IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced On	26.02.2024

CORAM:

THE HON'BLE MRS JUSTICE R. KALAIMATHI

Crl.A.No.368 of 2020

M/s.Sree Gokulam Chit & Finance Co., (P) Limited
represented by its Legal Assistant,
Mr.V.Mukuntha
S/o.T.Velukutty Nair, 52 years
No.66, Arcot Road,
Chennai – 600 024. ...Appellant/Respondent/Complainant

Versus

P.Rajendran ...Respondent/Appellant/Accused

Prayer: Criminal Appeal filed under Section 378 Cr.P.C. against the judgment in CA.No.199 of 2018 dated 13.11.2019, passed by the XV Additional Sessions Judge, City Civil Court, Chennai, reversing the judgment in CC.No.7805 of 2007 dated 26.03.2018 passed by the Hon'ble Metropolitan Magistrate Fast Track No.III) Saidapet, Chennai.

For Appellant : Mr.L.Rajsekar
For Respondent : Mr.Vanaraj

JUDGMENT

Being aggrieved by the judgment of Learned XV Additional, City Civil Court, Chennai dated 13.11.2019 in C.A.No.199 of 2018 against the order of acquittal, the complainant herein has preferred this criminal appeal.

2. The Complainant/M/s.Sree Gokulam Chit & Finance Co., (P) Limited, represented by its Legal Assistant, Mr.V.Mukuntha. Complaint presented before the Metropolitan Magistrate, Fast Track No.III, Court, Saidapet, Chennai against the respondent Mr.P.Rajendran in C.C.No.7805 of 2007 dated 26.03.2018. Upon evaluation of the records, the Trial Court concluded that the presumption which arose in favour of the complainant was not rebutted by the accused, and he failed to probablize his defense. The Trial Court concluded that the accused was guilty of charge under Section 138 of Negotiable Instruments Act, 1881 (for the sake of brevity, it will be mentioned as "Act") convicted and sentenced him to undergo simple imprisonment for a period of six (6) months after deducting a sum of Rs.2,55,000/- from the cheque amount, the accused was directed to pay the remaining amount as compensation to the complainant.

3. This judgment of the Trial Court was challenged by the accused before the Learned XV Additional, City Civil Court, Chennai dated 13.11.2019 in C.A.No.199 of 2018. The Learned Appellate Court upon hearing the arguments on either sides and after perusal of records, concluded as mentioned below:-

(i). The Complainant failed to substantiate the legally enforceable debt to the extent of quantum of amount, from the date of complaint;

(ii). The Complainant has not filed any statement of accounts;

(iii). The Complainant has not substantiated that the cheque amount in dispute was issued for the legally enforceable debt and with these reasons concluded that the accused is not found guilty of charge under Section 138 of the said Act and the appeal was allowed by setting aside the judgment and sentence passed by the Trial Court in C.C.No.7805 of 2007 dated 26.03.2018;

(iv). Against this judgment, the Appellant/M/s.Sree Gokulam Chit & Finance Co., (P) Limited has filed this Appeal.

4. Case of the Complainant is narrated in brief is as follows:-

- The Claimant/ M/s.Sree Gokulam Chit & Finance Co., (P) Limited is a private company incorporated under the Companies Act, 1956 having its registered office at No.66, Arcot Road, Chennai – 600 024 and it is represented by its legal assistant Mr.V.Mukuntha.
- Mr.P.Rajendran of Saligramam, Chennai/the Accused is one of the subscribers to the Chit Group No.G2J/49/9 conducted by the complainant company.
- The Accused issued a cheque bearing No.123772 dated 14.05.2007 for a sum of Rs.5,06,339/- drawn on Indian Overseas Bank, Nesapakkam Branch, Chennai – 600 078 in favour of the Complainant for liquidating, a part of his liability in respect of the defaulted subscriptions in the above said chit.
- The said cheque was re-presented by the complainant company on 08.06.2007 for encashment through the complainant's bank, M/s.The Catholic Syrian Bank Ltd., Kodambakkam Branch, Chennai – 600 024. The said cheque was returned with remarks as 'account closed'.

- The intimation of the said dishonoured cheque was received by the complainant on 19.06.2007.
- The Complainant issued a statutory notice dated 07.07.2007 to the accused through registered post with acknowledgement and called upon the accused to make payment within a period of 15 days from the date of receipt of the said notice.
- The said notice was served to the accused on 17.07.2007
- The Accused neither made any payment nor issued any reply to the said notice.
- Alleging that the accused issued the cheque deliberately knowing that the said cheque would be dishonoured on account of reason 'accounts closed'. Despite the receipt of notice, he did not re-pay the loan amount to the complainant Chit Company. He is, therefore, liable to be punished under Section 138 of the Act.

5. The defense, set up by the accused is that the prize money was not mentioned neither in the complaint nor in the proof affidavit of PW1. From which instalment the accused failed to pay has not been stated. On

01.12.2007, the accused has paid a sum of Rs.1 Lakh (Ex.D2/Payment receipt). The accused has paid Rs.2,55,000/-: after the presentation of the complaint, he paid an amount of Rs.1,25,000/- on 14.05.2007. He has re-paid the amounts as mentioned *supra* and the complainant company has not accounted for the same. The cheque, which was received for the security purpose was utilized for the purpose of filing the complaint which is an abuse of process of law.

6. Before the Trial Court, the authorized person of the complainant company has examined herself as PW1 and six documents were marked. On the accused side, no oral evidence was let in. Two documents were marked. Ex.D1 is Chit Passbook of the accused and Ex.D2 is the payment receipt issued by the complainant Chit Company to the accused.

7. The learned counsel appearing for the appellant, Mr.L.Rajsekar vehemently contended that the accused has admitted the signature in the Ex.P2 cheque and the presumption arise in favour of the complaint as per Section 139 of the Act. As the presumption is a rebuttable one, the accused is at liberty to prove his defense through oral or documentary evidence or by means of cross-examination of PW1. But he has not suitably rebutted the presumption arose in favour of the complainant herein. The payment made through Ex.D2 is accepted by the complainant company and the accused is liable to pay rest of the said amount and the Trial Court has rightly passed a judgment of conviction.

8. The learned counsel appearing for the respondent/accused,Mr.Vanaraj *per-contra,* strenuously argued that as per Ex.D1 passbook of the accused, he has already paid a sum of Rs.5,70,900/- and as per the cross-examination details of PW1. He has also admitted that the accused re-paid a sum of Rs.2,55,000/-. Ex.D2 explicates that after the presentation of the complaint, accused repaid a sum of Rs.1,25,000/-. He would stoutly contend that without giving proper account, the complaint is presented in order to gain unlawful enrichment. To buttress his arguments, the judgment of Hon'ble Apex Court in ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and Anr*** 2023 (1) SCC 578 was referred to, in order to contend that the loan amount is even partly discharged then there is an altered situation and the cheque shall not be presented for encashment.

9. It is the evidence of PW1 that the accused was a subscriber in the Chit Group, bearing No.G2J/49/9 conducted by the complainant company. On perusal of the complaint, it is nowhere mentioned that what is the instalment details, what is the prize money received by the complainant, and what is the amount due as per the Chit Account of the accused, etc. PW1 in his proof affidavit has stated that the accused issued a cheque for a sum of Rs.5,06,339/- for the purpose of liquidating his liability in respect of the defaulted subscriptions in the aforesaid chit.

10. It is made clear from Ex.D1 that the accused had subscribed a chit for an amount of Rs. 10,00,000/- recoverable in 20 monthly installments. The appellant/accused received a prize money of Rs.7,50,000/- on 20.08.2003 through auction. PW1 has admitted that the accused has repaid some amounts specifically on 01.12.2007 that too after the presentation of the complaint, an amount of Rs.1,00,000/- was paid. PW1 had also admitted that the accused has paid a sum of Rs.2,55,000/-.

11. More so the law expects the Financial Company to compulsorily give the entire particulars in the notice/complaint itself, enabling the debtor to workout his remedy.

12. It is relevant to note that for the total amount due in that chit transaction, for collecting the said money, the said complaint was presented under Section 138 of the Negotiable Instruments Act against the accused.

13. It is useful to refer to the observations made by the Hon'ble Supreme Court in ***Suni Todi Vs. State of Gujarat*** 2022 (16) SCC 762. The observation of the Hon'ble Supreme Court is as follows:-

> ***"17.*** *A two judge Bench of this Court expounded the meaning of the phrase 'debt or other liability'. It was observed that the phrase takes within its meaning a 'sum of money promised to be paid on a future day by reason of a present obligation'. The court observed that a post-dated cheque issued after the debt was incurred would be covered within the meaning of 'debt'. The court held that Section 138 would also include cases where the debt is incurred after the cheque is drawn but before it is presented for encashment. In this context, it was observed:*

"26. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment. In Indus Airways, advance payments were made but since the purchase agreement was cancelled, there was no occasion of incurring any debt. The true purpose of Section 138 would not be fulfilled, if 'debt or other liability' is interpreted to include only a debt that exists as on the date of drawing of the cheque. Moreover, Parliament has used the expression 'debt or other liability'. The expression "or other liability' must have a meaning of its own, the legislature having used two distinct phrases. The expression 'or other liability' has a content which is broader than 'a debt' and cannot be equated with the latter. In the present case, the cheque was issued in close proximity with the commencement of power supply. The issuance of the cheque in the context of a commercial transaction must be understood in the context of the business dealings. The issuance of the cheque was followed close on its heels by the supply of power. To hold that the cheque was not issued in the context of a liability which was being assumed by the company to pay for the dues towards power supplied would be to produce an outcome at odds with the business dealings. If the company were to fail to provide a satisfactory LC and yet consume power, the cheques were capable of being presented for the purpose of meeting the outstanding dues."

14. In the case of the Hon'ble Supreme Court, in ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and Anr*** 2023 (1) SCC

578, it has been held that when the amount is repaid in part, then the cheque which was received for the payment in full shall not be presented for encashment.

15. This condition is violated by the Finance Company because without accounting for the payment made by the accused and without properly quantifying the amount due from the accused, the complaint is filed.

16. Undoubtedly the complainant company is a Finance Company. As per law, it has to maintain a ledger/account book etc. Being a financial company when any money is due from any person, the law is well-settled that the Finance Company shall file the ledger/cash book/account book as the case may be. Apart from this the complainant is obligated to have also furnished the details as mentioned *supra,* as to how come the amount due is arrived at.

17. It is evident from the evidence of PW1 that out of three cheques given by the accused, which were received for the purpose of security, utilizing one cheque, this complaint was presented. Therefore, it is vividly clear that based on the cheque which was given by the accused as security, this case has been filed.

18. The legal notice issued on behalf of the complainant company is obnoxious in nature totally bereft of the particulars of the amount paid and due. Therefore, the amount mentioned in the complaint can never be taken as legally enforceable debt.

19. In fine, for the below said reasons, the complainant is not suited:-

1. The amounts re-paid are not accounted for.
2. Ledger/Account Book not filed by the Complainant/Finance Company.
3. For invoking Section 138 of the Negotiable Instruments Act, there must be legally enforceable debt on the date of the complaint. Which was not quantified by the complainant.

20. For the said reasons, this Court is of the considered view that the offence under Section 138 of the said Act is not made out in the complaint and deserves to be dismissed. I find no perversity in the judgment of the Appellate Court which warrants no interference by this Court.

21. In fine, this Criminal Appeal No.368 of 2020 stands dismissed, confirming the judgment passed in C.A.No.199 of 2018. There shall be no order as to costs.

26.02.2024

Index : Yes /no
Speaking : Yes/No
Neutral Citation Case : Yes/No
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Copy to:

1. Hon'ble XV Additional Sessions Judge, Chennai

2.Hon'ble Metropolitan Magistrate Fast Track Court No.III – Saidapet, Chennai.

2. The Public Prosecutor, High Court, Madras.

R. KALAIMATHI,J

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