IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

(Reserved on : 24.10.2016 ; Pronounced on : 18.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.473 of 2010

M/s. Sree Gokulam Chit & Finance Co.(P) Ltd.,
Rep. by its Managing Director and Foreman
A.M.Gopalan ...Appellant \ complainant

Vs.

B.Rasheed ..Respondent \ Accused

Prayer: Criminal Appeal filed to call for the records and judgment acquitting the respondent \ accused in C.C.NO.353 of 2003, dated 21.01.2010 passed by the learned Judicial Magistrate No.II, Coimbatore and set aside the same and pass further order.

For Appellant : Mr.L.Rajasekar
For Respondent : Mr. J. Franklin

J U D G M E N T

The Criminal Appeal is filed to call for the records and judgment acquitting the respondent \ accused in C.C.NO.353 of 2003, dated 21.01.2010 passed by the learned Judicial Magistrate No.II, Coimbatore and set aside the same and pass further order.

2. The case of the Appellant / Complainant is that the complainant is a private limited company by name M/s. Sree Gokulam Chit & Finance Co.(P) Ltd. The respondent / accused was a subscriber for two chit groups, group No.G3LC20 bearing Ticket No.18 and group No.G3SC92 bearing Ticket No.20 having a chit value of Rs.1,00,000/- each and having a chit duration of 25 and 20 months having a monthly subscription of Rs.4,000/- and 5,000/- respectively. The chit group No.G3L20 bearing Ticket No.18 was commenced on 19.03.1998 and terminated on 19.03.2000. The auction held in the month of September 1998, the respondent / accused had bid the chit and received the amount of Rs.75,00/- on 24.10.1998 from the appellant / complainant by way

of cheque. Similarly, in chit Group No. G3SC92 bearing ticket No.20 was commenced on 16.11.1998 and terminated on 16.06.2000. In the auction held in the month of March 1999, the respondent / accused had bid the chit and received the amount of Rs.75,000/- on 21.04.1999, from the appellant / complainant by way of cheques. After receiving the above said chit amount by way of cheques from the appellant / complainant, the respondent / accused had committed default in payment of the monthly subscription and owned a sum of Rs.2,16,044/- towards the defaulted monthly subscription with the accrued interest thereon. Inspite of the repeated demands made by the appellant / complainant, the respondent / accused failed to pay any amount to discharge the above said liability of both the chit groups. Then, on 25.06.2002, he had issued a cheque for a sum of Rs.2,16,044/-, bearing no.348841 drawn on the Nedungadi Bank Limited, Udhagamandalam. The appellant / complainant presented the above cheque on the State Bank of Travancore, Ootacamund, on 19.08.2002 and the same was dishonoured and returned with an endorsement "Funds Insufficient". The appellant / complainant was in receipt of the debit advice on 20.08.2002. The respondent / accused knowing fully well that he had no sufficient funds in his bank account, had issued cheque in favour of the appellant / complainant. The appellant / complainant issued notice to the respondent / accused on 02.09.2002, but he didn't received the notice. Hence, the appellant / complainant has filed a complaint before the Judicial Magistrate No.II, Coimbatore, under Sections 138 and 141 of Negotiable Instruments Act and Section 200 of Cr.P.C.

3. The appellant / complainant has been examined himself as PW1 and marked Exhibits P1 to P8. On the side of the respondent / accused DW1 and DW2 have been examined and marked exhibits D1 & D2. Considering the above said oral and documentary evidence the trial court has come to the conclusion that the complainant / appellant has not proved its case and acquitted the accused vide judgment dated 21.01.2010.

4. Aggrieved with the said judgment of the learned Magistrate in C.C.No.353 of 2003, dated 21.01.2010, the appellant / complainant has preferred the present appeal.

5. In order to prove the case of the appellant/complainant the power agent Harikrishnan has been examined as PW1, who has deposed that he is the power agent of complainant the chit fund company and the appellant / complainant is a private limited company and the respondent / accused was one of the subscriber for two chit groups number G3LC20 and G3SC92 for value of Rs.1,00,000/- each for a duration of 25 and 20 months having monthly subscription of Rs.4,000/- and 5,000/- respectively. The respondent accused was declared as successive bidder and chit

amount was disbursed to him. The respondent accused had committed default in payment of monthly subscription and owned a sum of Rs.2,16,044/- towards the defaulted monthly subscription. The respondent / accused on 25.06.2002, had issued a cheque for a sum of Rs.2,16,044/-, bearing cheque No.348841 drawn on the Nedungadi Bank Limited, Udhagamandalam. The appellant / complainant presented the above cheque on the State Bank of Travancore, Ootacamund, on 19.08.2002 and the same was dishonoured and returned with an endorsement "Funds Insufficient". The appellant / complainant was in receipt of the debit advice on 20.08.2002. Then, the appellant / complainant issued notice to the respondent / accused on 02.09.2002, and the said legal notice was returned with endorsement that intimation served on 03.09.2002.

6. To substantiate his case on behalf of the complainant, the following Exhibits were marked, viz., the power of attorney as Exhibit P1, cheque as Exhibit P2 and return memo from the bank as Exhibit P3, debit advice as Exhibit P4 and the advocate notice as Exhibit P5 and return cover as Exhibit P6, Certificate of incorporation as Exhibit P7 & Chit agreement as Exhibit P8. The above said incriminating materials were put to the accused/respondent, he denied the same as false.

7. Whereas the respondent denied that he was not subscriber of the appellant / complainant chit fund company. He never issued a cheque in favour of the complainant. It is the duty of the complainant to prove that the accused has issued a cheque for legally enforceable debt.

8. In order to substantiate the case of the accused he himself has been examined as DW1 and and he has deposed that he subscribed in the Finance and Chit Funds Company at Ooty with registration no.6995/75. He subscribed for 2 chit groups, each one lakh. He had Subscribed in the chit group no. G3LC20, which begins on 19.03.1998 and ended on 13.03.2000. He participated in the auction concluded in the month of September 1998 and he had bid the chit for Rs.75,000/-. After discount he received the bid amount of Rs.75,000/- in the month of October 1998. At the time of receiving the amount they have received two unfilled signed pronote and one cheque. He has repaid a sum of Rs.48,598/- till 28.04.1999 by way of subscription and he has produced the pass book Ex.D1 for the same. For the another chit group No.G3SC92, he paid the monthly subscription of Rs.5,000/- for 20 months. He participated in the auction conducted in the month of March 1999 and he had bid the chit after discount he received a sum of Rs.75,000/- in the month of April 1999. During that time also, they have received two signed unfilled pronotes and one signed unfilled cheque. He repaid a sum of Rs.34,650/- by way of subscription. Subsequently, he paid some amount for which the

chit fund company has not given any receipts. He has got passbooks and the said passbooks have entry of date of commencement of the chit, bid and details of repayment of subscription. The Chit fund Company has filled the cheque subsequently in the year 2002 and filed false complaint against him. Hence, it is liable to be dismissed. To substantiate his case, he has marked chit pass book as Ex.D-1 and another pass book for another chit as Ex.D2 and further he has examined DW2, who was working as Assistant in the Registrar of Companies.

9. The learned counsel for the appellant would submit that the respondent / accused had admitted the signatures found in the cheque. Therefore, the appellant / complainant has proved the execution of the cheque, but the accused failed to discharge his burden to rebut the presumption envisaged under Section 139 of Negotiable Instruments Act. The learned counsel for the appellant further submitted that the accused / respondent had admitted the default in payment of the chit dues owes a sum of Rs.1,00,000/- to the complainant as on 1999. The Trial Court has not considered this fact that the complainant has proved the case beyond reasonable doubt against the accused / respondent. Further he would submit that the accused / respondent purposely had not received the notice which shows the malafide intention of the accused / respondent. Once the execution of the cheque is admitted then Section 139 of the Negotiable Instruments Act has come in to play and it is the duty of the respondent / defendant to rebut the presumption as the manner known to the law.

10. According to the appellant / complainant, the respondent / accused became a subscriber of two chit groups, first one is bearing group no.G3LC20 and Ticket no.18. Second one is baring group no.G3SC92 and Ticket no.20. One with the monthly installment payable is Rs.4,000/- for 24 months and another with the monthly installment payable is Rs.5,000/- for 25 months and the value of both the chit are each Rs.1,00,000/-. The chit groups were commenced on 19.03.1998, 16.11.1998 and terminated on 19.03.2000, 16.06.2000, respectively. The auction held in the month of September 1998 and March 1999, respectively, the respondent / accused bid the chits and received the amount each of Rs.75,000/- on 24.10.1998 and 21.04.1999, respectively. After receiving the above said chit amount by way of cheque from the appellant / complainant, the respondent / accused was irregular in payment of installment dues. Inspite of the repeated demands made by the appellant / complainant, the respondent / accused failed to pay any amount to discharge the above said liability of both the chit groups. Then, on 25.06.2002, he had issued a cheque for a sum of Rs.2,16,044/-, bearing no.348841 drawn on the Nedungadi Bank Limited, Udhagamandalam. The appellant / complainant presented the above cheque on the State Bank of Travancore, Ootacamund, on 19.08.2002 and the same was

dishonoured and returned with an endorsement "Funds Insufficient". The appellant / complainant was in receipt of the debit advice on 20.08.2002. Then, the appellant / complainant issued notice to the respondent / accused on 02.09.2002, but he didn't received the notice. Hence, the appellant / complainant has filed a complaint before the Judicial Magistrate No.II, Coimbatore, under Section 200 of Cr.P.C.

11. According to the respondent / accused, he subscribed in the Finance and Chit Funds Company at Ooty with registration no.6995/75. He subscribed 2 chits, viz., G3LC20 & G3SC92 each one lakh. He has to pay in 24 installments each 4,000/-. The chit bearing no. G3LC20, begins on 19.03.1998 and ended on 13.03.2000. He had bid for Rs.75,000/- in the month of September 1998. After discount, he received bid amount of Rs.75,000/- in the month of October 1998. At the time of receiving the amount the chit company has received two unfilled pronote and one cheque. He has repaid a sum of Rs.48,598/- till 28.04.1999 and he has produced the pass book Ex.D1 for the same. For the another chit i.e., G3SC92, he paid the monthly subscription of Rs.5,000/- for 25 months. He had bid the said chit in the month of March 1999 in that chit also he had bid for a sum of Rs.75,000/- and after discount he received that amount in the month of April 1999. During that time also, he gave two signed unfilled pronotes and one signed unfilled cheque. He repaid a sum of Rs.34,650/- in this chit. Subsequently, he paid some amount for which the appellant has not given any receipts. He has got passbooks for the chit and the said passbook have entry of date of commencement of the chit, date of bid and details of repayment of subscription. The appellant / complainant has filled one of the cheques, subsequently, in the year 2002 and filed false complaint. Therefore, this case against the accused is liable to be dismissed.

12. The admitted facts are that the respondent / accused given the signed unfilled check and the same was filled by appellant / complainant and presented the above cheque on the State Bank of Travancore, Ootacamund, on 19.08.2002 and the same was returned with an endorsement "Funds Insufficient". The appellant / complainant was in receipt of the debit advice on 20.08.2002. On perusal of the Exhibit P2, the cheque bearing No.348841 alleged to have given by the respondent/accused in favour of the appellant/complainant the signature of the accused is found in black ink and other details have been filled in blue ink.

13. During cross examination the PW1 has stated that at the time of receiving chit amount respondent / accused gave 2 pro-notes, whereas he has not produced the pro-notes. Further, the

two chits with a value of Rs.1,00,000/- each, at the time of bid after discounting Rs.25,000/- each, the accused received Rs.1,50,000/- but he gave cheque for Rs.2,16,000/-. During the evidence, PW1 has stated that they have not calculated any interest for both the chits, it creates suspicion.

14. Admittedly, accused has said that he had bid the first chit in the month of October 1998 and received the said chit amount in the month of April 1999. But when the accused did not pay any amount, how he allowed to participated in the second bid. Whereas, the complainant has stated that the respondent / accused has given cheque for the defaulted chit amount only on 25.06.2002. It is not plausible one that after completion of 2 years of the chit period without taking any legal action against the respondent. Therefore under the said circumstances, the complainant has not established that the cheque issued by the respondent / accused in favour of the complainant for legally enforceable debt.

15. However, as already stated that they have not maintained any account for the value arrived at the liabiltiy of the accused for 2,16,044/-. Mere admitting of signature in the cheque is not enough to convict the accused, unless the complainant has proved that the cheque issued by the accused is for only legally enforceable debt.

16. Therefore, considering all the facts, the accused has rebut the presumption drawn under Section 139 of the Negotiable Instrument Act under preponderance of probability. Considering the facts and circumstances of the case available on records and carefully perused the judgment of the trial court, there is no reason to interfere with the judgment of the trial court. In these circumstances, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed and the judgment passed by the trial court is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Judicial Magistrate No.II, Coimbatore

2 do Chief Judicial Magistrate, Coimbatore

+1cc to Mr.I. Franklin, Advocate, S.R.No.67587

pa(CO)
md(30/12/2016)

Crl.A.No.473 of 2010