IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 513 OF 2024

M/s. Sree Gokulam Chit & Finance
Co. (P) Ltd., rep. By its Vice
Chairman, Mr. V.C.Praveen
Regional Office at :
Sree Gokulam Towers
100 Feet Road, 7th Street
Gandhipuram, Coimbatore – 12

Corporate Office at :
No.66, Arcot Road, Kodambakkam
Chennai 600 024. .. Appellant

- Vs -

M.Rajkumar .. Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment in C.C. No.33 of 2017 dated 5.2.2024 passed by the Judicial Magistrate No.I, Fast Track Court, Magisterial Level, Coimbatore.

For Appellant : Mr. L.Rajasekar

JUDGMENT

Assailing the order in and by which the complaint initiated by the appellant u/s 138 of the Negotiable Instruments Act (for short 'the Act') had come to be dismissed, the present appeal is directed against the said judgment.

2. It is the case of the appellant that the respondent was a subscriber in a chit having a chit value of Rs.25,00,000/- and was paying a monthly subscription of Rs.1,25,000/- with a tenure of 20 months commencing from 11.11.2011 and termination date of 11.06.2013.

3. It is the further case of the appellant that the respondent became the successful bidder and the prize value of the chit of Rs.18,74,900/- was paid to the respondent on 19.03.2012. However, the respondent was irregular in payment of monthly subscription and committed default and the respondent

had a default outstanding of Rs.22,18,625/- towards the chit along with interest.

4. It is the further case of the appellant that due to the said default committed by the respondent, the appellant called upon the respondent several time to pay the due amount and after repeated requests the respondent issue a cheque bearing No.395184 dated 16.03.2016 drawn on M/s.Dena Bank, Coimbatore, for a sum of Rs.22,18,625/-, but on presentation of the same for encashment with the appellant's banker, M/s.Axis Bank, the same was returned with endorsement "Funds Insufficient", which was intimated on 22.03.2016. Upon return of the cheques as dishonoured, the appellant issued legal notice dated 11.04.2016 u/s 138 (b) of the Act calling upon the respondent to pay the amount of the cheque, failing which legal action would be taken to realise the said amount, the receipt of which was acknowledged on 21.04.2016. However, neither there was any reply nor any payment was made by the respondent prompting the appellant to file the complaint.

5. Originally the complaint was taken on file and numbered as C.C. No.816/2016 on the file of the learned Judicial Magistrate-I, Coimbatore, but upon transfer to the Judicial Magistrate-I, Fast Track Court, Magisterial Level, Coimbatore, the case was renumbered as C.C. No.33/2017.

6. Upon cognizance being taken, summons were issued to the accused and on their appearance, copy of the complaint was provided to the accused, who pleaded not guilty and contended that a false case has been foisted upon them.

7. Before the Court below, the appellant examined one witness as P.W.1 and marked Exs.P-1 to P-10. On the side of the respondent no oral evidence was tendered, but one document, Ex.D-1 was marked through P.W.1. The Court below, on consideration of the evidence, both oral and documentary, held that the appellant has not proved the case against the respondent and, accordingly, acquitted the respondent. Aggrieved by the same, the present appeal has been preferred by the appellant.

8. Learned counsel appearing for the appellant submitted that there is a clear admission that the respondent had partaken in the chit and had become the successful bidder and had been paid the bid amount. However, he committed default in paying the chit amount regularly after receiving the bid amount. It is the further submission of the learned counsel that upon constant follow up, the respondent agreed to pay the defaulted amount and had given the cheque, which had since been dishonoured, leading to the filing of the complaint.

9. It is the further submission of the learned counsel that the once the cheque given by the respondent is dishonoured, which is towards the discharge of whole or part of the debt, then the presumption falls on the respondent to prove that the cheque was not given for the purpose of discharge of the debt. Since the respondent has failed to prove the same, necessarily the benefit should fall on the appellant and the court below ought to have appreciated the said fact in proper perspective, which it has miserably failed to do and, therefore, the order impugned requires interference at the hands of this Court.

10. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the appellant and perused the materials available on record.

11. This Court, in Crl. A. No.473/2024, etc., batch, by a judgment of even date, had dismissed the appeals in which similar issue was raised with regard to default in payment of the monthly chit amounts towards which cheque was alleged to have been issued and stood dishonoured resulting in the initiation of the complaint u/s 138 of the NI Act. In the above context, this Court held as under :-

> *"23. In this regard, a careful perusal of Section 138 of the Act clearly prescribes that any cheque, which has been given towards payment of any amount of money to another person towards the discharge in whole or part of any debt or other liability is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account, then it would mean that such person shall be deemed to have committed an offence. Explanation*

therefore with regard to 'debt or other liability' appearing in Section 138, it has been explained that it means a legally enforceable debt or other liability.

24. From a careful reading of Section 138, it transpires that the cheque, which had been given, which stood dishonoured, should be in pursuance of a legally enforceable debt or liability and only in such cases, Section 138 of the Act would stand attracted.

25. However, in the case on hand, it is the case of the respondents that the cheques, which are the subject matter of the present appeals/petitions, were not given for the discharge of a legally enforceable debt, which has been accepted by the courts below on the ground that neither the appellant has proved that the cheques were given for the purpose of discharging a legally enforceable debt nor any materials have been placed by the appellant to show that there existed a legally enforceable debt towards which the cheques in issue were given. Without the appellant discharging his share u/s 138, the appellant cannot fall back on Section 139 to show that the presumption would have to be given to the appellant and the ball would have to be placed in the court of the respondents to prove that the cheques were not given towards the discharge of a legally enforceable debt or other liability. Therefore, the courts below, rightly appreciating Section 138 of the Act has held that the *appellant having not established that there existed a legally enforceable debt and the cheques which were given by the respondents, which stood dishonoured were given towards its discharge, had rightly negatived the contention of the appellant, with which this Court has no qualms or grievance.*

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28. The decision in Dashrathbhai case is more in favour of the respondents. In the said case, the Apex Court has held that in case of part-payment before the presentation of the cheque must be endorsed whereinafter alone the cheque dishonour would attract Section 138 of the Act against the issuer of the cheque. In this regard, the Apex Court had made the following observation :-

> *"16. The judgments of this Court on post-dated cheques when read with the purpose of Section 138 indicate that an offence under the provision arises if the cheque represents a legally enforceable debt on the date of maturity. The offence under Section 138 is tipped by the dishonour of the cheque when it is sought to be encashed. Though a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at*

the time of maturity or encashment, then the offence under Section 138 is not made out.

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28. A Division Bench of the Kerala High Court has held in Joseph Sartho v. Gopinathan that since the representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the drawer of the cheque cannot be convicted for the offence under Section 138 of the Act. The High Court of Delhi addressed the same issue in Alliance Infrastructure Project Ltd. v. Vinay Mittal. The High Court observed that when part payment is made after the cheque is drawn, the payee has the option of either taking a new cheque for the reduced amount or by making an endorsement on the cheque acknowledging that a part payment was made according to the provisions of Section 56 of the Act. It was also held that the notice of demand which requires the drawer of the cheque to make payment of the whole amount represented in the cheque despite receiving part repayment against the sum, before the issue of notice, cannot be valid under Section 138(b) of the Act. A similar view was taken by the High Court of Gujarat in Shree Corporation v. Anilbhai Puranbhai Bansal.

29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note 12

(2008) 3 KLJ 784 13 ILR (2010) III Delhi 459 14 [2018 (2) GLH 105] appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment."

29. From the aforesaid decision, it is implicitly evident that the payments which have been made should be reflected so as to come to the conclusion that the cheque, which is the subject matter of dishonour was with regard to the discharge of a legally enforceable debt. Further, the Apex Court has held that the dishonour of the cheque alone cannot be the criteria to invoke Section 138 of the Act, but the cheque, which stood dishonoured should be against a legally enforceable debt. However, as stated above, there are no materials to show that the amount, which is shown in the cheque is a legally enforceable debt, *as no statement of account, the dues paid and the dues in default, etc., have not been established by the appellant.*

30. Therefore, applying the said ratio to the present case, as aforesaid, the appellant ought to discharge their burden by giving the requisite details with regard to the statement of account and all the other details, which have been noted above and without giving the aforesaid details, placing a cheque, which is alleged to have been dishonoured, which is alleged to have been given by the respondents cannot be the basis to hold that a case u/s 138 of the Act is made out."

12. Even in the present case, the respondent had even disputed the entering into chit agreement with the appellant. Inspite of the directions of this Court for production of the agreement, which was not produced by the appellant before the court below and there was clear dispute with regard to the payment of the chit amounts, the court below had rejected the case of the appellant. Further, it is to be pointed out that even in the present case, the details of the amounts paid by the respondent and the details of the default from the books of accounts of the appellant has not been provided to the respondent inspite of the same being sought for. In the absence of clear

default committed by the respondent being established by the appellant, the court below was right in rejecting the case of the appellant.

13. Applying the decision in *Dashrathbhai case*, which has been relied on in the aforesaid decision to the case on hand, as the facts being similar, necessarily, the only inference that could be drawn is that the appellant had not discharged its burden of proving the exact default committed by the respondent and that there was a legally enforceable debt, which was not properly discharged by the respondent, the court below had rightly arrived at the conclusion that no case has been made out by the appellant and dismissed the complaint.

14. This Court, on careful perusal of the entire order is of the considered opinion that the court below has rightly appreciated all the materials and had come to the right conclusion and, therefore, no interference is warranted with the order impugned herein.

15. For the reasons aforesaid, the impugned order passed by the court below does not deserve interference and the same stands affirmed. However, liberty is granted to the appellant to provide all the details, such as statement of account, the payment and receipt details with regard to the chit amounts, the defaulted amounts, the agreement signed between the appellant and the respondent towards the chit transaction and also materials to establish that the cheque, which has been dishonoured was given for the purpose of discharging the said debt, which is legally enforceable, then there would be no impediment for the court below to look into the issue u/s 138 of the Act.

03.06.2024

Index : Yes / No

GLN

To

The Judicial Magistrate No.I
Fast Track Court, Magisterial Level
Coimbatore.

M.DHANDAPANI, J.

GLN

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