



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.190 of 2014

M/s.Sri Krishna Chit Funds (P) Limited,
Sattur,
Through its Manager,
R.M.Ananth

... Appellant/Complainant

Vs.

M.Rajarathinam

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records relating to the Judgment dated 23.08.2013 made in S.T.C.No.454 of 2007 on the file of the learned Judicial Magistrate No.II, Sattur and set aside the same and convict the respondent and award compensation to the appellant herein.

For Appellant : Mr.T.Antony Arul Raj

For Respondent : Mr.D.Dhana Chandra Prakash



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JUDGMENT

This appeal has been preferred as against the order of acquittal passed in S.T.C.No.454 of 2007 on the file of the learned Judicial Magistrate No.II, Sattur, dated 23.08.2013, thereby dismissing the complaint and acquitting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The appellant is the complainant and the respondent is the accused.

3.The crux of the complaint is that the respondent is one of the subscribers for the chit to the tune of Rs.5,00,000/-. As per the said chit for the period of 20 months, a sum of Rs.25,000/- for each month is to be paid by the subscriber. In the chit auction, the respondent participated and had taken the chit amount. There was a due amount of Rs.96,450/-. In order to collect the same, the appellant also initiated proceedings before the Registrar of Chits in proceeding No.146 of 2006 and obtained a decree on 04.09.2006. On compliance of the said decree, the respondent issued cheque for the said sum. It was presented for collection and the same was



returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the appellant filed the complaint.

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4.On the side of the appellant, he examined P.W.1 to P.W.3 and marked Exs.P.1 to P.6 and on the side of the respondent, no one was examined and marked Ex.D.1 to Ex.D.4.

5.On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty and acquitted him for the offence punishable under Section 138 of the Negotiable Instruments Act and dismissed the complaint. Aggrieved by the same, the present Appeal.

6.The learned counsel appearing for the petitioner would submit that already he had handed over the bundle along with change of vakalat. Therefore, he is withdrawing his appearance on behalf of the petitioner. Even then, the petitioner did not engage any new counsel and failed to appear before this Court either by person or through Pleader.

7.The appellant raised the ground that the respondent specifically admitted the signature and also the issuance of cheque. Therefore, the appellant discharged its initial burden as



contemplated under Section 138 of the Negotiable Instruments Act.

That apart, the complaint was filed by the manager of the appellant company. He is the person, who is acquainted with the affairs of the company, therefore, he can very well maintain the complaint. The cheque was issued only for the purpose of compliance of the decree passed in chit fund case No.147 of 2006 on the file of the Deputy Registrar of Chit, Virudhunagar. Therefore, the cheque was issued for legally enforceable debt and as such, the respondent is liable to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act.

8.Per contra, the learned counsel appearing for the respondent would submit that while pending the complaint, the execution proceeding was initiated on the strength of the decree passed in chit fund case No.147 of 2006 on the file of the learned Subordinate Court, Sivakasi, in which, the entire cheque amount was paid by the respondent and after recording the full satisfaction memo, the execution proceeding was also closed. Therefore, the trial Court rightly dismissed the complaint and it does not require any interference by this Court.



9. Admittedly, the respondent issued a cheque for a sum of Rs.96,450/- in order to comply with the decree passed in chit fund case No.147 of 2006 on the file of the Deputy Registrar of Chit, Virudhunagar, dated 04.09.2006. However, in its presentation, it was returned dishonoured for the reason 'funds insufficient'. Thereafter, the appellant initiated proceedings under Section 138 of the Negotiable Instruments Act and while pending the said proceeding, the appellant also initiated execution proceeding pursuant to the decree passed in chit fund case No.147 of 2006 on the file of the Subordinate Court, Sivakasi. In the said execution proceeding, the respondent settled the entire cheque amount and on receipt of the same, the appellant also filed full satisfaction memo. It was recorded by the execution Court and terminated the execution proceeding. Therefore, the entire cheque amount was paid and the trial Court rightly dismissed the complaint and acquitted the respondent. Hence, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Criminal Appeal is dismissed.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Judicial Magistrate No.II,
Sattur.



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G.K.ILANTHIRAIYAN, J.

ps

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