

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.10.2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.6 of 2013

M/s.Sree Gokulam Chits and Finance Company Pvt Ltd
by its Managing Director and Foreman and having a
branch office at No.443, Vanekatesh Complex, Palakad
Main Road, Kuniamuthur, Coimbatore - 641 008.

Rep by his power agent Mr.Harikrishnan.

... Appellant

-Vs-

T.Ramesh

... Respondent

Prayer: Criminal revision is filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the judgment of acquittal dated 13.06.2006 passed by the learned District and Sessions Court, Fast Track Court No.II, Coimbatore in CA.No.413 of 2005 and to restore the order dated 12.09.2005 made in CC.No.128 of 2004 passed by the learned Judicial Magistrate No.II, Coimbatore.

For petitioner : Mr.T.C.Sajith Babu
for M/s.Prince Associates.

For Respondent : Mr.D.Selvaraju.

J U D G M E N T

The criminal appeal is filed against the judgment of acquittal dated 13.06.2006 passed by the learned District and Sessions Court, Fast Track Court No.II, Coimbatore in CA.No.413 of 2005 and to restore the order dated 12.09.2005 made in CC.No.128 of 2004 passed by the learned Judicial Magistrate No.II, Coimbatore.

2. The case of the appellant/complainant is that the respondent/accused was a subscriber of chit Group Nos.G3SC 07 & G3SC 08 vide ticket Nos.11 and 2 to the value of Rs.1 lakh each with 20 months subscription of Rs.5,000/-p.m. each respectively. When the respondent was declared as successful bidder and received the bid amount, subsequently, he committed default in payment and respondent owed a sum of Rs.1,74,000/- to the complainant on account of defaulted monthly subscriptions with accrued interest thereon. The respondent issued a cheque bearing No.0652336 dated 03.02.2003 for a sum of Rs.1,74,000/- drawn from the Nedungadi Bank Ltd, Ootatamaund to the

complainant. When the complainant presented the cheque with his bankers, the Dhanalakshmi Bank Ltd, Gandhipuram branch on 03.02.2003, the cheque was dishonoured by his bankers on 06.02.2003 for the reasons "insufficient funds". Thereafter, the complainant issued a legal notice dated 21.02.2003, thereby calling upon the respondent to pay the amount within 15 days and the respondent received the notice on 27.02.2003, after receiving the notice the respondent neither paid the amount nor sent any reply. Hence, the complainant preferred the private complaint before the learned Judicial Magistrate, No.II, Coimbatore, under Section 200 Cr.PC for the offence under Section 138 of Negotiable Instruments Act.

3. It is the case of the respondent that the complainant has not filed any statement of accounts at the time of filing the complaint. The amount arrived at in the complaint has not been properly explained. The amount claimed in the complaint is erroneous and several payments made by the respondent has not been given credit by the complainant.

4. During trial, the complainant was examined as PW1 and Exs.P1 to P6 were marked on the side of the complainant. On the side of the respondent DW1 to DW3 were examined, the respondent/accused was examined as DW3 and through him Exs.D1 to D11 were marked.

5. After hearing the arguments of both sides, the trial Court convicted the accused for the offence under Section 138 of the Negotiable Instruments Act for a period of one year rigorous imprisonment and to pay a fine of Rs.50,000/-. Aggrieved against the said order, the respondent/accused preferred an appeal before the learned District and Sessions Court, Fast Track Court No.II, Coimbatore. The appellate Court after re-appreciating the oral and documentary evidences comes to a conclusion by setting aside the order passed by the trial Court and acquitted the respondent/accused. As against the judgment of acquittal, the complainant preferred the present criminal appeal before this Court.

6. Heard the rival submissions made on both sides and perused the available records.

7. The learned counsel for the appellant would submit that the respondent is the subscriber of the chit fund is admitted and the default in subscription is not admitted. The respondent issued a cheque for a sum of Rs.1,74,000/-, when presented for collection the same was returned with an endorsement "insufficient funds", after receiving legal notice the respondent failed to repay the amount. Hence, the offence under Section 138 of the Negotiable Instruments Act is attracted.

8. The defence taken by the respondent is that the cheque was issued only for security purpose at the time of joining in the chit scheme. Since the issuance of cheque is only for security purpose, the offence under Section 138 of the Negotiable Instruments Act, will not be attracted. The legal presumption is that the cheque was issued only for legally enforceable debt. Hence, the learned Judicial Magistrate rightly convicted the respondent and the learned District Judge failed to consider the legal presumption, once the cheque is admitted, then the presumption is that cheque was issued for legally enforceable debt and the respondent/accused has not rebutted the evidence. Hence, the judgment of the District Judge requires interference.

9. The learned counsel for the respondent would submit that the respondent is a subscriber of chit fund and issuance of cheque, but, the amount arrived in the cheque has not been properly explained. The respondent has made several payments to the appellants chit fund which was not properly accounted. Furthermore, the cheque was issued in the year 1998 itself, when the respondent participated in the bid auction. It is seen from the cheque leaf that the cheque was printed before the year 2000 and the cheque was not issued for legally enforceable debt. Hence, the learned counsel prays for dismissal of the appeal.

10. It is the case of the appellant that the respondent is the subscriber of two chit funds and he was successful bidder in the chit auction during 1998 and the respondent issued a cheque in the year 2003 for the balance amount to be paid is not believable one. Once the doubt arises and if two views are possible, the benefit of doubt should be extended to the accused.

11. Admittedly, in this case, the respondent is subscriber of two chit funds Group Nos.G3SC 07 & G3SC 08 vide ticket Nos.11 and 2 to the value of Rs.1 lakh each with 20 months subscription of Rs.5,000/-p.m. each respectively and taken the chits on 21.10.1997 and 22.10.1997 as successful bidder, for which the cheque was issued only on 03.02.2003 is not acceptable one, that too after a lapse of more than five years. The payments made by the respondent in piecemeal has not been properly given credit to the respondent account. On bare perusal of the cheque leaf issued by the respondent, that in the date and year column was printed as ".....19..." it shows that the cheque ought to have been used before the year of 2000. Assuming if the cheque was issued in the year of 2003 the year column should have been printed as ".....20.....". It is seen that the cheque presented in bank vide Ex.P2 the date and year was written manually as "03.02.2003" after striking out ".....19...". That being the factual position, the appellant has not approached the Court with clean hands. As per the

statement of accounts produced by the appellants, they can very well approach the civil court for recovery of money.

12. Under these circumstance, this Court feels that there is no merit in the appeal filed by the appellant and there is no illegality or perversity in the judgment passed by the learned District and Sessions Court, Fast Track Court No.II, Coimbatore dated 12.09.2004 made in CC.No.128 of 2004.

13. In the result, the criminal appeal stands dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II,
Coimbatore.
- 2.-Do- thro' the Chief Judicial Magistrate,
Coimbatore.
- 3.The District and Sessions Judge,
Fast Track Court No.II, Coimbatore.
- 4.-Do- thro' the Principal Sessions Judge,
Coimbatore.

+1cc to M/s.Prince Associates, Advocate, S.R.No.69858

+1cc to Mr.D.Selvarasu, Advocate, S.R.No.70009

Cr1.A.No.6 of 2013

MG(CO)

RRS (06/05/2019)

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