



Crl.A.No.592 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

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

Crl.A.No.592 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.

Jayanth Kumar ... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment and orders dated 21.06.2013 passed in C.C.No.50/2011 by the Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore.

For Appellant : Mr.L.Rajasekar

For Respondent : Mrs.D.Sathyya,
Legal Aid Counsel



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JUDGMENT

Challenging the order of acquittal dated 21.06.2013 passed in C.C.No.50/2011 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 its Managing Director Mr.R.Harikrishnan. The accused was a subscriber to a chit in Group number G2F/0156/GAN/14 for Rs.2,00,000/-. The duration of the chit was for 20 months with subscription at Rs.10,000/- per month.

ii. The Chit commenced on 17.04.2008 and terminated on



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17.11.2009. The accused was a successful bidder in the Chit group and was paid a sum of Rs.1,49,258/- on 08.09.2008.

- iii. Thereafter, the accused was not regular in paying the monthly installments and there was an outstanding amount of Rs.40,581/- as on 20.11.2010. The accused has to pay interest for this amount @ 24% per annum.
- iv. The accused in order to discharge his liability, issued a cheque bearing number 770587 (Ex.P3) dated 20.11.2010 for a sum of Rs.56,540/- drawn on ICICI Bank, Trichy Road Branch, Coimabtoire, in favour of the complainant.
- v. When the cheque was presented for collection by the complainant through their bankers viz., City Union Bank, Vilankurichi branch, Coimbatore, it was returned on 23.11.2010 for the reason 'account closed' as is evidenced by the cheque return memo (Ex.P4).
- vi. Thereafter, the complainant issued a statutory notice, dated 18.12.2010 (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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- vii. The accused received the notice on 21.12.2010 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 notice.
- viii. 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.50/2011.
- ix. 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.
- x. 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.
- xi. One witness was examined on the side of the complainant and



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Ex.P1 to Ex.P8 were marked.

xii.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. The accused examined himself as D.W.1.

xiii.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., on the following grounds:

- i. The contention of the complainant that the accused issued the cheque (Ex.P3) after lapse of one year from the date of termination of the chit, is unbelievable.
- ii. The complainant also did not issue any notice to the accused calling upon him to pay a sum of Rs.40,581/-
- iii. The complainant company had received signed blank cheques from the accused towards security and did not return the cheques to the accused even after the



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termination of the chit.

Aggrieved over the Judgment passed by the trial Court, the present appeal is filed by the complainant.

4. Heard Mr.L.Rajasekar, learned counsel for the appellant / Complainant and Mrs.D.Sathyya, learned counsel for the Respondent / Accused.

5. At the outset it may be observed that the accused did not deny his signature on the cheque (Ex.P3). Once the signature is admitted on the cheque, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act, unless the contrary is proved.

6. According to the accused, he had repaid the entire chit amount during the subsistence of the chit fund and he is not liable to pay any amount to the complainant. It is also his contention that one of the signed blank cheques issued by him at the time of joining the chit fund, has been misused by the complainant for the purpose of filing the present



7. The complainant had filed an extract of the Ledger which shows that the accused is due and liable to pay a sum of Rs.40,581/- as on 20.11.2010. The accused has not questioned the genuineness of this document. His contention was that he repaid the entire amount due to the complainant. However, he did not adduce any documentary evidence to substantiate his contention in this regard. The contention of the accused that one of the cheques issued by him at the time of joining the chit fund was misused by the complainant, cannot be accepted for the simple reason that the accused did not issue any notice to the complainant in this regard. He also did not lodge any police complaint against the complainant.

8. The presumption, which is available in favour of the complainant has not been rebutted by the accused by adducing acceptable evidence. Therefore, the order of acquittal passed by the trial Court is totally perverse and the same is liable to be set aside.

9. Accordingly, the accused is found guilty of the offence



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punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for a period of six months and to pay compensation of Rs.50,000/- (Rupees Fifty Thousand only) to the complainant, in default to undergo simple imprisonment for a period of two weeks.

10. In the result,

- i. This Criminal Appeal is allowed.
- ii. The Judgment and Orders, dated 21.06.2013 passed in C.C.No.50/2011 by the Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore is set aside.
- iii. The Respondent / accused is found guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs.50,000/- (Rupees Fifty Thousand only) to the complainant, in default to undergo simple imprisonment for a period of two weeks.
- iv. The Respondent / accused is directed to surrender before the trial



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Court viz., the Judicial Magistrate, Fast Track Court-I (Magisterial level), Coimbatore within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the sentence;

- v. This Court places on record its appreciation to Mrs.D.Sathya, learned Legal Aid counsel, for her valuable assistance in deciding this case. The High Court Legal Services Committee shall pay her fees as per Rules.

23.07.2024

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

R.HEMALATHA, J.

vum



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To

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

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