



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

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

CrI.R.C.No.867 of 2018

B.D.Mohanasundaram

... Petitioner

Vs.

S.Sivakumar,
Proprietor,
M/s.Seven Hills Trading Agency,
6/1, Poosari Chennimalai Street-5,
Erode.

... Respondent

Prayer: Criminal Revision Petition filed under section 397(1) r/w Section 401 of Criminal Procedure Code, seeking to set aside the judgement dated 18.08.2017 passed in C.A.No.40 of 2017 on the file of the Second Additional District Sessions Court, Erode confirming the judgement dated 29.12.2016 passed in S.T.C.No.676 of 2013 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode by allowing the present Criminal Revision Petition.

For Petitioner : M/s.I.C.Vasudevan

For Respondent : Mr.J.Prithivi
for Mr.S.Kaithamalai Kumaran

**ORDER**

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The Criminal Revision petition has been filed challenging the judgement dated 18.08.2017 passed in C.A.No.40 of 2017 on the file of the Second Additional District Sessions Court, Erode, confirming the judgement of the trial Court passed in S.T.C.No.676 of 2013 vide order dated 29.12.2016, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The case of the petitioner is that the respondent/Proprietor of Seven Hills Trading Agency was dealing with yarn business. While being so, on 30.04.2012 and 25.06.2013, the petitioner borrowed yarn from the respondent to the tune of Rs.2,46,330/- and Rs.4,18,860/- under the invoices respectively. In order to pay the amount with interest, the petitioner issued a cheque dated 30.07.2013 for a sum of Rs.7,20,000/-. Subsequently, the cheque was presented for collection. However, it was dishonoured for the reason “Insufficient Funds”. Immediately, the respondent caused notice on the petitioner and it was returned as refused. Thereafter, the respondent lodged a complaint against the petitioner. Hence, the case.



3. On the side of the respondent, he examined P.W.1 and P.W.2 and marked Ex.P1 and Ex.P2. On the side of the petitioner, no one was examined and no documents were marked. On a perusal of oral and documentary evidence, the trial Court found the petitioner guilty and convicted him for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and also imposed a fine of Rs.3000/-. Aggrieved by the same, the petitioner preferred appeal before the Second Additional District Sessions Court, Erode and the same was dismissed on 18.08.2017, confirming the conviction order passed by the trial Court.

4. The learned counsel for the petitioner would submit that the respondent failed to file any documents to show whether the petitioner had received any goods under the invoices. Therefore, there is no legal enforcement on the part of the petitioner and the cheque was not issued for any consideration. However, the Appellate Court have confirmed the order of the trial court, convicting the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.



5. On a perusal of the records under the invoices, which were marked as Ex.P6 to Ex.P8, supply and purchase of yarn was also reflected in the commercial tax registry. That apart, the petitioner refused to receive legal notice issued by the respondent as contemplated under Section 138 of Negotiable Instruments Act. In fact, he also did not even examine any of the witnesses and failed to mark any documents to rebut the evidence of the respondent herein. Whereas, the respondent, he himself was examined as P.W.1 and he also examined P.W.2 and he categorically deposed that after purchase of yarn, the petitioner issued a cheque and the same was presented for collection. However, it was returned dishonoured for the reasons "funds insufficient".

6. It is seen that P.W.2 was also examined by the respondent, who is the Assistant Commissioner of Commercial Tax Department and he had also confirmed the purchase of yarn from the respondent. That apart, while suspending the sentence, this Court imposed a condition on the petitioner to deposit 50 percent of the cheque amount to the credit of the trial court. However, the petitioner failed to comply with the condition imposed by this Court.



7. Therefore, both the Courts below have rightly held that the petitioner is liable to be punishable under Section 138 of Negotiable Instruments Act and this Court finds no illegality or infirmity in the orders passed by the Courts below. Thereby, this revision is liable to be dismissed.

8. Accordingly, this Criminal Revision case stands dismissed.

30.09.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non speaking order

Anu

To

1. The Second Additional District Sessions Court, Erode

2 The Judicial Magistrate Court (Fast Track Court No.II), Erode



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G.K.ILANTHIRAIYAN, J.

Anu

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