IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1065 of 2007

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

Vs.

S.Rajarajeswaran ... 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.345 of 2006 dated 10.08.2007 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.345 of 2006 and to set aside the judgment dated 10.08.2007 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 Power Agent of the appellant company. The respondent/ accused is sub-gratia of the chit in G 49 S C 2 Ticket No.11. The value of the chit is Rs.1 Lakh. The duration of the chit is 20 months from 10.07.1996 to 10.02.1998. During February, 1997, the respondent/ accused became the successful bidder and has taken the chit amount. Thereafter, he did not pay the chit amount.

3.It is the further case of the appellant that for payment of the balance chit amount, the accused, issued a cheque dated 07.06.2005 drawn in Bank of Madura for a sum of Rs.1,29,000/-. The said cheque when presented for collection was returned as 'account closed'. Thereafter the complainant sent a legal notice to the accused on 27.06.2005. The said notice was received by the accused on 30.06.2005 and the accused sent reply with false allegations. Hence, the complainant lodged the complaint against the respondent/ accused for the offence under Section 138 of the Negotiable Instruments Act.

4.On the side of the appellant/ complainant, one witness was examined and 10 documents were marked as exhibits. On the side of the respondent/ accused no witness was examined and 2 documents were marked as exhibits.

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 appellant clearly established the case by examining P.W.1 who is the Power Agent of the appellant company and by marking exhibits particularly exhibits Ex.P6 to Ex.P10. He would further submit that the accused was the successful bidder during February, 1997 and he has taken a sum of Rs.75,000/- after deducting the bid amount. Immediately thereafter, he executed a pro note and the same was marked as Ex.P9. The statement of accounts was marked as Ex.P10. The accused issued the cheque dated 07.06.2005 for a sum of Rs.1,29,000/- as per the account details. All those things were clearly established before the trial Court. However, the trial Court arrived at a conclusion that the appellant did not establish the case properly and failed to establish that it was legally enforceable debt.

7.The learned counsel appearing for the appellant would further submit that since the chit ended during 1998 and since the cheque was issued during 2005, the trial Court arrived at a conclusion that there is no plausible evidence and that the evidence of P.W.1 is not believable and held in favour of the accused, which is un-sustainable.

8.On perusal of the entire records, the un-disputed facts are that the respondent/ accused is sub-gratia of the chit in appellant company. The value of the chit is Rs.1 Lakh. The duration of the chit is 20 months from 10.07.1996 to 10.02.1998. During February, 1997, the respondent/ accused became the successful bidder and has taken the chit amount of Rs.75,000/- after deducting the bid amount of Rs.25,000/-. It is also not is dispute that the instrument/ cheque is of the year 2005.

9.On perusal of the instrument/ cheque, the trial Court arrived at a conclusion that there is no evidence to the effect that the respondent/ accused issued the cheque for the legally enforceable debt in the year 1998 and the said cheque was issued in the year 1998 for security purpose. There are difference in the inks written in the signature column and other portion. Hence, the trial Court arrived at a conclusion that un-dated cheque was issued for collateral security purpose and nearly after 7 years, the instrument was filled up with different ink and the same was presented in the year 2005. However, the Banker issued a memo stating that 'account closed'. Thereafter, the appellant has not taken any steps to explain as to why the cheque was presented in a closed account. All those things were not properly explained by the appellant in his chief examination as well as in his cross examination.

10.Further, the chit came to an end during the year 1998. After seven years, the cheque was obtained during 2005. There is no proper explanation to show that the cheque was obtained by the appellant for the legally enforceable debt in the year 1998. In view of the above, I am not inclined to interfere with the order of the Court below.

11.The criminal appeal is accordingly dismissed. The judgment made in C.C.No.345 of 2006 dated 10.08.2007 by the learned Judicial Magistrate No.II, Coimbatore, is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pri

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.77484

Crl.A.No.1065 of 2007

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