IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.941 of 2006

M/s.Sree Gokulam Chit & Finance Company (P) Limited,
Represented by its Power Agent,
R.Harikrishnan,
S/o Ramaswamy,
Aged About 36 years,
No.830, Cross Cut Road,
Gandhipuram, Coimbatore-12. ...Appellant / Complainant

-Vs-

Mr.Prince Santho Remo,
S/o.Mr.Alphones,
Aged About 32 years,
No.9/54, A-12, Anton Cottage,
V.O.C. Nagar, Gudalur,
Nilgiris. ...Respondent / Accused

Prayer:- Criminal Appeal filed under Section 378 of the Criminal Procedure Code, 1973, to call for the records and judgment acquitting the Respondent / Accused in C.C.No.149 of 2004 dated 25.01.2006 passed by the learned Judicial Magistrate No.II, Coimbatore, and set aside the same.

For Appellant : Mr.R.S.Kirubakaran

For Respondent : Mr.T.M.Naveen
for Mr.T.P.Manoharan

JUDGMENT

This Criminal Appeal is filed to set aside the judgment acquitting the Respondent/Accused in C.C.No.149 of 2004 dated 25.01.2006, passed by the learned Judicial Magistrate No.II, Coimbatore.

2. Learned Counsel for the Appellant submitted that the Appellant is the Complainant in C.C.No.149 of 2004. The finance Company had filed a complaint with the Assistant Manager of the Indian Bank, Gudalur Branch, Nilgiris, regarding the cheque issued by the Respondent herein. The Complainant had presented the cheque was returned for "Funds Insufficient". Therefore, statutory notice was issued. The same was received by the Respondent. But he did not reply. Therefore, private complaint was filed for the offence under Section 138 of the Negotiable Instruments Act, 1988.

3. Thereafter, the learned Judicial Magistrate No.II, Coimbatore, had taken the cognizance of the offence, summons was issued to the Respondent. The Respondent appeared through Counsel; copies were furnished. He denied the charge. Therefore, the trial was ordered.

4. The Assistant Manager of the Bank Appellant's Company examined himself as P.W.1. The documents relied by the Complainant were marked as Exs.P.1 to Ex.P.6.

a) Ex.P.1 is the General Power of Attorney.

b) Ex.P.2 is the Cheque

c) Ex.P.3 is the Return Memo

d) Ex.P.4 is the Debit Advance

e) Ex.P.5 is the Copy of Advocate Notice

f) Ex.P.6 is the Acknowledgement Card

5. After closing of the evidence, the Accused was examined under Section 313 of Cr.P.C. The Accused denied the incriminating evidence against him. The Accused himself was examined as D.W.1, the mother of the Accused was examined as D.W.2, and the father of the Accused was examined as D.W.3.

6. On assessment of evidence, the learned Judicial Magistrate No.II, Coimbatore, by judgment dated 25.01.2006, dismissed the complaint in C.C.No.149 of 2004. Aggrieved by the judgment of dismissal of the complaint and acquittal of the Accused, the Complainant had filed this

Appeal.

7. It is the contention of the learned Counsel for the Appellant that the learned Trial Judge had dismissed the complaint on technicalities of law regarding board resolution granting authorization to the Assistant Manager of the branch to prosecute the case.

8. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Assistant Manager as P.W.1 and the cross-examination of D.W.1 by the learned Counsel for the Defence. As per the cross-examination, the Accused admits that he is liable for Rs.64,200/-. The learned Trial Judge failed to consider the materials available before the Court and had dismissed the complaint on technicalities of law. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of the learned Judicial Magistrate No.II, Coimbatore, as perverse.

9. Learned Counsel for the Respondent/Accused vehemently objected to the lines of argument of the learned Counsel for the Appellant, stating that the complaint itself is not maintainable.

10. The learned Counsel for the Respondent invited the attention of this Court to the contents of the complaint, copy which is enclosed in the Appeal memorandum, which reads as follows:

> *"The Accused was a subscriber in Group No.G3SC 473 vide ticket No.11. Chit value was Rs.1 lakh with 20 months duration and monthly subscription was Rs.5,000/-. The Accused was paid the chit amounts when he was declared the successful bidder. Subsequently he continued to commit default in paying monthly subscriptions. The Accused owed a sum of Rs.64,200/- to the Complainant on account of the defaulted monthly subscriptions with interest accrued thereon."*

It is not stated in the complaint how the Accused is liable to pay and under what circumstances the cheque was issued.

11. During trial, it is the defence of the Accused that the Accused has subscribed to the chit for Rs.1 lakh and his mother also subscribed to the chit for Rs.1 lakh. Each is to pay Rs.5,000/- per month towards subscription. Both the Accused and his mother joined the chit. The Accused used the money to develop his business and his mother used the money for her daughter's marriage. However, they could not avail the benefit of the chits. Therefore, they had closed the chits and wanted their money back before the chits attained maturity. When they approached the

branch concerned they delayed the payments. They did not furnish the details. They were paid Rs.75,000/- in total. Therefore, as on the date of filing of the complaint, there was no liability. It is the further defence of the Accused that at the time of receiving back their paid amount from the Complainant's Company, the officers of the Complainant's Company required blank signed cheque as security, and as the security of the Government servant. The mother of the Accused was serving as a teacher at the Government School. She had signed the documents on the request of the officials of the Complainant's Company.

12. Also, the learned Counsel for the Respondent also invited the attention of this Court to the evidence of the Assistant Manager as P.W.1 in the cross-examination. It is stated that the signature of the Accused in the cheque differs from the signature marked as Ex.P.6 in the acknowledgement card marked before the Court. The seal of the Post Office is at the Post Office in Chennai. Whereas the Accused resides in Gudalur, Nilgiris, regarding the maintainability of the complaint. The Assistant Manager of the Complainant's Company, who was examined as P.W.1, was subjected to cross-examination regarding filing of the complaint by duly registered Company. Regarding the board resolution, he

had answered evasively. Knowing fully well that these are all the legal requirements, he had wantonly denied the suggestion put to him in the cross-examination by the learned Counsel for the Appellant.

13. Further, the learned Counsel for the Respondent invited the attention of this Court that, after the closing of the Complainant's evidence, the Accused had letting in evidence to discharge the burden caused upon the Accused as per the Negotiable Instruments Act. Not only the Accused had deposed as witness, but his parents also deposed as D.W.2 and D.W.3. The exhibit marked as Ex.D1 is the original passbook issued from the Complainant's Company regarding the monthly payments of the chit amount, and closing of the chit by the Accused and the withdrawal of the amount was already paid to the Complainant's Company. Similarly, the mother of the Accused, who deposed as D.W.2, had in her evidence marked as Ex.D.2 the passbook issued to her by the Complainant's Company closing the chit on request of the D.W.2. The father of the Accused was also examined as D.W.3.

14. The learned Counsel for the Respondent further invited the attention of this Court that the learned Trial Judge in the judgment, had

specifically pointed out the fact that the Accused and his parents were examined as D.W.1 to D.W.3. The Complainant's Company had not chosen to the cross-examination. The ingredients of the complaint were also put to the P.W.1 cross-examination regarding the payments made by the subscribers towards the chit. The registration of the chit in the name of subscribers and the filing of the board resolution authorizing the Assistant Manager of the branch to depose evidence on behalf of the Company as Complainant witness, for which the P.W.1 had given aversive answers. The learned Trial Judge had discussed those facts in the course of the judgment.

15. The learned Counsel for the Respondent invited the attention of this Court to the discussion of the evidence by the learned Judicial Magistrate No.II, Coimbatore, in paras 15 to 22.

16. Also, the learned Counsel for the Respondent invited the attention of this Court to the learned Trial Judge, relying on the judgment of this High Court regarding filing of a complaint by the Company. Also, the learned Trial Judge had discussed the facts when the Accused had disputed the claim of the Complainant's Company, the Complainant's

Company was duty-bound to file proper accounts maintained by them. They had not done so. Therefore, the Complainant's Company miserably failed regarding the claim that the cheque was issued for the debt owed by the Accused.

17. In the light of the above, the learned Counsel for the Respondent submitted that the Court has to draw necessary adverse inference regarding the complaint claimed by the Complainant to the Company law, which does not furnish any documents. In support of his contention that the Accused issued cheque for the date owed to the Company or for the outstanding dues towards the chit amount.

18. The learned Counsel for the Respondent submitted that the learned Judicial Magistrate No.II, Coimbatore, had dismissed the complaint based on the materials available before him through the evidence of P.W.1 as well as D.W.1 to D.W.3.

19. On proper appreciation of evidence and on proper application of law concerning the filing of the criminal complaint by the registered Company. The learned Trial Judge also pointed out that the chit has

registered chit and had not been for which documents had not been furnished. Accounts book was also not marked. Apart from all the above, the Accused as well as his parents were not cross-examined. Therefore, on that ground also, the learned Trial Judge has drawn adverse inference and dismissed the complaint. Both on evidence as well as technicalities of law. The judgment of the learned Judicial Magistrate No.II, Coimbatore, is a well-reasoned judgment that does not warrant any interference from this Court. The Appeal lacks merit and is to be dismissed.

20. **Point for consideration:**

> ***Whether the judgment of the learned Judicial Magistrate No.II, Coimbatore, dismissing the complaint in C.C.No.146 of 2004 dated 25.01.2006 is to be set aside as perverse?***

21. Heard the learned Counsel for the Appellant and learned Counsel for the Respondent.

22. Perused evidence of P.W.1 and Exs.P.1 to P.6, evidence of D.W.1 to D.W.3, and Exs.D1 and D2, and the judgment of the learned Judicial Magistrate No.II, Coimbatore.

23. On perusal of the complaint and the evidence of P.W.1 in the cross-examination and on perusal of the judgment of the learned Judicial Magistrate No.II, Coimbatore, it is found that the learned Judicial Magistrate No.II, Coimbatore, had on proper appreciation of evidence dismissed the complaint on appreciation of evidence, appreciation of law, and fact involved in this case. The learned Judicial Magistrate No.II, Coimbatore, had placed reliance on the ruling cited by the learned Counsel for the defence in 2004(2) T.N.L.R-234 (MAD) regarding the filing of the complaint. 2004(2) T.N.L.R.-453 (MAD) regarding the discharge claimed by the Accused. 1999 (III) CTC 764 regarding the filing of the complaint by the Complainant.

24. In the light of the reliance placed by the learned Counsel for the Defence and the defects pointed out by the learned Counsel for the Defence in the complaint filed by the Complainant's Company and in the appreciation of evidence, the learned Trial Judge had rightly dismissed the complaint and acquitted the Accused as the registered Company had not filed board resolution authorization by the Assistant Manager of the Company to depose the evidence on behalf of the Company. They had only filed authorization letter issuing Power of Attorney, which is not supported

with board resolution. When P.W.1 was cross-examined on those lines, he was classified as evading answering directly and denied those suggestions. Also, it is to be noted that the Complainant's Company had not marked any accounts book or register maintenance regarding the claim in the Company subscription paid by the subscribers in the chit when the Complainant's Company had not marked accounts, the Accused had filed Exs.D1 and D2, the passbook of the chit issued by the Complainant's Company to the subscribers to the Accused and to his mother.

25. In the light of the facts and on analysis, the learned Judicial Magistrate No.II, Coimbatore, had on proper appreciation of evidence arrived at the conclusion that the Complainant's Company failed to prove their case cogently and dismissed the complaint and acquitted the Accused.

26. Further, it is the guideline issued by the Hon'ble Supreme Court in cases where the learned Trial Judge had on proper appreciation of the evidence, even if the learned Appellate Judge on the very same set of evidence had arrived at the conclusion that the finding of the learned Trial Judge which is not found acceptable. Therefore, this Court arrives at the conclusion that the Appeal lacks merit.

27. **Accordingly, this Criminal Appeal stands dismissed with costs of Rs.30,000/- to the Respondent**.

14.09.2023

cda
Index : Yes/No
Speaking/Non-speaking order

To

1.The Judicial Magistrate No.II,
Coimbatore.

2.The Section Officer, VR Records,
High Court, Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Crl.A.No.941 of 2006

14.09.2023