



Crl.O.P.No.11043 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.11043 of 2024

in

Crl.A.SR.No.17508 of 2024

M/s.Sree Gokulam Chit and Finance Co. (P) Limited,
Rep. by its Vice Chairman Mr.V.C.Praveen,
Having regional office at :
Sree Gokulam Towers,
100 Feet Road, 7th Street,
Gandhipuram, Coimbatore – 72.
Having corporate office at :
No.66, Arcot Road, Kodambakkam,
Chennai – 600 024.

... Petitioner

Vs.

B.Devan

... Respondent

Prayer in Crl.O.P.No.11043 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave to appeal against the judgment of the Trial Court in C.C.No.626 of 2014 passed by the Judicial Magistrate – II, Coimbatore.

Prayer in Crl.A.SR.No.17508 of 2024 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to call for the records and Judgment acquitting the respondent/accused in C.C.No.626



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of 2014 dated 09.01.2024 passed by the Judicial Magistrate – II, Coimbatore and set aside the same.

For Petitioner : Mr.L.Rajasekar

ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned judgment passed by the learned Judicial Magistrate - II, Coimbatore in C.C.No.626 of 2014 dated 09.01.2024.

2. The complainant, namely R.Harikrishnan, who is a power agent and working as Assistant Manager in M/s.Sree Gokularm Chit & Finance Co. (P) Ltd and the respondent/accused was Guarantor for subscriber Mr.Sasi Kumar and he subscribed in a Chit Group bearing No.G2E/1198/GAN/19 having a chit value of Rs.1,00,000/- with a monthly subscription of Rs.5,000/- for 20 months commencing from 22.09.2008 and termination on 22.04.2010. Further, the accused was paid the chit amount when the accused was declared the successful bidder and he received the bid amount Rs.77,629/- on 01.06.2009 and



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the said Sasi Kumar accused was irregular in payments of the monthly subscription and he continued to commit default and he owed an outstanding sum of Rs.61,040/- to the complainant on account of the defaulted monthly subscriptions with interest accrued thereon. After repeated request, the respondent/accused had given a cheque bearing No.270676 dated 30.06.2012 drawn at Canara Bank, Ooty for a sum of Rs.61,040/- (Sixty one Thousand and forty only) on 30.06.2012. As per the instructions of the respondent, the petitioner presented the said cheque for collection and the said cheque was returned dishonoured with an endorsement "Funds Insufficient" vide memo dated 04.07.2012. Thereafter, the petitioner issued a legal notice to the respondent on 01.08.2012 calling upon the respondent to pay the amount within 15 days from the receipt of the notice. On 03.08.2012, the respondent received the notice on 03.08.2012 and sent a belated reply notice on 30.08.2012 with false averments and did not pay any amount to the petitioner. Therefore, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') before the trial court in C.C.No.626 of 2014. While so, after trial, the Court below had dismissed the said complaint



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filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant special leave to prefer an appeal against the said judgment dated 09.01.2024 in C.C.No.626 of 2014.

3. The learned counsel appearing for the petitioner submitted that the signature in the alleged cheque was admitted by the respondent, who is the legal custodian of the cheque, whereas the Court below has failed to consider the facts of the case in a proper manner. He further submits that the petitioner will be put to much hardship, if the leave sought for is not granted. Hence, he prays for appropriate orders.

4. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.

5. It is the consistent ratio laid down that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has been accused of a crime rests and where a person, who had been accused of a crime had been acquitted by the court below, a presumption



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follows the golden rule that a person is presumed innocent until proven guilty and on that basis the second presumption on the basis of the acquittal necessitates the appellate court to scrutinize the materials more carefully. Further, grant of leave to the prosecution should not be as a matter of routine, but should be on just and equitable basis, when materials reveal that the court below has not appreciated the materials in proper prospective.

6. Grant leave provided for u/s 378(4) is not an empty formality, but has been brought into the statute only to safeguard the interests of the persons accused of a crime, who have since been acquitted, as otherwise, they would be put through the rigours of continuous litigation even after their innocence has been accepted by the trial court.

7. With the above in mind, a perusal of the entire records reveals that the respondent is not a subscriber and he is only a guarantor of one subscriber, namely Sasi Kumar and no details were furnished in the complaint with regard to the action taken against the subscriber Sasi Kumar. Further, it is mentioned in the complaint that the chit value is



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Rs.1,00,000/- with the duration of 20 months with the monthly subscription of Rs.5,000/-, which was commenced on 22.09.2008 and on 01.06.2009, the bid amount of Rs.77,629/- was paid to the respondent. Thereafter, the said subscriber not paid the subscription. However, without any materials, the petitioner claims that there is an outstanding of Rs.61,040/- towards chit dues along with interest. It is relevant to mention that the balance period to pay subscription is only for ten months. Even as per the averments of the petitioner, the subscription amount for ten months is Rs.50,000/- alone, thereby this court is unable to understand on what ground the petitioner is claiming a sum of Rs.61,040/- as outstanding from the subscriber. Further, Ex.P.8/ledger maintained by the petitioner with regard to subscriber Sasi Kumar was marked before the trial. P.W.1 in his cross examination had deposed that the total outstanding as on 22.12.2009 is only Rs.38,150/- and the subscription paid is Rs.61,850/- as on 22.02.2009. When the balance amount as on 22.02.2009 is only Rs.38,150/-, how the petitioner has collected a cheque to the tune of Rs.61,040/- from the respondent, for which, there is proper answer by the petitioner neither in cross examination nor in the complaint. Hence, the complaint itself is breft of



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any details. Considering all the above aspects, the trial court had rightly dismissed the complaint filed by the petitioner, which cannot be said to be illegal or perverse. Therefore, this court is not inclined to interfere with the same.

8. Further, in order to grant leave, a case should be made out, but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, in the case on hand, the petitioner, has not made out of a case, where the findings are so very perverse that there has been miscarriage of justice warranting this Court to grant leave to set right the wrong that has been committed by the court below.

9. No infirmities or other materials are placed which necessitates relook into the findings recorded by the court below and granting leave to appeal would be nothing but a travesty of justice insofar as the respondent is concerned, who has been acquitted through a well considered judgement passed by the court below.



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M.DHANDAPANI, J.

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10. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

12.06.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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To

The Judicial Magistrate – II, Coimbatore.

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