BAIL SLIP

The appellant herein/Accused Viz. Purushothaman, S/o.Dhanapal Chettiar(A1) and Guna @ Gunasundari W/o.Purushothaman(A2), were directed to be released on bail as per order of this court dated 12.10.11 made in Crl.MP.No.1 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.631 of 2011

1.Purushothaman

2.Guna @ Gunasundari ... Appellants/Accused 1 & 2

Vs

The Sub-Inspector of Police,
Economic Offences Wing-II,
Cuddalore. ... Respondent

Prayer : Criminal Appeal filed under Section 374 Cr.P.C., praying to set aside the order of conviction dated 12.09.2011, passed in C.C.No.1 of 2010 on the file of the District Sessions Judge, Cuddalore and allow the appeal.

For Appellants :Mr.D.Baskar

For Respondent :Ms.P.Kritika Kamal
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 12.09.2011, passed in C.C.No.1 of 2010 on the file of the District and Sessions Court, Cuddalore.

2.For the sake of convenience, the appellants will be referred to as accused.

3.It is the case of the prosecution that Purushothaman (A1) and his wife Gunasundari (A2) conducted chit transactions without registration under the Chit Funds Act, 1982 and cheated several subscribers; on the complaint (Ex.P6) dated 09.12.2005 given by Selvanayagi (P.W.1), Abdulsamadu (P.W.5), Sub-Inspector of Police, Economic Offences Wing, Cuddalore, registered a case in Crime No.1 of 2005 for the offence punishable under Section 420 IPC and prepared the printed FIR (Ex.P9); he took up the investigation of the case and examined some witnesses; after his transfer, the investigation was continued by Selvaraj (P.W.6), who filed final report on 24.10.2006 against the accused in C.C.No.6 of 2007 before the Chief Judicial Magistrate Court, Cuddalore; the accused filed a quash application under Section 482 Cr.P.C. before this Court, which was dismissed; however, this Court transferred the case in C.C.No.6 of 2007 from the file of the Chief Judicial Magistrate Court, Cuddalore, to the file of the Principal Sessions Court, Cuddalore, for trial and therefore, the case was renumbered as C.C.No.1 of 2010.

4.On the appearance of the accused, they were furnished with the relied upon documents under Section 207 Cr.P.C. The trial Court framed charges under Section 4 r/w. Section 76 of the Chit Funds Act, Section 5 r/w. Section 76 of the Chit Funds Act, Section 8 r/w. Section 76 of the Chit Funds Act, Section 9 r/w. Section 76 of the Chit Funds Act, Section 23 r/w. Section 76 of the Chit Funds Act and Sections 420 & 409 IPC. In the charges which were framed, chit transactions relating to Selvanayagi (P.W.1), Natarajan (P.W.3) and Rajakantham (P.W.4) have been referred to. When the accused were questioned, they pleaded “not guilty”.

5.To prove the case, the prosecution examined six witnesses and marked 13 Exhibits.

6.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. In the cross-examination of the prosecution witnesses, the accused marked Exs.D1 to D20. However, no witness was examined on the part of the accused.

7.After considering the evidence on record and hearing either side, the trial Court acquitted the accused of the offences under Section 8 r/w. Section 76 of the Chit Funds Act and Sections 409 & 420 IPC and convicted and sentenced them as follows :

Provision under which convicted	Sentence
Section 4 r/w. Section 76 of the Chit Funds Act	One year rigorous imprisonment and also to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for one month
Section 5 r/w. Section 76 of the Chit Funds Act	One year rigorous imprisonment and also to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for one month
Section 9 r/w. Section 76 of the Chit Funds Act	One year rigorous imprisonment and also to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for one month
Section 23 r/w. Section 76 of the Chit Funds Act	One year rigorous imprisonment and also to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for one month

Challenging the conviction and sentence, the accused are before this Court.

8.Heard Mr.D.Baskar, learned counsel for the accused and Ms.P.Kritika Kamal, learned Government Advocate (Crl. Side), appearing for the respondent police.

9.The learned counsel for the accused contended that the prosecution had not produced any satisfactory material to show that the accused were running illegal chit transactions in violation of the Chit Funds Act and therefore, the conviction and sentence deserve to be set aside. He also contended that the prosecution have not produced any documentary evidence to prove the chit transactions.

10.Per contra, the learned Government Advocate (Crl. Side) refuted the contentions.

11.This Court gave its anxious consideration to the rival submissions.

12.Selvanayagi (P.W.1), in her examination-in-chief, has stated that she is a house-wife; Gunasundari (A2) is the wife of Purushothaman (A1) and they live in the same street and hence, she knows them well; the accused were conducting chit from 1996 onwards; when she (P.W.1) begot a girl child, she wanted to save some money, knowing which, the accused approached her and asked her to join the chit scheme; accordingly, she joined two chit schemes, each for Rs.30,000/- and another chit scheme for Rs.22,500/-; towards the two chit schemes for Rs.30,000/- each, she paid Rs.2,000/- per month per chit and towards the chit scheme of Rs.22,500/-, she paid Rs.1,500/- per month; the chit schemes were for 15 months; after the scheme period of 15 months, when she approached the accused, they did not pay any money and convinced her that her money is safe with them and that will be given to her, when the need arises; believing that, she did not press them further; she joined some more chit schemes, viz. chit scheme for Rs.1,00,000/-, two chit schemes for Rs.50,000/- each, chit scheme for Rs.40,000/- and two chit schemes for Rs.45,000/- each and paid the monthly dues regularly; after the time period of those schemes, when she approached the accused, they told her that her money is safe with them and they will give it at the time of her daughter's (daugher of P.W.1) wedding; when she found that the accused were dodging, she thought that she could get back her money by bidding in the auction and hence, she participated, and bid Rs.1,00,000/- after deducting Rs.29,000/- and also bid a sum of Rs.50,000/- after deducting Rs.3,000/-; the accused did not pay even the bid amount and gave only Rs.30,000/- on 01.04.1996, for which, Gunasundari (A2) gave a receipt (Ex.P1); on 01.08.1996 when she approached Gunasundari (A2) for the money, she (A2) issued a receipt (Ex.P2); similarly, for the payments made subsequently, Gunasundari (A2) issued another receipt (Ex.P3) and also gave an unsigned statement of account (Ex.P4); ultimately, when Gunasundari (A2) did not make any payment, she (P.W.1) lodged the complaint (Ex.P6). In the cross-examination, she has admitted that her husband worked as conductor in the State Transport Corporation and retired from service. She has also admitted that she has no independent means of income and she has no documentary evidence to show that she had joined the chit, run by the accused. However, she has stated in the cross-examination that when she demanded the money, Gunasundari (A2) issued Exs.P1 to P4, which are accounts of the transactions between them. She has also admitted that Exs.P1 to P4 do not contain her (P.W.1) name. She has further admitted that she had earlier given a complaint to the police and an enquiry was conducted. It was suggested to her that the accused had borrowed Rs.4,03,000/- from her husband, for which, promissory notes were executed, which suggestion she denied. Ultimately, it was suggested to her that the accused did not run any chit transaction and they had only borrowed money from her husband, which suggestion also she denied.

13.Ramalingam (P.W.2), in his examination-in-chief, has stated that he worked as Conductor in the Tamil Nadu State Transport Corporation and retired from service; Selvanayagi (P.W.1) is his wife and he knows the accused, since, they live in the same street; eight years ago, Purushothaman (A1) approached him for a loan, saying that he wants to start a fancy store and took Rs.4,00,000/- from him and executed promissory notes; he returned Rs.30,000/- and did not return the balance money; so, he (P.W.2) made over the promissory notes to some persons known to him for valuable consideration; his wife (P.W.1) had chit transactions separately with the accused and when the accused did not honour the commitment, his wife lodged police complaint. In the cross-examination, he has stated that he had nothing to do with Gunasundari (A2) and it was only Purushothaman (A1), who borrowed money from him. He has also stated that he did not know about the chit transactions between his wife (P.W.1) and Gunasundari (A2) and came to know of it, only when the matter became serious. He gave the details of the persons to whom he made over the promissory notes which were given by Purushothaman (A1). For a question, as to whether, he had provided the finance to his wife, to join the chit scheme, he has stated that he would give half of his salary to his wife and his wife will get money from her brothers also. Ultimately, it was suggested to him that there was no amount due to his wife (P.W.1) and the promissory notes were issued only towards chit transactions, which suggestion, he denied.

14.Natarajan (P.W.3), in his evidence, has stated that he knows the accused; his wife joined a chit scheme for Rs.3,00,000/-, run by Gunasundari (A2) and was regularly paying the monthly installments; however, after the expiry of the time period, Gunasundari (A2) did not return the amount and he came to know that they had done the same thing to Selvanayagi (P.W.1) also and hence, he also gave a complaint to the police. In the cross-examination, he has admitted that Purushothaman (A1) executed a promissory note for Rs.2,80,000/- in favour of his wife (wife of P.W.3) and a suit was filed and the matter was settled in the Court. It was suggested to him that his wife had not joined any chit, as deposed by him, and only a loan was taken from his wife, which suggestion, he denied.

15.Rajakantham (P.W.4), in her evidence, has stated that she knows the accused and she joined two chit schemes, one for Rs.1,00,000/- and another for 12,000/- and paid Rs.5,000/- per month for 18 months, towards the chit scheme for Rs.1,00,000/-; when she demanded return of the money, the accused wrote the accounts in a piece of paper (Ex.P8), but did not give any money and hence, she gave a complaint (Ex.P7) to the police. In the cross-examination, she has admitted that, apart from Ex.P8, she has no documentary evidence to show that she had joined the chit transaction. She denied the suggestion that Ex.P8 had nothing to do with the chit transaction.

16.As stated above, the accused have filed Exs.D1 to D20, which are all certified copies of the plaint and written statement in the suits, filed between the parties. On the strength of these documents, the accused wanted to project that they were not running any chit transaction, but, they had only borrowed monies from the witnesses.

17.The contention of the learned counsel for the accused that the victims did not produce any documents to establish the chit transaction deserves only to be stated to be rejected, because, the very allegation against the accused is that, they were running illegal chits without registration. It is in the evidence of Selvanayagi (P.W.1) that she joined the chit run by the accused, in good faith. The receipts viz. Exs.P2,3,4 bear the signature of Gunasundari (A2) and have been written in ordinary paper, showing the amounts received on various dates. This Court cannot lose sight of the fact that such unregistered chit transactions are not considered as taboo and in fact, house-wives consider it as a viable mode of saving money for rainy days. In fact, this Court can draw such an inference with the aid of Section 114 of the Evidence Act. Hence, the non-availability of documentary proof at the hands of the victims cannot be a reason to disbelieve their testimony. In this case, this Court has no reason to disbelieve the evidence of P.W.1 to P.W.4 in this regard. Ramalingam (P.W.2), in his examination-in-chief, has himself stated that the transaction, which he had with Purushothaman (A1), was different from the transaction, his wife had with Gunasundari (A2).

18.On the contrary, the documents filed by the accused, viz., Exs.D1 to D20 contain sufficient admission showing that Gunasundari (A2) was running a chit. For example, in Ex.D4, the written statement filed by Purushothaman (A1) in O.S.No.95 of 2006, it is stated as follows :

> ''The defendant's wife Gunasundari was running chit for about 9 years. She stopped it in 2002. Those who bid in the auction received their amounts but failed to pay the balance instalments. Hence, the defendant's wife suffered heavy loss to the tune of several lakhs of rupees.''

Similarly, in Ex.D16, the written statement filed by Purushothaman (A1) in O.S.No.20 of 2006, it is stated as follows :

> ''Defendant's wife Gunasundari was doing business in chit privately. She stopped last year. Over about 9 years of business there were defaulters. Those who bid chits early would commit default in payment of subsequent instalments. As a result the others could not be paid their due. In order to pay those whom Gunasundari had to pay, she required funds.''

19.In the light of these documents, it is too late for the accused to contend that they were not running chit schemes. Neither in Ex.P10, i.e. the certificate given by Registrar of Chits, Cuddalore, it is stated that, Purushothaman (A1) and Gunasundari (A2) have registered under the Chit Funds Act, nor it is the case of the accused that they were running registered chits. As stated above, in one breath, they contended that they were not running chit transaction, but, in the cross-examination of some of the witnesses, it is stated that, promissory notes were given in discharge of the chit transactions. Of course, it is open to the accused to take conflicting defence but, not mutually destructive defence as in this case.

20.However, on a complete reading of the evidence of the prosecution witnesses, it is seen that the chit schemes were being carried on by Gunasundari (A2) and not by Purushothaman (A1). It is only Gunasundari (A2), who has issued Exs.P1 to P5 and P8 and hence, the conviction of Purushothaman (A1) for the said offences cannot be sustained.

21.In the opinion of this Court, the prosecution have proved the case beyond cavil that, Gunasundari (A2) was running unregistered chits, in which, P.Ws.1, 3 and 4 joined and lost money. Section 4 of the Chit Funds Act prohibits conduct of chit scheme without registration. Section 5 of the Chit Funds Act will not apply to this case, because, there is no evidence on record to show that, Gunasundari (A2) issued any notice, circular, prospectus, proposal or other documents inviting subscribers, nor is there any material to show that Gunasundari (A2) told P.Ws.1, 3 and 4 that she has registered the Chit schemes under the Chit Funds Act. Similarly, the conviction of Gunasundari (A2) under Section 9 r/w. Section 76 of the Chit Funds Act is also improper, because, Section 9 would apply only where, the Foreman fails to file a declaration with the Registrar after all the tickets specified in the chit agreement are fully subscribed. The provision of Section 9 will apply only in a case, where, the chit is primarily registered. In this case, the chit transaction has been conducted in violation of Section 4 of the Chit Funds Act and therefore, the question of applying Section 9 may not arise. Section 76 of the Chit Funds Act does not contemplate any punishment for violation of Section 23 and therefore, conviction under Section 23 r/w. Section 76 of the Chit Funds Act is improper.

22.In the result, the appeal is partly allowed. The conviction and sentence imposed on Purushothaman (A1) in C.C.No.1 of 2010 are hereby set aside. The conviction and sentence imposed on Gunasundari (A2) for the offences under Section 5 r/w. Section 76 of the Chit Funds Act, Section 9 r/w. Section 76 of the Chit Funds Act and Section 23 r/w. Section 76 of the Chit Funds Act, are also hereby set aside. The conviction and sentence imposed on Gunasundari (A2) for the offence under Section 4 r/w. Section 76 of the Chit Funds Act, stand confirmed.

The trial Court is directed to secure Gunasundari (A2) and commit her to prison to suffer the remaining period of sentence.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

1.The Principal Sessions Judge,
Cuddalore.

2.The Sub Inspector of Police
Economic Offences Wing-II
Cuddalore.

3.The Judicial Magistrate No.II
Cuddalore.

4.The Chief Judicial Magistrate
Cuddalore.

5.The Public Prosecutor,
High Court, Madras.

+2 ccs to Mr.D.Baskar Advocate sr 3414

Crl.A.No.631 of 2011

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