



Crl.R.C.No.1128 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1128 of 2018

Sudhakaran Nair

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Petitioner

Vs

M/s.Arjun Amaravathi Chits Pvt Ltd.,
Having office at No.30, Kutchery Road,
Mylapore, Chennai – 600 004.

Represented by its authorised signatory
T.Bhuvaraghamurthy.

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Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the concurrent judgments of the VI Additional Judge, City Civil Court, Chennai, dated 02.08.2018 and Fast Track Metropolitan Magistrate Court No.IV, George Town, Chennai in C.C.No.1528 of 2011 dated 16.11.2017 and acquit the accused.

For Petitioner : M/s.P.Uma

For Respondent : Mr.S.Baskaran

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 02.08.2018 passed in C.A.No.390 of 2017 on the file of the VI Additional Judge, City Civil Court, Chennai, thereby confirming



Crl.R.C.No.1128 of 2018

the judgment dated 16.11.2017 passed in C.C.No.1528 of 2011 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instrument Act. The case of the respondent is that the respondent is engaged in chit business. One K.M.Saleem had subscribed 3 tickets No.2, 3 and 4 in chit group AL9 and a ticket No.7 in chit group A5LA9 and the value of each ticket is Rs.1,00,000/-. He has successfully bided the above tickets before the termination period and had collected the amount. The petitioner had stood as guarantor for the collected amount and he had executed necessary documents and also assured that the amount will be promptly repaid by the said K.M.Saleem. However, the said K.M.Saleem committed default in payment of chit amount and the respondent had initiated the arbitration proceedings before the District Registrar of Chits, Chennai, against K.M.Saleem and the petitioner.



Crl.R.C.No.1128 of 2018

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3. On 30.06.2009, the Arbitrator had passed an award against both of them and had ordered to pay a sum of Rs.3,14,320/- and a cost of Rs.11,180/- with interest at the rate of 24% till the payment of the same. Even after passing the award, they have not come forward to pay the due amount. When the respondent approached the petitioner, he had issued a cheque dated 25.01.2011 for the said amount. On instruction, it was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. Immediately, he caused statutory notice and the same was duly received by the petitioner. Hence, the Complaint.

4. On the side of the respondent, he examined himself as P.W.1 and marked Exs.P1 to P10. On the side of the petitioner, he examined himself as D.W.1 and marked Exs.D1 to D6.

5. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instrument Act and he was sentenced to undergo six months simple imprisonment and to pay a compensation of



Crl.R.C.No.1128 of 2018

Rs.3,10,000/- in default to undergo two months simple imprisonment.

Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed. Hence, this revision.

6. The petitioner raised grounds that the alleged cheque was the part of cheque book issued by the bank of the petitioner in the year 2005 and the chit has been subscribed by the said K.M.Saleem also in the year 2005 and the documents were also executed in the year 2005. Therefore, the alleged cheque was issued for security purpose and there was no legally enforceable debt. In fact, there is no consideration was passed in favour of the petitioner. Even according to the respondent, the alleged cheque was issued on the chit amount taken by the said K.M.Saleem. He had stood as guarantor, he was never passed any consideration.

7. Heard, M/s.P.Uma, learned counsel appearing for the petitioner and Mr.S.Baskaran, learned counsel appearing for the respondent and perused the materials available on record.



Crl.R.C.No.1128 of 2018

8. A perusal of the records reveals that admittedly the petitioner stood as guarantor while taking the chit amount by one K.M.Saleem. However, both of them failed to pay the chit amount and as such, the respondent initiated an arbitration proceedings and the learned Arbitrator passed an award, which were marked as Exs.P2 to P5. Accordingly, the petitioner and another were held liable to pay a sum of Rs.3,14,320/- with a cost of Rs.11,180/- and also awarded interest at the rate of 24% till the payment of the same. However, the petitioner and the said K.M.Saleem failed to pay the amount and on request, the petitioner issued cheque for the said amount. It was returned dishonoured and the respondent lodged a complaint. In fact, the respondent caused statutory notice and the same was duly received by the petitioner with acknowledgement card, which was marked as Ex.P.10. However, the petitioner failed to reply for the demand notice. Though the petitioner raised grounds that the petitioner only stood as a guarantor for the chit amount being received by another person viz., K.M.Saleem, the award was passed as against both persons viz., the petitioner and the said K.M.Saleem. Therefore, at the time of issuance of cheque, there was a legally enforceable debt and the Courts below rightly convicted the



Crl.R.C.No.1128 of 2018

petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision Case stands dismissed. However, if the petitioner settles the issue, he is at liberty to approach this Court for appropriate relief.

27.10.2022

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The VI Additional Judge, City Civil Court, Chennai.
2. The Metropolitan Magistrate, Fast Track Court No.IV, Geroqe Town, Chennai.



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Crl.R.C.No.1128 of 2018

G.K.ILANTHIRAIYAN. J.

Lpp

Crl.R.C.No.1128 of 2018

27.10.2022