

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.A.No.1063 of 2007

M/s.Sree Gokulam Chit & Finance Co.(P) Ltd.,
Represented by its Executive Director,
G.Baiju ... Appellant / Complainant.

Vs.

G.Vijaya Kumar ... Respondent / Accused.

Prayer:

Appeal filed under Section 378 of Cr.P.C., seeking to call for the records and judgment acquitting the respondent/ accused in C.C.No.51 of 2006 dated 01.09.2007 passed by the learned Judicial Magistrate No.II, Coimbatore and set aside the same.

For Appellant : Mr.L.Rajasekar

For Respondent : No Appearance

J U D G M E N T

The appellant has filed this appeal seeking to call for the records in C.C.No.51 of 2006 and to set aside the judgment dated 01.09.2007 passed by the learned Judicial Magistrate No.II, Coimbatore.

2.The case of the appellant is that the appellant is a chit and finance company. The complainant is the Assistant Manager and Power Agent of the appellant company. The complainant's brother one Saravanakumar is sub-gratia in Group G 2 E Ticket No.59/11. The value of the chit is Rs.1 Lakh. The duration of the chit is 20 months. The accused is the guarantor of the complainant's brother. Whiles, the complainant's brother became the successful bidder and has taken the chit amount. Thereafter, he did not pay the chit amount and committed default in paying the chit amount. Hence, there was a balance of Rs.41,400/- to be paid by the complainant's brother.

3.It is the further case of the appellant that when the complainant repeatedly asked his brother for payment of the chit amount, the accused, issued a cheque bearing no.556066, dated 13.06.2005 drawn in ICICI Bank for a sum of Rs.41,400/-. The said cheque when presented for collection was returned as 'insufficient funds'. Thereafter the complainant sent a legal notice to the accused on 20.09.2005. The said notice was not received by the accused. Hence, the complainant lodged the complaint.

4.On the side of the appellant/ complainant, one witness was examined and 8 documents were marked as exhibits. On the side of the respondent/ accused one witness was examined and one document was marked as exhibit.

5.After trial, the lower Court acquitted the accused. Aggrieved by the said acquittal of the accused, the appellant/ complainant has filed this appeal.

6.The learned counsel appearing for the appellant would submit that the core issue involved in this case is that the respondent/ accused stood as guarantor for the complainant's brother. He would further submit that in order to prove that the accused stood as guarantor, the appellant has filed exhibit Ex.A8 before the trial Court and the said document was not properly considered by the trial Court and the trial Court held that the appellant did not establish that the respondent stood as guarantor and further held that the cheque was not issued for legally enforceable debt.

7.Perusal of Ex.A8 discloses that there is an endorsement available that the respondent/ accused stood as guarantor for the complainant's brother, however, it is a self serving document. Apart from the above, there is no independent document available to prove that the accused stood as guarantor to the complainant's brother. Further, there is no document available to show that the impugned cheque was given by the accused for the chit amount that has to be paid by the complainant's brother who is none other than the sub gratia of the appellant company. Mere self serving document is not sufficient to prove that the respondent/ accused stood as guarantor for the complainant's brother.

8.In the absence of any independent document to prove that the respondent/ accused stood as guarantor for the complainant's brother and that he has given the impugned cheque for the chit amount that has to be paid by the complainant's brother who is none other than the sub gratia of the appellant company, I am not inclined to allow this appeal.

9.The criminal appeal is accordingly dismissed. The judgment made in C.C.No.51 of 2006 dated 01.09.2007 by the learned Judicial Magistrate No.II, Coimbatore, is hereby confirmed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

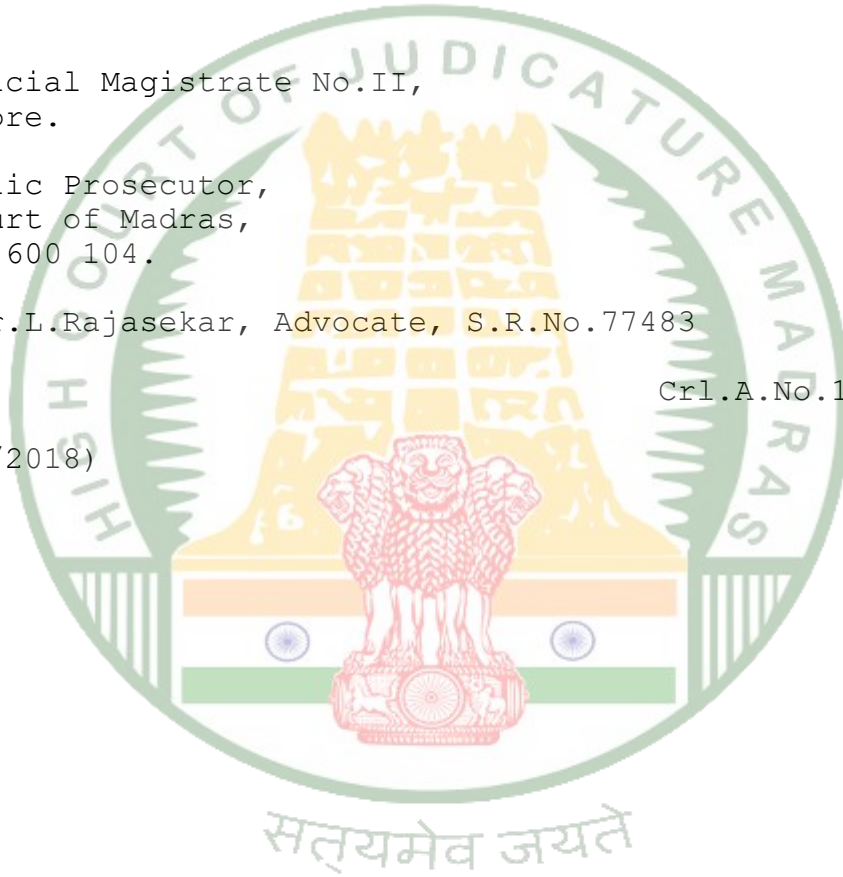
1.The Judicial Magistrate No.II,
Coimbatore.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.L.Rajasekar, Advocate, S.R.No.77483

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CA (CO)
ssm(05/12/2018)



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