IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.No.111 of 2012

M/s. Sree Gokulam Chit & Finance
Co. (P) Ltd.,
Represented by its Managing Director
and Foreman: A.M.Gopalan : Appellant/Complainant

Vs.

Mrs.R.Ponmani
W/o. Ravichandran
Proprietor : Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records and Judgment acquitting the Respondent/Accused in C.C.No.209/2007 dated 21.11.2011 passed by the learned Judicial Magistrate No.II, Coimbatore and set aside the same.

For Appellant : Mr.L.Rajasekar
For Respondent : No Appearance

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ORDER

This Criminal Appeal has been filed to set aside the Order passed by the learned Judicial Magistrate No.II, Coimbatore in C.C.No. 209/2007, dated 21.11.2011.

2. The learned Counsel for the Appellant submitted that the Appellant is the Complainant before the Judicial Magistrate No.II, Coimbatore. The Appellant is a Chit Company. The Respondent in this case is the wife of the subscriber. The husband of the Respondent had subscribed to chit for Rs.3,00,000/- in which he had to pay every month Rs.15,000/- commencing from 10.08.2004 and it has to be completed by 10.03.2006. On 19.01.2005, the husband of the Respondent was granted the prize money of Rs.2,25,000/-. After receipt of the Prize money, the husband of the Respondent committed default. As on 10.03.2006, after the completion of the chit there was an outstanding of Rs.1,24,842/-.

3. The cheque issued by the wife of the subscriber towards the outstanding was presented on 01.02.2006 for an amount including the interest which was Rs.2,03,000/-. The cheque was returned for insufficient fund on 03.02.2006. The Company issued notice to the Respondents on 10.02.2006 which was acknowledged by the Respondent on 12.02.2006. No reply was sent. After waiting for 15 days, the Company filed the Complaint through Assistant Manager of the Branch concerned.

4. After recording statement of the Assistant Manager and perusing

the records, the learned Judicial Magistrate No.II had taken the Complaint on its file and issued summons to the Accused, Respondent in this Appeal. Accordingly, the Respondent appeared before the learned Judicial Magistrate No.II, copies were furnished. The Accused was questioned with regard to the charge since Accused had denied the charge. The learned Judicial Magistrate No. II, Coimbatore ordered trial.

5. During trial, Assistant Manager of the Branch concerned was examined as P.W-1 and documents were marked as Ex.P-1 to Ex.P-6. In the course of the cross-examination of P.W-1, the documents relied by the Accused was marked as Ex.D-1 and Ex.D-2. Ex.D-1 is the statement of Account for the subscription of the chit by the husband of Accused. Ex.D-2 is the letter sent by the company dated 06.10.2006.

6. After hearing the argument of the learned Counsel for the Complainant and the defence, on assessment of the evidence, learned Judicial Magistrate No.II, Coimbatore by Judgment dated 21.11.2011 in C.C.No.209/2007 dismissed the complaint and acquitted the Accused.

7. Aggrieved by the same, the learned Counsel for the Complainant

approached the Hon'ble High Court. The learned Counsel for the Appellant invited the attention of the Court to the statement of accounts regarding the chit in Ex.D-1 and the portions in the cross-examination of P.W-1 and the Judgment of the learned Judicial Magistrate No. II, Coimbatore. It is the submission of the learned Counsel for the Appellant that the finding of acquittal recorded by the learned Judicial Magistrate No. II is perverse in the light of the documents available before the Court and in the light of the Provision of law governing Chits and Negotiable Instruments Act.

8. Inspite of sufficient chance given to the learned Counsel for the Respondent to argue the case, he had not preferred to appear before this Court. Hence, this Court, on hearing the Appellant and on perusal of the materials available before this Court, proceed to dispose off this case.

9. ***Point for consideration:***

Whether the Judgment of learned Judicial Magistrate No.II, Coimbatore, dismissing the Complaint in C.C.No.209/2007, dated 21.11.2011 is perverse?

10. On perusal of the Judgment and on appreciation of evidence of P.W-1 and documents under Ex.P-1 to Ex.P-6, it is found that the Complainant had not approached the Court with clean hands. Merely because, presumption

under Section 139 of Negotiable Instrument Act is in favour of the holder, in due course of the cheque, as the signature in the cheque is not denied cannot be the reason for the trial Judge to convict the Accused on the basis of presumption. The preponderance and principles of the case is also considered invariably in a trial. Here, the Complaint proceeds stating that the husband of the Accused subscribed to the chit with the Complainant company bearing chit group number G499 in which the husband of the Accused had to pay monthly subscription of Rs.15,000/- per month for 20 months. On completion of the period, it will be Rs.3,00,000/-. In the auction on 01.02.2006, the husband of the Accused was paid Rs.2,03,000/- for which the wife stood as guarantor and issued the cheque dated 01.02.2006 for the value of Rs.2,03,000/- drawn on Karur Vysya Bank, Ganapathy Branch, Coimbatore. The cheque was presented on 02.02.2006 by the company in their banker M/s. Lord Krishna Bank Limited, Gandhipuram Branch, Coimbatore and the same was returned with an endorsement “insufficient funds” on 03.02.2006. On 10.02.2006, the Complainant's company issued a legal notice directing the Accused to settle the dues. The said legal notice though received by the Accused on 12.02.2006, he had not approached the Complainant to settle the dues. Therefore, after waiting for a reasonable period of time of 15 days time, the complaint was filed. The complaint was taken on file after recording the sufficient statements of the complainant and on perusal of the documents. The learned Judicial Magistrate No.II had taken cognizance of the offence and issued summons to the Accused. The copies were furnished to the Accused under Section 203 Cr.P.C., and the Accused was questioned under Section 313 Cr.P.C., he denied the same. Therefore, the trial was Ordered. In trial, the Assistant Manager of the Company examined himself as P.W-1. The Power of Attorney deed in favour of the Manager of the Complainant company was marked as Ex.P-1. The cheque was marked as Ex.P-2. The memo of return was marked as Ex.P-3. The Debt Advice was marked as Ex.P-4. The copy of statutory notice issued by the Complainant was marked as Ex.P-5. The acknowledgment card for receipt of statutory notice was marked as Ex.P-6. In the course of the cross-examination, the document issued by the Complainant company in favour of the Accused was marked as Ex.D-1. The notice issued by the Complainant Company dated 06.12.2005 was marked as Ex.D-2. On perusal of the evidence of P.W-1, he had in his examination-in-chief deposed the ingredients of the complaint and marked Ex.P-1 to Ex.P-6. Only in the cross-examination, the statement of accounts issued by the Complainant Company to the husband of the Accused was marked as Ex.D-1 and the notice issued by the company to the subscriber for the outstanding dues dated 06.12.2005 was marked as Ex.D-2 in which it is stated that the outstanding including dividend is Rs.1,34,354/- and the balance of Rs.1,20,646/- payable by the subscriber towards the loan and also the payable interest is Rs.19,303/-. Therefore, as on date of notice i.e., 06.12.2005, the subscriber/husband of the Accused was liable to pay to the company totally Rs.1,39,949/-. Instead of approaching the Court with all relevant documents, the complaint was filed with the above six documents only viz., cheque return memo, debt advice, statutory notice, acknowledgment card, etc.. Therefore, P.W-1 was confronted regarding conduct of the chits as per the rules of the company as well as the law in Tamilnadu regarding registered chits. In the course of the cross-examination, P.W-1 fairly concedes that he had not filed statement of accounts showing the subscription paid by the subscriber for the alleged group chit Registration No.G2G Ticket No. 409/14 whose monthly subscription is Rs.15,000/- for a period of 20 months. When the auction was held, the chit price amount was paid to the husband of the Accused who was the successful bidder. When the husband of the Accused committed default, whether the defaulting subscriber is permitted to participate in auction were the suggestions put in cross-examination by the learned Counsel for the Accused. Whenever P.W-1 was confronted regarding the facts about chit amount and due procedure adopted in taking promissory note from the subscriber at the time of granting price chit and taking cheque from guarantor. P.W-1 claimed ignorance. He gave evasive replies. He had clearly stated that the husband of the Accused was not removed from the group chit for his default. He had fairly conceded that the Complaint does not mention about the commencing of the group chit and the date on which the price money was granted to the husband of the Accused. He fairly conceded that the register maintained by the Complainant Company regarding day book and other registers were not filed before the Court to prove the claim of the complainant that the Accused committed default. In the light of those discussion and in the light of the cross-examination of P.W-1, Manager of the Company having answered almost all the suggestions put to him in the cross-examination, but had given evasive replies. When he answered the suggestion that who is actually liable? Whether the Accused is liable? The absence of liability of the Accused was discussed by the learned Judicial Magistrate No.II, Coimbatore to arrive at a conclusion that the cheque under Ex.P-2 was not supported by prior liability of the Accused.

11. The submission of the learned Counsel for the Appellant is that the learned Judicial Magistrate No.II, Coimbatore, had not appreciated the evidence when the Complainant had proved his case through cogent evidence under Section 139 of Negotiable Instruments Act, when the presumption is in favour of the Complainant, the learned Judge failed to appreciate those facts

and instead dismissed the Complaint without rebuttal evidence of the Accused by entering into the witness box and let in evidence. That therefore, the Judgment of the learned Judicial Magistrate No.II, Coimbatore, dismissing the Complaint and acquitting the Accused from the charge under Section 138 of Negotiable Instruments Act is to be treated as perverse cannot at all be acceptable. There are reported rulings of the Hon'ble Supreme Court stating that in all the cases, the Accused need not enter the witness box and let in rebuttal evidence. It is enough, if the Accused is able to prove that the case of the complainant is not true and preponderance and principles of the case raised a reasonable doubt in favour of the Accused. Under those circumstances, on proper appreciation of evidence, the learned Judicial Magistrate No.II, Coimbatore, had arrived at a conclusion that there is no liability from the Accused towards the Complainant Company. The Complainant Company had suppressed the facts regarding the original liability of the husband of the Accused by not producing the day book and other relevant registers maintained with regard to the group Chit in G414. Therefore, the Judgment of the learned Judicial Magistrate No.II, Coimbatore in C.C.No.209/2007 dismissing the Complaint is found a well-reasoned Judgment and is not perverse warranting interference of this Court.

12. In the light of the above discussion, the point for consideration is answered in favour of the Respondent/Accused and against the Appellant/Complainant. Therefore, the Judgment of learned Judicial Magistrate No.II, Coimbatore dismissing the Complaint in C.C.No.209/2007 dated 21.11.2011 is found proper and the same is to be confirmed.

In the result, **this Criminal Appeal is dismissed.**

The Judgment of learned Judicial Magistrate No.II, Coimbatore dismissing the Complaint in C.C.No.209/2007 dated 21.11.2011 is confirmed.

28.02.2024

Index : Yes / No
Internet : Yes / No.
Speaking order/Non speaking order
dh

To

1.The Judicial Magistrate No.II,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Judgment made in

CRL.A.No.111 of 2012

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