IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HON'BLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.643 of 2018

Maheswaran
Proprietor,
Pillayar Texs,
No.7/34-A, Uppiliyan Thottam,
Pommanaickanpalayam,
Puluvaipatti,
Thirupur – 641 602 ... Petitioner

Vs

Velayudhaswamy Spinning Mills Pvt Ltd.,
Represented by Collection Manager,
Thirugnanam,
No.27, Mangalam Road,
Thirupur – 641 602. ... Respondent

Prayer : Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the conviction and sentence imposed in Crl.A.No.22 of 2017 dated 31.01.2018 on the file of the II Additional District and Sessions Court, Tiruppur confirming the conviction and sentence in STC No.327 of 2012 dated 31.01.2017 on the file of the Fast Track Judicial Magistrate, Tiruppur by allowing this Criminal Revision Petition.

For Petitioner : Mr.P.Maruthupandian
for Mr.R.Prabakar

For Respondent : Mr.T.Manikandan

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ORDER

This Criminal Revision Case is arising out of the Judgment passed in Crl.A.No.22 of 2017 dated 31.01.2018 on the file of the II Additional District and Sessions Court, Tiruppur, thereby confirming the conviction and sentenced imposed by the Trial Court in STC No.327 of 2012 dated 31.10.2017, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act and sentenced him to undergo one year Rigorous Imprisonment and to pay a sum of Rs.1,000/- as fine.

2. Heard, the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

3. The petitioner is an accused. The respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instrument Act, alleging that the respondent/company is engaged in the business of yarn production and export. While being so, the petitioner, being the proprietor concern of M/s.Millayar Texs, engaged in the business of ready made

garments and used to purchase yarn from the respondent. In this regard, the respondent supplied yarn to the tune of Rs.14,19,613/- (Rupees Fourteen Lakhs Nineteen Thousand Six Hundred and Thirteen only). In order to repay the balance, the petitioner issued cheque and the same was presented for collection. However, it was returned with an endorsement that "Exceeds Arrangements". After causing statutory notice, the respondent lodged a complaint.

4. On the side of the complainant, he was examined as P.W.1 and marked Exs.P1 to P35. On the side of the petitioner, he was examined as D.W.1 and two other witnesses were examined as D.Ws. 2 and 3 and he also marked documents as Exs.D1 to D5.

5. A perusal of the oral and documentary evidence, the Trial Court convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.22 of 2017 and the same was dismissed and confirmed the Judgment passed by the Trial Court.

6. The learned counsel for the petitioner filed a memo thereby

withdrawing his appearance on behalf of the petitioner since no instructions from the petitioner. Even then the petitioner did not engage any other counsel to present on behalf of the petitioner. Therefore, this Court is inclined to take the matter on merits.

7. The petitioner raised grounds that he produced sufficient materials which would cause serious doubt in the case of the respondent, which would shift the burden on the respondent herein to prove the case. Further, the Exs.P10 & P11 are fabricated documents, based upon which, without assigning any reason, both the Courts below erroneously convicted the petitioner for the offence under Section 138 of Negotiable Instrument Act. Originally, the cheque was presented on 18.05.2011 and the same was returned as 'Non Performance Account (NPA)' which means defunct account. Concealing the same, again the cheque was presented for collection and the same was returned as 'Exceeds Arrangement'. Therefore, the offence under Section 138 of Negotiable Instrument Act cannot at all be sustained as against the petitioner.

8. A perusal of the records reveals that the petitioner admittedly

purchased yarn from the respondent. The respondent marked Exs.P13 & P14. Ex.P13 is the order placed by the petitioner. Ex.P14 – Invoice, the materials supplied by the respondent to the petitioner. The respondent also marked sales tax details as Exs.P16 to P35 from February 2008 to December 2009. Though the petitioner examined DWs.1 to 3 and marked Exs.D1 to D5 filed to rebut the case of the respondent. Hence, the respondent proved 30 cheques were issued for legally enforceable debt. Further the petitioner never denied the signature found in the cheque and also issuance of cheque, which was marked as Ex.P4. That part, while suspending the sentence of the petitioner, this Court, by an order dated 04.07.2018, imposed a condition to deposit a sum of Rs.2,00,000/- awarded by the Court below as compensation. However, the petitioner failed to comply with the condition and it is also revealed from the copy application filed by the respondent asking for sureties memo and deposit challan. The Trial Court returned the copy application for the reason that the sureties memo and deposit challan is not available before the Trial Court.

9. In view of the above, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act. Therefore, this Court finds no infirmity or illegality in the

order passed by the Courts below. Accordingly, this Criminal Revision Cases stands dismissed.

29.09.2022

Index: Yes/No
Speaking / Non Speaking Order

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To

1. The II Additional District and Sessions Court,
Tiruppur

2. The Fast Track Judicial Magistrate,
Tiruppur

G.K.ILANTHIRAIYAN, J

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