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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.219 of 2010

The Cotton Corporation of India,
(A Govt of India undertaking)
Represented by its Deputy Manager,
No.80, G.S.T. Road,
Tirunagar,
Madurai-625 006.

... Appellant

-VS-

1.M/s.Sheela Rani Textiles Ltd.,
2, Kiruba Nagar, Thiruppalai,
Madurai-625 014.
(Through its Director
Sundarapandian)

2.R.J.Sundarapandiyan
Director,
M/s.Sheela Rani Textiles Ltd.,
2,Kiruba Nagar, Thiruppalai,
Madurai-625 014.

... Respondents

PRAYER : Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure praying this Court to set aside the judgement and order of acquittal of respondents/accused passed by the learned Judicial



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Magistrate No.IV, Madurai in C.C.No.811 of 2005 dated 10.02.2010 and convict the respondents/Accused.

For Appellant : No appearance

JUDGMENT

No representation for the appellant, inspite of the case being notified in the advance list published on 19.02.2024.

2. The appeal against the acquittal arising out of the private complaint initiated under Section 138 of NI Act. The trial Court considering the evidence let in by the complainant found that not adequate to convict the accused for issuing subject cheques without adequate balance.

3. The present appeal is filed stating that the trial Court ought to have drawn the presumption under Section 139 of NI Act and should have convicted the accused. It is pertinent to note that to draw the presumption under Section 139 of NI Act the foundational facts alleged in the complaint



should have been proved in other words the fact that the subject cheques were issued to discharge legal liability ought to have been pleaded and proved.

4. In this case, this Court finds that the subject cheques issued by the accused Mill through its Director the second accused was presented for collection on 05.01.2002 and it was dishonored and returned with intimation memo. In reply to the statutory notice, the accused has denied the liability and the transaction been disputed citing the criminal complaint filed for removal of 414 bales of cotton from the godown.

5. The trial Court after considering Ex.P2-GSF agreement and Ex.P11- statutory notice had arrived at a conclusion that it is a civil dispute regarding the sale of goods and the liability has not been proved and therefore, concluded that the five cheques the subject mater of the complaint not proved to have been given for discharging the liability of unauthorized removal of 414 bales. While acknowledgment issued by the second accused is to the effect that the cheques were issued for removal of 414 bales,



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whereas the complainant had alleged that the five cheques were given as a secretary for clearing 635 cotton bales.

6. The inconsistency in the case of the prosecution has made the trial Court to disbelieve the case of the prosecution and not accepted the complainant has proved the fundamental requirement necessary to attract the offence under Section 138 of NI Act. This Court in agreement with the above finding of the trial Court. Hence, this Criminal Appeal is dismissed.

01.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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To:

1.The Judicial Magistrate No.IV,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

cp

JUDGMENT MADE IN

CRL.A(MD) No.219 of 2010

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