

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.753 of 2009

M/s.Sree Gokulam Chit & Finance Co. [P] Ltd.,
Rep. by its Managing Director and
Foreman : A.M.Gopalan,
307, Gokulam Towers,
7th Street Corner, 100 Feet Road,
Gandhipuram, Coimbatore-12. ... Appellant/Complainant

Vs
D.Sathishkumar ... Respondent/Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973 against the Judgment dated 15.10.2009, passed in C.C.No.452 of 2006, by the learned Judicial Magistrate No.II, Coimbatore.

For Appellant : Mr.S.Kamaraj
for Mr.L.Rajasekar
For Respondent : Mr.A.R.Inba Kumar

J U D G M E N T

This Criminal Appeal has been directed against the judgment of the learned Judicial Magistrate-II, Coimbatore, dated 15.10.2009, in C.C.No.452 of 2006, acquitting the accused for the offence under Section 138 of Negotiable Instruments Act, 1881.

2.The case of the appellant/complainant is that the complainant is running a registered chit company and the accused was a subscriber in two chit groups. The accused was paid chit amount in both the chits, when he was declared as successful bidder. Subsequently, he was not regular in his payments and he continued to commit default, in paying monthly subscriptions and he owed a sum of Rs.64,400/- to the complainant, on account of defaulted monthly subscription with interest accrued thereon. After repeated request from the complainant, the accused issued a cheque bearing No.437072 dated 12.10.2005, for a sum of Rs.64,400/-, drawn at Syndicate Bank, Kuniyamuthur branch, Coimbatore. The complainant presented the said cheque on the same day for collection and the same was returned by the banker

of the accused with an endorsement "funds insufficient" with their memo dated 15.10.2005. The complainant issued a legal notice dated 25.10.2005 and the same was returned to the sender on 07.11.2005. Therefore, the appellant/complainant preferred the complaint.

3.On the side of the complainant, one witness was examined and six exhibits were marked.

4.On the side of the accused, two exhibits were marked.

5.The incriminating evidence against the accused was put to him under Section 313 of Cr.P.C. and he denied the same. The learned Judicial Magistrate, after analysing the evidence, acquitted the accused. Aggrieved by the same, the present appeal has been filed.

6.The learned counsel appearing for the appellant argued that the trial Court has committed error in shifting the burden to the complainant and the initial burden is only on the accused. It is further argued that the accused having got full chit amount in two chit groups and failed to pay subsequent subscriptions till termination of the chits, the presumption under Section 139 of the Act is to be rebutted with a fact by preponderance of probability.

7.The learned counsel appearing for the respondent argued that the trial Court, after analysing the evidence of both sides has rightly acquitted the accused and the same does not require any interference.

8.The issuance of cheque by the accused and his signature therein have been admitted. The accused took the defence that when he was paid chit amount for one chit as he became a successful bidder, he gave signed blank cheque as security to that chit amount and he was not paid the chit amount for another chit. The trial Court, believed the version of the accused, on the basis that 'paid seal' has been affixed in D1's passbook relating to the chit book No.23, whereas there is no such seal in Ex.D2 passbook relating to chit book No.24. Further, the trial Court, observed that no document has been filed by the complainant as to the payment of chit amount with respect to chit book No.24.

9.As per Section 139 of Negotiable Instruments Act, 1881, the Court has to presume in a complaint under Section 138 of the said Act, that the cheque had been issued for a legally enforceable debt or liability. The presumption is rebuttable. When the accused rebuts the presumption under Section 139 of the said Act, the standard of proof for doing so is that of "preponderance of probabilities".

10.A cursory perusal of passbooks Ex.D1 and Ex.D2 shows that the respondent/accused has not paid fully both the chits. Even if the respondent/accused being a subscriber, took the chit as a successful bidder in one chit, he is bound to pay continuously till the date of termination of chit. But, even in the chit, the accused claims to have received the amount as successful bidder, he was not regular in paying his subscriptions till the date of termination of the chit. It is also seen from the other passbook Ex.D2, the respondent/accused was not regular in paying the chit subscription. Therefore, the contention of the respondent/accused that he issued the blank cheque leaf as security, at the time of receipt of the chit amount in one chit as a successful bidder, is not acceptable. Thus, the trial Court, is not correct in acquitting the accused on that ground. The complainant has established his case as against the accused.

In the result, this Criminal Appeal is allowed. The judgment of the trial Court dated 15.10.2009 in C.C.No.452 of 2006 is set aside. The respondent/accused is found guilty for the offence under Section 138 r/w 142 of Negotiable Instruments Act, 1881, he is convicted and sentenced to undergo simple imprisonment for three months and directed to pay compensation of Rs.65,000/- to the appellant. The trial Court is directed to commit the respondent / accused to undergo the period of sentence by issuing NBW.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Coimbatore.

2. The Chief Judicial Magistrate, Coimbatore.

3. The Section officer, Criminal Section, High Court, Madras (2 copies)

4. The Public Prosecutor
High Court, Madras.

Crl. Appeal No.753 of 2009

SKS (CO)
SP(28/03/2018)