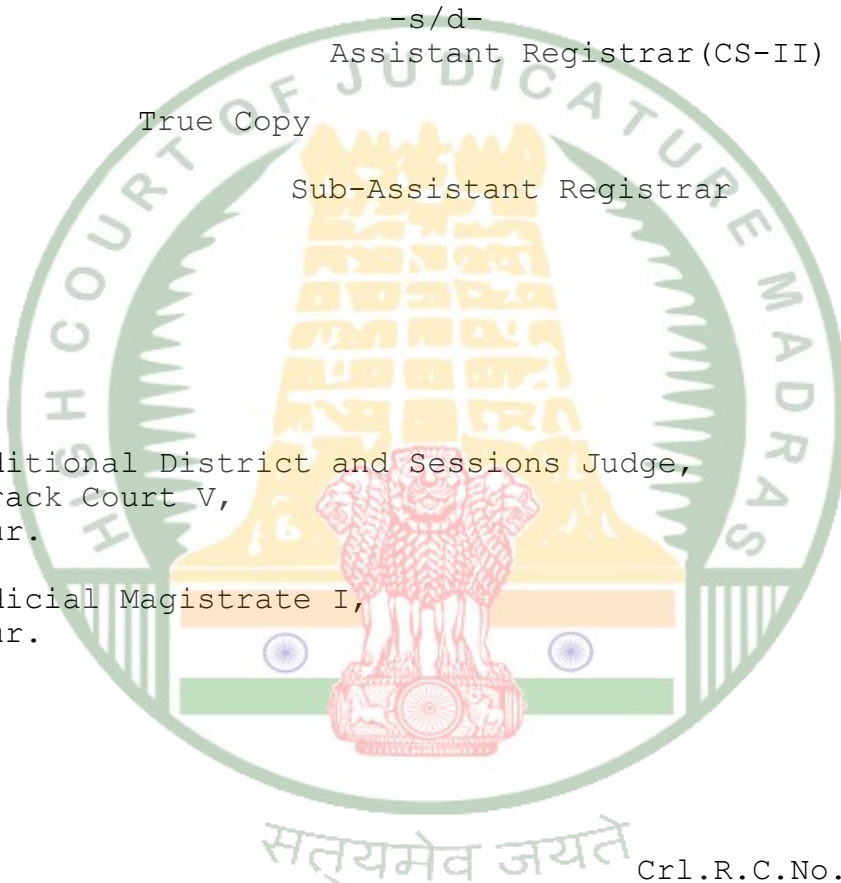
True Copy

Sub-Assistant Registrar

gm

To

1. The Additional District and Sessions Judge,
Fast Track Court V,
Tiruppur.
2. The Judicial Magistrate I,
Tiruppur.



Cr1.R.C.No.852 of 2010

SP(17/08/2017)

WEB COPY