



Crl.A.No.774 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.774 of 2013

M/s.Sree Gokulam Chits &
Finance Company (P) Limited,
Its Managing Director & Foreman
Rep. by his Power Agent,
Mr.Harikrishnan, S/o.Ramasamy,
Sree Gokulam Towers,
No.307, Seventh Street, 100 Feet Road,
Gandhipuram,
Coimbatore – 641 012.

... Appellant / Complainant

Vs.

P.A.Karuppaiah

... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders dated 27.05.2013 passed in C.C.No.112/2011 by the Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore.

For Appellant : Mr.L.Rajasekar

For Respondent : Mrs.M.Meena Rukmani,
Legal Aid Counsel



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JUDGMENT

Challenging the order of acquittal dated 27.05.2013 passed in C.C.No.112/2011 by the learned Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore, the present Criminal Appeal is filed by the complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The case of the appellant / complainant in a nutshell is as follows :

- i. The complainant M/s.Sree Gokulam Chits & Finance Company (P) Limited is represented by the Managing Director Mr.R.Harikrishnan. The accused was a subscriber with complainant Chit company in Group number G2E vide ticket No.253/02 for Rs.1,00,000/-. The duration of chit was for 20 months with monthly subscription at Rs.5,000/-.



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- ii. The accused after bidding the chit amount successfully, failed to pay the subsequent installments and thus he was due and liable to pay a sum of Rs.60,000/- to the complainant.
- iii. After much persuasion by the complainant, the accused issued a Cheque bearing number 130176 (Ex.P3) dated 15.04.2008 for a sum of Rs.60,000/- drawn on Central bank of India, Tiruppur in favour of the complainant.
- iv. When the cheque was presented for collection on 16.04.2008 by the complainant through his bankers viz., Centurion Bank of Punjab, Gandhipuram, Coimbatore, it was returned on 29.04.2008 for the reason 'insufficient funds' as evidenced by the cheque return memo (Ex.P4), dated 29.04.2008 and debit advice (Ex.P5) dated 20.05.2008.
- v. Thereafter, the complainant issued a statutory notice, dated 02.06.2008 (Ex.P6) to the accused calling upon him to pay the amount due under the cheque (Ex.P3) within fifteen days from the date of receipt of the notice.



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- vi. The accused received the notice on 04.06.2008 as is evidenced by the postal acknowledgement Card (Ex.P7), but did not come forward to make good the payment and did not also send any reply.
- vii. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore, under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.112/2011.
- viii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.
- ix. On the appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.
- x. One witness was examined as P.W.1 and Ex.P1 to Ex.P8 were marked.



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- xi. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side, but marked Ex.D1.
- xii. The learned trial court judge after analysing the oral and documentary evidence on record, found the accused not guilty of the offence under Section 138 of Negotiable Instruments Act and acquitted him under Section 255(1) Cr.P.C., vide his Judgment and orders, dated 27.05.2013. Aggrieved over the same, the present appeal is filed by the complainant.

4. Heard Mr.L.Rajasekar, learned counsel for the appellant / Complainant and Mrs.M.Meena Rukmani, learned counsel for the Respondent / Accused.

5. In the instant case, the accused did not deny his signature on the cheque (Ex.P3) in favour of the complainant. However, his contention is that he repaid the entire chit amount and filed a Pass book



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(Ex.D1) to support his contention . A perusal of the Passbook (Ex.D1)

shows that as on 30.04.2009, the accused had paid a sum of Rs.63,945/-.

According to the complainant, still there is a balance of Rs.60,000/-.

6. In any event, a perusal of the records shows that the complainant had issued the statutory notice on 02.06.2008 even though he received the cheque return memo on 29.04.2008 itself.

7. Mr.L.Rajasekar, learned counsel for the appellant would contend that the complainant received the debit advice (Ex.P5) from the bank only on 20.05.2008 and therefore the legal notice was issued within the period of limitation. However, the complainant as P.W.1 during the course of cross examination admitted that the complainant received the cheque return memo on 29.04.2008 itself. Therefore, it is clear that the complainant had not issued the statutory notice within the period of limitation and on this sole ground alone, the private complaint is liable to be dismissed.



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8. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The Judgment and Orders, dated 27.05.2013 passed in C.C.No.112/2011 by the Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore is confirmed.
- iii. This Court places on record its appreciation to Mrs.M.Meena Rukmani, learned Legal Aid counsel, for her valuable assistance in deciding this case. The High Court Legal Services Committee shall pay the fees as per Rules.

25.07.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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To

1. The Judicial Magistrate,
Fast Track Court-I, Coimbatore.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

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R.HEMALATHA, J.

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