



Crl.A.No.763 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

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M/s.Sree Gokulam Chit and Finance Complany (P) Limited,  
Represented by its Managing Director, M.G.Baiju,  
Having his Office at:  
Sree Gokulam Towers,  
No.66/356, Arcot Road, Kodambakkam,  
Chennai – 600 024.

...Appellant

Vs.

Y.Subilakumari

...Respondent

Criminal Appeal has been filed under Section 378 of Cr.P.C to call for records and set aside the order acquitting the respondent / accused passed in C.C.No.5900 of 2011 dated 28.04.2023 by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

For Appellant : Mr.L.Rajasekar

For Respondent : Mr.R.Chandrasudan



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### **ORDER**

This Criminal Appeal has been filed to set aside the order dated 28.04.2023 in C.C.No.5900 of 2011 acquitting the respondent / accused by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

2. The case of the appellant is that, the appellant / complainant is a Private Limited Company represented by its Managing Director, is engaged in the business of chit all over India and the respondent had subscribed for a chit bearing No.J2F/1902/7. The respondent had bid the chit and received the chit amounts. Thereafter, the respondent had committed default in payment of chit dues. In order to discharge the liability, the respondent / accused had issued a cheque bearing No.632932 dated 26.11.2012 for a sum of Rs.81,796/-drawn on M/s.ICICI Bank, Alwarthinagar Branch, towards the chit and when the said cheque was presented for collection, the same has been dishonoured with an endorsement “Funds insufficient”. Thereafter, the appellant sent a statutory notice to the respondents on 07.01.2013 calling



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upon the respondent / accused to make a payment of the dishonoured cheque and despite receiving the same, as the respondent has not repaid the outstanding due, the appellant filed a complaint under Section 200 Cr.P.C., for an offence u/s. 138 of Negotiable Instruments Act in CC.No.5900 of 2011 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, subsequently, the said case was transferred to the file of the learned Metropolitan Magistrate, Fast Track Court – III, Saidapet, Chennai. While so, the trial court, without going into the merits of the case, vide impugned order dated 28.04.2023, dismissed the said complaint on the ground of non-appearance of the complainant u/s.256 of Cr.P.C. Aggrieved by the same, the appellant has come up with the present appeal has been filed.

3. Learned counsel for the appellant submitted that, for mere non-appearance on the part of the appellant before the trial court on a particular date, the trial court had dismissed the complaint filed by the appellant, which is per se unsustainable and the impugned order passed by the trial court is wholly erroneous, as the same was passed, without issuing notice to



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the petitioner and without affording opportunity to the petitioner to canvass his case, which is a clear violation of principles of natural justice. He further submitted that, the petitioner is ready to examine all the witnesses within the time stipulated by this Court. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the respondent submitted that, the complaint given by the complainant is pending from the year 2011 and despite giving sufficient opportunity to the complainant company, they did not proceed to conduct the case and without the presence of the complainant / P.W.1, the trial Court could not proceed the said complaint. Upon perusing the oral and documentary evidence, the trial Court had dismissed the complaint given by the appellant, which is based on cogent and convincing reasoning and the same does not require any interference at the hands of this Court.

5. Heard learned counsel on either side and perused the material documents placed on record.



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6. A perusal of the impugned order reveals that, no opportunity was given to the appellant and the trial court had directly discharged the accused person without hearing the appellant, which is against the principles of natural justice, as necessarily opportunity has to be given to the appellant to put forth his case.

7. In such view of the matter, the impugned order dated 28.04.2023 made in CC.No.5900 of 2011 is set aside and the matter is remanded to the trial court. The appellant is directed to appear before the court on the date fixed and let in evidences on behalf of the complainant before the trial Court and the respondent is at liberty to cross examine the prosecution witnesses. After production and examination of the witnesses, the trial Court after affording an opportunity of hearing to the parties is directed to dispose of the complaint filed by the appellant upon the materials placed before it within a period of four (4) months from the date of receipt of a copy of this order. Further, it is open to the trial Court to dismiss the complaint made by the appellant by invoking powers u/s.256 of Cr.P.C. if the appellant fails to appear before the trial Court on the first date fixed for hearing.



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**WEB COPY** 8. With the above observations and directions, this Criminal Appeal stands allowed.

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NCC : Yes/No  
Index : Yes/No  
Speaking order : Yes/No



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To

The Metropolitan Magistrate,  
Fast Track Court-III,  
Saidapet, Chennai



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**M.DHANDAPANI, J.**

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