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Crl.R.C.No.364 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.364 of 2020

R.Bharani

.. Petitioner

Vs.

M/s.Sooraj Leathers,
Represented by its Partner,
K.Anandhan,
S/o.Krishnamoorthy,
No.1, Bhavani
Sathy link Road,
K.A.S.B., Thanneri Complex,
P.P.Agraharam,
Erode-638005.

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the conviction dated 30.01.2020 made in C.A.No.281 of 2019 on the file of the II Additional District and Sessions Court, Erode District at Erode confirming the conviction imposed in judgment dated 27.11.2019 made in S.T.C.No.552 of 2018 on the file of the learned Judicial Magistrate (FTC) No.II, Erode by allowing this criminal revision petition.



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For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.D.Gopal

ORDER

The revision petitioner is the accused in S.T.C.No.552 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode. He was found guilty for an offence under Section 138 of Negotiable Instruments Act, for issuing the cheque for Rs.18,56,640/- being the invoice for the goods sold and delivered by the complainant. The said cheque dated 04.05.2018, when presented for collection, it was returned with memo stating that “Fund Insufficient”. After causing statutory notice, complaint has been filed and the same was taken on file by the Judicial Magistrate Fast Track Court No.II, Erode in S.T.C.No.552 of 2019.

2. On behalf of the complaint, Anandhan mounted in the witness box and 11 exhibits were marked. On considering the invoice marked as Ex.P8 dated 25.01.2016 and the ledger account Ex.P9 indicate that the running account between the complainant and the accused.



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3. Being satisfied that the cheque has been issued to discharge the enforceable debt, which was due and payable by the accused, the Trial Court convicted the accused to undergo one year Simple Imprisonment. Challenging the said judgment of conviction and sentence, the accused preferred an appeal before the II Additional District and Sessions Judge, Erode. The said appeal has been taken on file in C.A.No.281 of 2019. The lower Appellate Court, on re-appreciation of the evidence, found that the presumption under Section 139 of Negotiable Instruments Act has not been rebutted by the accused and furthermore, the debt of cheque amount been proved by the complainant through evidence and hence confirmed the judgment of the Trial Court.

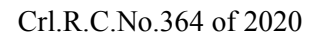
4. In the revision petition, it is contended that the Courts below failed to take note of the fact that the execution of the cheque [Ex.P1] not proved by the complainant and while the invoice value is Rs.18,56,640/- the cheque was only for Rs.16,56.640/- and therefore, the cheque amount and the invoice amount does not corresponds. In such circumstances, the



Courts below ought not to have believed the complainant that the cheque was issued to discharge the debt occurred for the supply of goods under the invoice marked as Ex.P8. Further, the learned counsel for the revision petitioner submitted that the Courts below ought not to have drawn presumption, when the foundational fact not proved by the complainant.

5. However, the learned counsel for the complainant submitted that by producing the invoice as well as the ledger account, the due payable by the accused been duly proved and it is admitted by the accused that he has received the goods under the invoice marked as Ex.P8 and having paid only Rs.2,00,000/-. He did not pay the balance amount, for which, he gave the cheque after two years and on presentation, same was bounced without fund.

6. This Court, on considering the materials available on record, the evidence and in the light of the grounds of revision, finds that it is a case where the complainant has proved positively that the subject cheque Ex.P1 was issued to discharge the debt occurred against the goods sold



Dr.G.JAYACHANDRAN, J.



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9. With the above modification, this Criminal Revision Case is partly allowed.

06.04.2023

Internet : Yes/No

Index: Yes/No

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To

1.The II Additional District and Sessions Court, Erode District at Erode.

2.The Judicial Magistrate (FTC) No.II, Erode.

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