



Crl.R.C.No.421 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2023

CORAM :

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

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and

Crl.M.P.No.3337 of 2020

Badri Narayanan
S/o.Ramalingam
Proprietor : Shri Narayana Agency,
N.S.Complex, II Floor,
No.210, Salem Road,
Opp : ING Vysya Bank,
Namakkal – 637 001.

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Petitioner

Vs

M/s.Meghraj International
A Firm registered under
Indian Partnership Act,
Represented by Special Power Agent,
Tarun Goyal,
No.87, Bhamshah Nagar,
Hariyana, Hariyana State
Office at Shop No.168,
New Araj Mandi,
Hisar, Haryana.

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Respondent



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PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the entire records in so far relates to order passed by the Principal Sessions Judge, Namakkal, Namakkal District in C.A.No.40 of 2019 dated 28.11.2019 whereby confirming the order passed in C.C.No.72 of 2015 dated 27.08.2019 on the file of Judicial Magistrate I, Namakkal, Namakkal District and set aside the same.

For Petitioner : M/s.R.Hemalatha

For Respondent : Mr.C.D.Johnson

ORDER

This Criminal Revision Case is filed by the accused who was found guilty for issuing a cheque for a sum of Rs.5,00,000/- to discharge his liability but failed to honour the cheque.

2. The Trial Court convicted the petitioner and the Appellate Court has confirmed the conviction and sentence of six months Simple Imprisonment and compensation of Rs.5,00,000/-, in default two months Simple Imprisonment.



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3. The case of the complainant is that he and the accused were in trade of Poultry Feeds and the suppliers. He has sold the poultry feeds on credit basis with the accused. As on 20.12.2014, a sum of Rs.16,62,000/- is due and payable by the accused. The accused gave a cheque for Rs.5,00,000/- drawn at Indian Bank, Namakkal Branch dated 19.11.2014, to discharge of part payment of his liability. The cheque was presented for collection through the complainant bank on 24.11.2014. The said cheque returned with an endorsement "funds insufficient" On receipt of the memo along with the returned cheque, a statutory notice dated 20.12.2014 was issued to the accused. The accused received the notice on 26.12.2014 but failed to reply. Therefore, the complaint under Section 138 of Negotiable Instruments Act was filed.

4. To prove the complaint, the complainant has examined P.W.1 and 15 documents were marked. On the side of the defence, neither oral nor documentary evidence filed. As per the testimony of P.W.1, who is the special power of attorney, to the complainant he has



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spoken about the trade transaction between the complainant and the respondent and over due of Rs.16,62,000/-, for which the subject cheque marked as Ex.P6 was issued by the accused towards discharge of part of his liability. Though the accused has pleaded that the said cheque was given as an advance for the goods purchased and having found goods were defective, compromise was arrived between the complainant and the accused in the DCB Police, Namakkal, wherein the complainant accepted to adjust the entire loan towards the advance paid earlier. However, he has used the blank cheque and presented it for collection. This defence was not found favour by the Courts below and rejecting the said defence, the accused was convicted. Being aggrieved by the concurrent findings, the present revision petition is filed.

5. The learned counsel appearing for the revision petitioner submitted that the accused has probalised his defence by preponderance of probability and he was prevented from putting forth the defence positively at the time of trial since she met with an accident



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and filed an application under Section 311 Cr.P.C to recall witnesses and the same was rejected by the Trial Court.

6. Point for consideration is whether the Trial Court failed to appreciate the defence of the accused and whether the said defence falls within the meaning of preponderance of probability.

7. 15 documents relied upon by the complainant to show that Ex.P6 cheque was issued towards the discharge of liability. Three invoices raised in the name of Shri Narayana Agency owned by the accused are marked as Ex.P10 series. Ex.P3, P4 and P5 were the Forms A, B and C of commercial department accompanied with the goods sent for delivery. The lorry freight charges and weigh bridge bills were marked as Ex.B12 and Ex.B13. The evidence let in by the complainant clearly proves the fact that the goods worth more than Rs.5,00,000/- has been delivered to the accused firm “Shri Narayana Agency”, Namakkal. There is no piece of evidence to show that the goods were defective as



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claimed by the learned counsel appearing for the appellant. Having taken delivery of the goods during the month of June, 2009 and November, 2009, for a long time the accused has not discharged the debt and it appears that there was mutual open running account between the accused and the complainant for the goods sold and delivered. In the said circumstances the subject cheque Ex.P6 has been given to discharge part of his liability and the same ought not to have been dishonoured for want of fund.

8. On perusing the Judgment of the Courts below and records, this Court finds that there is no error in the finding of the Courts below. Hence, this Criminal Revision Case is dismissed. The conviction and sentence imposed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
Index: Yes/No
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To

1. The Principal Sessions Judge, Namakkal.
2. The Judicial Magistrate No.I, Namakkal.



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Dr.G.JAYACHANDRAN, J.

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