IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.02.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

CRL.A.No.371 of 2020

M/s.Sree Gokulam Chit & Finance Co. Limited,
Represented by its Authorised Person,
Mr.P.Kaliappan
S/o.Ponnuvel,
Aged 40 years,
No.59/1-A, First Floor, Mayanoor Main Road,
Near ARRS Multiplex, Salem-636 004. … Appellant / Complainant

vs.

P.Murugesan … Respondent / Accused

PRAYER: This Criminal Appeal is filed under Section 378(4) of Criminal Procedure Code, against the judgment in S.T.C.No.151 of 2018 dated 20.02.2020, passed by the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Salem.

For Appellant : Mr.L.Rajasekar
For Respondent : Mr.K.Sathishkumar

JUDGMENT

The complainant herein is the appellant before this Court. Being aggrieved by the order of acquittal dated 20.02.2020, passed in

S.T.C.No.151 of 2018, on the file of the Special Court for Land Grabbing Cases, Salem, the complainant herein has preferred this appeal.

The facts put forth by the complainant in brief are as follows:

2. The complainant M/s.Sree Gokulam Chits ad Finance Private Limited, is a private limited company registered under the Companies Act, having registered office, in Chennai and having branches all over the Country, doing chit business which is registered before the Chit Registrar under the Chit Funds Act, 1982.

●The Accused joined in the chit group commencing from 25.07.2014 spread over 20 months for a ticket for Rs.50,000/- p.m., and the ticket number of the accused is G2J/1839/KDM/19 is not in dispute.

●The accused was a successful bidder in the 7th auction held on 26.01.2015 and the accused received the price money of Rs.7,70,000/- by way of cheque drawn on Axis Bank, Chennai (Cheque No.202059 dated 05.03.2015).

●In the said chit transactions, the accused has not repaid the debt amount properly. He has fallen heavy amount due in his chit account.

●After repeated demands made by the complainant for the payment of due amount with interest, the accused issued a Karur Vysya Bank, Attur Branch cheque dated 08.04.2017 for a sum of Rs.1,99,669/- to discharge his liability and he assured that the cheque would be honoured if presented for the collection on due date.

●On 12.04.2017, when the cheque was presented for collection with their banker-Corporation Bank, Alagapuram Branch, the same was returned on 15.04.2017 on the ground of funds insufficient with the bank's return memo.

●The complainant caused to issue legal notice to the accused on 06.05.2017, calling upon him to pay the amount of Rs.1,99,669/- covered under the dishonoured cheque.

●Despite the receipt of notice, the accused either settled the amount or gave a reply.

●The accused issued the above cheque to discharge his liability in order to defraud the complainant, he did not provide sufficient funds in his account and the same amounts to an offence punishable under Section 138 of Negotiable Instrument Act.

3. The case of the complainant was resisted by the accused stating that the amounts paid by him were not accounted properly and these details were not found either in the legal notice or in the complaint. Adding to that PW1 has also not spoken about the payments made by him.

4. At trial, the authorised person of the complainant was examined as PW1. Six documents were marked. The ledger extract pertaining to the accused in respect of this transaction is Ex.P6. Through cross-examination of PW1, six documents were marked on the accused side. Payment receipt dated 22.05.2015 for an amount of Rs.70,000/- is Ex.D1. Payment receipt for an amount of Rs.30,000/- dated 11.04.2015 is Ex.D3.

5. When the accused was questioned, he has denied the offence. During the questioning under Section 313 of Cr.P.C., he has answered that it is a false case and has given no other explanation.

6. The learned counsel appearing for the appellant/complainant Mr.L.Rajasekar would strenuously contend that the accused who was a subscriber of chit for a value of Rs.10,00,000/- quit the chit on the 7th installment and taken the price money of Rs.7,70,000/- which was paid to him by way of cheque dated 05.03.2015. The monthly subscription is Rs.50,000/- and period of chit was 20 months. It is his further arguments that after receipt of the above said price money, he became irregular in payment. For the amount due i.e., Rs.1,99,669/- he issued a cheque dated 08.04.2017 was returned from the complainant's bank as funds insufficient (return memo Ex.P3). He would further argue that on receipt of

the legal notice, the accused neither repaid money nor issued a reply notice.

7. It is his further argument that Ex.P6 and D6 Ledger details of the accused chit transaction are issued for different purposes and the amounts paid by the accused have duly been given credit to, which is reflected in Ex.P6 ledger account of accused.

8.Contending contra, the learned counsel for the respondent/accused would argue that the chit was originally subscribed by some other person and the accused was substituted afterwords. Though the accused made payments, nothing is whispered in the complaint about the same. Exs.P6 and D6 accounts statements do not tally with each other. It is his further argument that as the complainant's chit company has not accounted properly, his complaint is liable to be dismissed and the trial Court appreciated the arguments put-forth by the learned counsel for the accused and dismissed the claim of complainant. When these details were not properly accounted by the complainant, no presumption would arise under Sections 118 and 139 of the Negotiable Instruments Act.

9. It is relevant to refer to the observations made by the Apex Court

in ***Rangappa vs. Mohan*** reported in ***2010 (4) CTC 118 (SC)*** wherein it has been held that the standard of proof to discharge the evidential burden is not as heavy as that usually seen in situations, where the prosecution is required to prove the guilt of an Accused. The Accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The Accused must meet the standard of 'preponderance of probabilities', similar to a Defendant in a Civil proceeding.

10. In ***Basalingappa vs. Mudibasappa*** reported in ***AIR 2019 SC 1983*** the Apex Court has held that " ... In order to rebut the presumption and prove to the contrary, it is open to the Accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 of Negotiable Instruments Act, 1881 do not mean that Accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability. But the Accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the cases, to act upon the supposition that the debt/liability did not exist.

11. In ***K.Baskaran vs. Sankaran Vaidhyan Balan*** reported in ***1999 (3) CTC 358*** the Apex Court has analaysed the prime elements of offence as per Section 138 of the Negotiable Instruments Act, 1881 as under:-

> "14. ... The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the Cheque, (ii) presentation of the Cheque to the Bank, (3) returning the Cheque unpaid by the Drawee Bank, (4) giving Notice in writing to the drawer of the Cheque demanding payment of the Cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the Notice."

12. It is the evidence of the authorised person PW1 Kaliyappan that the accused was a subscriber of chit in the complainant's company for a value of Rs.10,00,000/- and monthly subscription is Rs.50,000/-. It is further evident that the cheque period is 20 months commencing from 25.07.2014 to 25.04.2016.

13. It is discernible from the evidence of PW1 that the accused quit the chit on 7th installment and he took the price money of Rs.7,70,000/- which is paid to him by way of cheque on 05.03.2015.

14. Ex.P6 is the ledger extract pertaining to chit transaction of accused which is a computer generated one. Nowhere, the details of

entries in Ex.P9 were questioned.

15. Exs.D1 and D3 are the payment receipts issued by the complainant's company to the accused for an amount of Rs.30,000/- and Rs.70,000/- under Ex.P6 ledger extract. The said amounts have duly been given credit to in the months of April and May 2015.

16. As rightly pointed out by the learned counsel for the respondent, these payment details have not been mentioned either in the legal notice or in the complaint. It is relevant to note that PW1 has also not spoken about the payments made by the accused subsequent to the receipt of price money which is omission on the part of the complainant.

17. More so, it is not the case of the accused that he was not a subscriber to a chit in the complainant's company. Exs.D1 to D6 have been marked through cross-examination of PW1. The defence of the accused is that the payments made subsequent to the receipt of price money have not been accounted either in the legal notice or in the complaint. Therefore, the complainant's claim shall not be accepted.

18. Despite omission pointed out by the accused, this Court is of the

view that once signature in the cheque Ex.P2 is admitted and the amount mentioned therein is found to tally with Ex.P6-ledger extract of the accused that the presumption under Section 118 read with 139 of the Negotiable Instruments Act, arise in favour of the complaint that the cheque is issued by the accused for a legally enforceable debt. Law is well settled that this legal presumption is a rebuttable one. The accused can rebut the said presumption through oral or documentary evidence. He has also at liberty to rebut through the cross-examination of PW1 and even though circumstantial evidence.

19. The crucial issue is that through cross-examination of PW1 coupled with Exs.D1 to D6 whether the accused succeeded in rebutting the presumption.

20. As per Ex.P6, for the total amount due, the accused has issued cheque for an amount of Rs.1,99,669/-. Ex.P6 is ledger extract pertaining to the accused chit transaction. As mentioned supra, Exs.D1 and D3 payment details are found in Ex.P6. The payments of Rs.30,000/- and Rs.70,000/- made in the month of April and May 2015 have duly been entered in the ledger extract.

21. On a careful perusal of Ex.D4 pass book issued by the complainant's company, the chit was originally in the name of Priya Karthick and it was transferred in the name of accused, which was made on 21.02.2015. Up to the month of May 2015, dividend amounts have been credited. The total dividend amount from 25.07.2014 to 25.04.2017 given to the accused is Rs.71,500/-.

22. The accused has mentioned only about two payments that were made by him are Exs.D1 and Ex.D3. However, it could be seen that in Ex.P6, in the month of January 2016, the accused paid an amount of Rs.2,00,000/- and in the month of April 2016, an amount of Rs.1,50,000/- was paid. In the month of April 2017, amounts due from the accused is quantified as Rs.1,99,669/-, which is the amount found in Ex.P2 cheque.

23. The learned counsel for the respondent drew the attention of this Court that Ex.D6 which is the ledger account of the accused wherein the total amount do not tally with Ex.P6.

24. The learned counsel for the appellant would state that Ex.P6 is for the period from July 2014 to April 2017, whereas in A.R.C.No.696 of 2018, the period covered in the statement is July 2014 to June 2017.

Therefore, the difference in the due sum, ought to come.

25. On a thorough perusal of both sides submissions, I find there is some force in the arguments of the learned counsel for the appellant/complainant.

26. This is an appeal against the order of acquittal, the High Court would be so slow in interfering with the said order, unless the findings suffers from perversity.

27. As pointed out by the learned counsel for the respondent, the payments made by the accused were not at all explained either in the legal notice or in the complaint. A deep perusal of the legal notice-Ex.P4 and the complaint details are totally bereft of payments made by the accused. But, the said error is rectified by filing the ledger extract-Ex.P6, which is in clear terms. Had Ex.P6 not filed in to Court which spells out the exact due certainly the complainant will be out of Court.

28. For non-explaining the payments made by the accused, the complainant cannot be made to suffer. Therefore, this Court is of the considered opinion that through cross-examination of PW1 coupled with

Exs.D1 to D6, the presumption arose in favour of the complainant under Section 139 of Negotiable Instruments Act, was not rebutted by the accused suitably.

29. In the light of the above discussions, it is concluded that as per Section 139 of the Negotiable Instruments Act, the accused has failed to rebut presumption and the appeal has got merits.

30. In the result, this Criminal Appeal stands allowed and the judgment in S.T.C.No.151 of 2018 dated 20.02.2020, passed by the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Salem stands set aside.

13.02.2024

Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
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To:

1. The Special Judicial Magistrate,
   Special Court for Land Grabbing Cases,
   Salem.

2. The Public Prosecutor,
   High Court, Madras.

R.KALAIMATHI, J.,

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