IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2018

PRONOUNCED ON : 10.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.463 of 2008

P.S.K.R.Finance and Chit Funds Limited
Rep. by its Managing Director,
T.K.Kuppusamy,
Rep. by his Power of Attorney Agent
and Mananager M.Ramasamy,
No.395, Bazaar Street,
Salem - 1. ... Appellant/Complainant

Vs

1. B.Umar Ali
S/o. Bashee Ahmed

2. Bathulma
W/o.B.Umar Ali ... Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment of acquittal dated 04.12.2007 in C.C.No.598 of 2004 on the file of the learned Judicial Magistrate No.I, Salem.

For Appellant : Mr.K.Selvaraj

For Respondents: No appearance

J U D G M E N T

This present appeal is directed as against the judgment dated 04.12.2007, passed in C.C.No.598 of 2004 on the file of the learned Judicial Magistrate No.I, Salem, thereby acquitted the respondent.

2. The appellant/complainant stated in the complaint that the Power of Attorney Agent M.Ramasamy was working as Manager of the complainant Office. He was appointed as Power of Attorney to file the present case. The first respondent/accused was the subscriber of a chit run by the company and the second

respondent/accused was the guarantor of the first respondent. After taking the chit amount, the first respondent issued a cheque dated 12.02.2004, for a sum of Rs.82,665/- towards the repayment of the monthly chit payable by him. The said cheque, after presentation, returned dishonoured for the reason that "No sufficient fund". After causing statutory notice, the respondents had neither paid the amount nor sent any reply, the appellant filed the complaint under Section 138 of Negotiable Instruments Act.

3. The learned counsel for the appellant would submit that the learned Magistrate misconstrued the fact that the appellant did not produce the Power of Attorney at the time of filing the complaint. The alleged cheque was issued only to repay the chit amount, which was already taken by the first respondent herein. The second respondent was stood as guarantor for the first respondent in repaying the chit amount. Further, he would contend that the appellant proved this case and the respondents are liable to be punished.

4. Heard the argument of Mr.K.Selvaraj, learned counsel for the appellant and none appeared on behalf of the respondents.

5. Admittedly, the complainant represented through its Power of Attorney and lodged this complaint. Originally, P.S.K.Finance run by its Managing Director, T.K.Kuppusamy and executed Power of Attorney in favour of his Manager M.Ramasamy. After dishonour of the alleged cheque, a statutory notice was issued on 16.02.2004, and thereafter the complaint was lodged on 11.03.2004, as per the Board resolution dated 15.02.2004. K.Sivakumar, Chairman cum Managing Director, the son of the said T.K.Kuppusamy, and two other Board Directors namely K.Nirmala and S.Anitha passed the resolution to appoint M.Ramasamy as their Power of Attorney.

6. It is seen from the notice dated 16.02.2004, it was issued only on the instructions of T.K.Kuppusamy. Thereafter, the said T.K.Kuppusamy died on 27.10.2004. Even though, the Board resolution passed on 15.02.2004 to appoint M.Ramasamy as Power of Attorney, the statutory notice was issued only in the name of T.K.Kuppusamy. Further the complaint also filed in the name of T.K.Kuppusamy. After the death of T.K.Kuppusamy, on the basis of the Board resolution dated 15.02.2004, the case was conducted by their Power of Attorney. Only thereafter, on 04.11.2004, the present Managing Director K.Sivakumar requested the Registrar of Company to appoint and declare him as Chairman-cum-Managing Director of the complainant/company. On his request, on 04.12.2004, the said K.Sivakumar declared as Chairman-cum-Managing Director. Therefore, the said T.K.Kuppusamy has no power to execute any Power of Attorney and

as such the complaint itself, lodged by the said M.Ramasamy was being the Power of Attorney of the said T.K.Kuppusamy is not maintainable.

7. Further, as far as the second respondent is concerned, she stood as guarantor for the first respondent towards the repayment of the chit amount. Admittedly, she stood as guarantor and as such she cannot be prosecuted under Section 138 of Negotiable Instruments Act, since she has not signed in the alleged cheque, and also there is no evidence to show that she stood as guarantor for the first respondent.

8. With the above discussion, there is no need interference with the findings of the learned Magistrate and the present appeal is liable to be dismissed. Accordingly, the criminal appeal is dismissed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rts

To

1.The Judicial Magistrate I,
Salem.

Copy TO

The Section Officer,
Criminal Section,
High Court, Madras.

CRL.A.463 OF 2008

GJII(CO)
GN(20/07/2018)