

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.122 of 2009

M/s.Sree Gokulam Chit & Finance Co. (P) Ltd.,
Represented by its Executive Director,
G.Baiju Son of A.M.Gopalan,
No.307, Gokulam Towers,
7th Street Corner, 100 feet Road,
Gandhipuram, Coimbatore - 12. ...Appellant/Complainant

Vs

S.M.Senthilkumar ...Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C.,
against the Judgment in S.T.C.No.1364 of 2006 dated 26.03.2006
passed by the learned Judicial Magistrate No.VII, Coimbatore.

For Appellant : M/s.R.S.Kirubakaran

For Respondent : Mr.S.Gunalan

JUDGMENT

That the instant Criminal Appeal is filed by the complaint under Sections 142 and 138 of Negotiable Instruments Act proceeding as against the order of acquittal made in S.T.C.No.1364 of 2006 dated 26.03.2008 on the file of the learned Judicial Magistrate No.VII, Coimbatore.

2.The case of the appellant is that the respondent herein signed up as a member in complainant's chit company under group No.G2D Scheme vide ticket No.14 of 2014. Under the said scheme the chit value stood Rs.50,000/- and the tenure of payment was 20 month, such that monthly subscription at Rs.2500/-.

3.The respondent herein was a successful bidder and therefore was paid with the chit amount. However subsequently petitioner failed to pay the monthly subscription and committed default in payment of monthly subscription.

4.In the said transaction the respondent herein was due to the complainant to the tune of Rs.90,600/-. After several requests made by the complainant, the respondent herein/accused issued a cheque bearing No.587799 dated 12.01.2006 for Rs.90,600/- drawn at TMB Bank, R.S.Puram Branch at Coimbatore. The said cheque was presented for encashment by the complainant company before Syndicate Bank on 18.01.2006 and the same was returned with an endorsement 'account closed' vide memo dated 20.01.2006. Thereupon the complainant issued statutory notice to the accused on 30.01.2006. The accused refused to receive the notice and same was returned to the complainant on 11.02.2006. Wherefore, he filed the above private complaint in S.T.C.No. 1364 of 2006 before Learned Judicial Magistrate VII, Coimbatore.

5.Before the Trial Court on the side of the complainant, the power agent of the complainant was examined as PW-1 and Exhibit P-1 to P-6 were marked. On the side of the accused he himself was examined as RW-1 and Exhibit D-1 was marked.

6.The respondent / accused defended the case of the complainant, admitting that he joined the above chit run by the complainant company and had taken chit for Rs.32,500/- after deduction of Rs.17,500/- towards usual deduction.

7.He further admitted his failure in paying certain monthly installment due to his business loss. However he contended that the complainant company had received a blank cheque from the accused at the time of payment of chit amount. He further disputed quantum of outstanding due to the complainant company claimed at Rs.90,600/-.

8.It is his case that when the total face value of chit amount itself was for Rs.50,000/-, the cheque presented by the complainant for Rs.90600/- is indefensible and hence the respondent/accused is not liable to pay the said amount. The blank cheque given by the accused for security purpose has been misused by the complainant company.

9.The Learned Magistrate after considering the oral and

documentary evidence adduced on the either side was dismissed the complaint by order dated 26.03.2008 holding that the chit value and liability mismatched thereby acquitted the accused from the charges under Section 138 of Negotiable Instruments Act. As against the order of acquittal the present Criminal Appeal has been filed.

10.I heard Mr.R.S.Kirubakaran, learned counsel for the appellant and Mr.S.Gunalan, learned counsel for the respondent and perused the entire materials available on record.

11.The learned counsel appearing for the appellant contented that the Respondent / Accused has issued a cheque in question for a sum of Rs.90,600/- towards chit transaction and the same has been presented in the concerned Bank and the same has been returned by the Bank saying "Account Closed". Subsequently observing all the legal formalities demand was made by the complainant company. As the respondent / Accused has failed to discharge his liability and thereby has committed under offence under Section 138 read with 142 of the Negotiable Instruments Act, 1881.

12.The cheque in question has been marked as Ex.P2 and the memo given by the concerned Bank has been marked as Ex.P3 and the Legal notice has been marked as Ex.P4. The trial court without considering the contentions urged on the side of the appellant has erroneously relied upon Ex-D1, dismissed the complaint and therefore, the order passed by the trial court is totally erroneous and the same is liable to be set aside.

13.In order to repudiate the arguments advanced by the learned counsel for the appellant / complainant, the learned counsel appearing for the Respondent / Accused has also equally contended that the cheque in question has been given as security for payment of monthly subscription chit. Since the accused has already taken the chit amount of Rs. 32,500/- the respondent herein has given the blank cheque and the same has been misused by the complainant.

14.Thus, the Learned Counsel contends that the cheque in question has not been given in connection with any legally enforceable debt or other liability and the trial court after evaluating all the evidence available on record, has rightly acquitted the accused. Hence, the order of acquittal passed by the trial court is perfectly correct and the same needs no interference.

15.Hearing upon rival submissions made by the Learned counsels of either side, this Court analyzed as to whether execution of Ex. P2 the subject cheque in question, has been given by the respondent/accused in favour of the appellant/complainant in connection with a legally enforceable debt or other liability.

16.It is an admitted case that the cheque in question has been issued in connection with chit transaction. Whereas, according to the accused, it was given towards security and the blank cheque has been given to the complainant.

17.At this juncture it is to be noted that the respondent/accused has admitted his default in payment of monthly subscription of chit. At the same time the respondent failed to establish as to the value he would be liable to pay under scheme in case of default. Certainly there can be no doubt that the default would carry penal charges in addition to other charges. Thus this Court finds that no contrary evidence was let in to disprove the claim amount by the complainant company. Therefore presumption under Section 139 of Negotiable Instruments Act is positively available to the complainant.

18.It is an avowed principle of law that as per Section 139 of the said Act, there shall be a presumption to the effect that holder of a cheque received the cheque of the nature for the discharge, in whole or in part or any debt or other liability unless contrary is proved. If contrary is proved, the legal presumption available under Section 139 of the said Act, cannot be invoked in favour of holder of a cheque.

19.It has already been pointed out that there is a legally enforceable debt to the complainant or other liability and therefore, presumption under Section 139 of Negotiable Instruments Act would come into play in favour of the complainant. Therefore, the trial court ought to have drawn presumption and should have held that the cheque in question has been issued by the accused and accordingly the accused shall be liable to be punished under Section 138 of Negotiable Instruments Act.

20.Therefore, in the considered opinion of this Court, the trial Court is not right in coming to the conclusion that the respondent/accused has not committed offence under Section 138 read with Section 142 of Negotiable Instruments Act, 1881.

21.In view of the foregoing enunciation of facts and law, this Court has found that the judgment passed by the trial court is liable to be interfered and therefore, the present criminal appeal deserves to be allowed.

22.In fine, this Criminal Appeal is allowed and the judgment dated 26.03.2008 made in S.T.C.No.1364 of 2006 on the file of the learned Judicial Magistrate No.VII, Coimbatore is set aside and the accused is convicted and sentenced to undergo 3 months Simple Imprisonment and shall pay a fine amount of Rs.5,000/- in default to pay fine, he shall undergo Simple Imprisonment of one month. The accused shall pay compensation of Rs.1,00,000/- to the appellant/complainant.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate No.VII,
Coimbatore.
2. The Cheif Judicial Magistrate,
Coimbatore.

+1 cc Mr.R.S.Kirubakaran, Advocate, SR.No.69265

+1 cc Mr.S.Gunalan, Advocate, SR.No. 69525

Pre-delivery judgment made in
Crl.A.No.122 of 2009

PP(CO)
CSL/25.10.2018

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