



CrI.R.C.No.455 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.04.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.455 of 2020

M/s Mother Industries
Proprietor
R.Bharani,
S/o Raju,
No.19/8, Thulasingham Street,
Arcot 632 503,
Vellore District.

.. Petitioner

/versus/

M/s P.L.Leathers Tannery
Proprietor
P.lakshmanan
S/o of L.Perumal
Periya Agrakaram
Erode 638 005,
Erode District.

.. Respondent

Prayer : Criminal Revision Case has been filed under 397 and 401 of Cr.P.C., to set aside the conviction dated 07.02.2020 made in C.A.No.206 of 2019 on the file of the II Additional District and Sessions Court, Erode District at Erode, confirming the conviction imposed in judgment dated 22.08.2019 made in S.T.C.No.329 of 2018 on the file of the learned Judicial Magistrate (FTC) No.1, Erode by allowing this Criminal Revision Petition.



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For Petitioner :Mr.C.Ramaraj

For Respondent :Mr.D.Gopal

ORDER

The criminal revision case preferred by the accused being aggrieved by the concurrent finding of the Courts below holding guilty for issuing two cheques one for Rs.12,02,019/- and another for Rs.10,37,846/-.

2. According to the complainant, he is running a leather business in the name and style of M/s Mother Industries, Arcot had supplied material to the accused/revision petitioner herein running business in the name of M/s PL.Leathers Tannery, Erode under two invoices one dated 13.03.2016 for Rs.12,02,019/- and another dated 20.05.2016 for a sum of Rs.10,37,846/-. Two post dated cheques were given for the materials supplied and inspite of much persuasion, the accused did not pay the invoice amount, except a sum of Rs.2,00,000/- on 06.01.2017 and Rs.5,00,000/- on 02.06.2017. Hence, the post dated cheques given to him was presented and on bouncing of two cheques, statutory notice was issued. To the said statutory notice dated 07.07.2018, the accused gave a reply admitting the transaction and issuance of post dated cheques, but



had taken a plea that the goods supplied was defective and therefore, there is no liability to pay the cheque amount, but much less the cheque amount of Rs.15,39,865/- demanded under the statutory notice.

3. The trial Court took the private complaint filed in S.T.C.No.329 of 2018. To prove the complaint, one Lakshmanan, Proprietor of M/s P.L.Leathers Tannery was examined as PW-1. 13 exhibits were marked. No evidence on behalf of the accused was adduced.

4. The trial Court after appreciating the evidence placed before it, the claim of the complainant and the defence taken by the accused, held that there is no proof for return of goods delivered under the two invoices and therefore, the accused having admitted the transaction and delivery of goods is liable to pay the cheque amount as compensation and also sentenced him to undergo 3 months SI for issuance of cheques without sufficient balance.

5. On appeal, the II Additional District and Sessions Court, Erode, confirmed the judgment of conviction and sentence passed by the trial



Court. The said judgment confirming the trial Court judgment is subject matter of this revision case.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the records.

7. The learned counsel appearing for the petitioner submitted that having admitted that two cheques were issued to the complainant only as security for the goods sold under two invoices and having admitted that before presentation of these two cheques, the accused has paid Rs.7,00,000/- in two instalments, first instalment on 06.01.2017 and second instalment on 02.06.2017 respectively. There cannot be any legally enforceable debt of Rs.22,39,865/- as alleged by the complainant. Even in the statutory notice, the complainant has admitted the receipt of Rs.7,00,000/- in two instalments and he has claimed only Rs.15,39,865/- as due and payable. While so, the two cheques totally a sum of Rs.22,39,865/-, by no such imagination, has been considered as an amount due and payable and the cheque issued for legally enforceable debt. Since the foundation fact of liability to the tune of Rs.22,39,865/- itself has not



been proved or not been admittedly correct, the provision of the Negotiable Instruments Act cannot be attracted. Furthermore, the learned counsel appearing for the petitioner submitted that the trial Court as well as the appellate Court has miserably failed to take note of the fact that even according to the complainant, the liability is only Rs.15,39,865/- but he has presented the cheque for collecting higher amount making use of the post dated blank cheques, which *per se* renders the complaint not maintainable. Therefore, the judgment of the Courts below is vitiated for impropriety.

8. The learned counsel appearing for the complainant also submitted that the complaint against the revision petitioner is for issuing two cheques. One cheque dated 08.06.2018 bearing No.511930 for a sum of Rs.12,02,019/- drawn on Panjab National Bank, Anna Salai Road, Arcot Branch in favour of the complainant, which is marked as Ex.P1 and another cheque dated 13.06.2018 bearing No.511931 for a sum of Rs.10,37,846/0 drawn on the same bank which is marked as Ex.P2. While Ex.P1 was presented for collection, it was returned with a memo dated 14.06.2018. The said memo marked as Ex.P3. The second cheque Ex.P2,



on presentation, was returned on 20.06.2018 with a memo, which was marked as Ex.P4. For both the cheques together, notice was issued as required under the Negotiable Instruments Act, 1881, wherein the complainant has restricted his claim for Rs.15,39,865/- acknowledging the payment of Rs.7,00,000/-. There is no infirmity in the complaint or in the judgment of the Courts below.

9. This Court, on hearing the arguments of the both sides and on perusal of the records, finds that the complainant has proved the fact of supplying leather products to the accused under two invoices for which two cheques namely, one dated 08.06.2018 for Rs.12,02,019/- and another dated 13.06.2018 for Rs.10,37,846/-, which were marked as Ex.P1 and Ex.P2 respectively issued by the accused. The accused in his reply also admits the fact about the issuance of two cheques. The cheques were presented on two different dates and after getting intimation from the bank that the cheques were not honoured, the complainant has given a composite legal notice dated 07.07.2018 calling upon the accused to pay not the sum of the two cheques amount, but restricted to a sum of Rs.15,39,865/-, after giving credit to the two payments a sum of Rs.7,00,000/- made earlier.



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10. The spirit of Section 138(1)(b) of the Negotiable Instruments Act, 1881 to cause notice is to inform the drawer about his liability to pay the cheque amount and opportunity to pay it, within the period of 15 days. In this case, the statutory notice was marked as Ex.P5 indicates that the complainant has informed the return of the cheque and called upon to pay Rs.15,39,865/- which is not the cheque amount but something lesser than the cheque amount. The statutory notice is defective and will not give rise to a cause of action under Section 138 of the Negotiable Instruments Act, 1881 in strict sense. But, taking note of the fact that it is not a single cheque but two cheques of different dates for different amounts, the enforceable liability of the accused was admittedly only Rs.15,39,865/-. The defect gets curable and therefore, the complaint cannot be held to be not maintainable. Therefore, the error in the Courts below is only regarding the compensation amount fixed and not in respect of the sentence regarding imprisonment.

11. In this case, the foundational fact regarding delivery of goods under two invoices and issuance of two cheques namely Ex.P1 and Ex.P2, is proved directly and also proved by the corresponding ledger entries



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which are marked as Ex.P10. The invoice copies are marked as Ex.P8 and Ex.P9, which are corresponding to the cheque amount found in Ex.P1 and Ex.P2. The payment of Rs.7,00,000/- towards part payment of the goods sold under two invoices Ex.P8 and Ex.P9 is an undisputed fact. Whereas the defence taken by the accused that the goods were defective and therefore, the goods were returned back to the complainant, is only a fake defence without any *prima facie* material to hold it as a rebuttal.

12. In the said circumstances, while confirming the conviction and sentence of 3 months SI, Rs.15,39,865/- is fixed as compensation to be paid, instead of Rs.22,39,865/-. The compensation amount shall be paid within a period of two months, from the date of receipt of a copy of this order, in default, the accused shall undergo further period of 1 month SI.

13. Accordingly, **this Criminal Revision Case is partly allowed.**

13.04.2023

Index:yes/no
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To:

1. II Additional District and Sessions Court, Erode District at Erode.
2. The Judicial Magistrate (FTC) No.1, Erode.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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