(2015) 11 MAD CK 0137

In the Madras High Court

Case No : Criminal Appeal Nos. 12 to 14 of 2007

Sree Gokulam Chit & Finance Co. (P) Ltd. APPELLANT

Vs

S. Shanthi RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2016) 1 MLJ(Cri) 570

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : L. Rajasekar, for the Appellant; B. Kumarasamy, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—These criminal appeals have been directed against the orders of acquittal passed in Calendar Case Nos. 192 of 2006, 746 and 981 of 2005 by the Judicial Magistrate No. II, Coimbatore.

2. The appellant herein, as complainant has filed three complaints under Section 138 of the Negotiable Instruments Act, 1881 (''NI Act'' in short) on the file of the Trial Court and the same have been taken on file in Calendar Case Nos. 192 of 2006, 746 and 981 of 2005, wherein the present respondent has been shown as sole accused.

3. The material averments made in the complaint filed in C.C. Nos. 192 of 2006 are that the complainant is a Private Limited Finance Company. The accused is one of the subscribers of the chit group No. G2E 07 vide ticket No. 10 and 15. The value of Chit is Rs. 1,00,000/- (Rupees One lakh only) and the same should be paid in twenty instalments. The accused has become successful bidder. But she has become irregular in paying amount. Under the said circumstances, she is liable to pay a sum of Rs. 38,500/- (Rupees Thirty eight thousand five hundred only) to the complainant. In order to discharge her liability she has given the cheque, in question and the same has been put into concerned Bank. The

concerned Bank has returned the same stating ''funds insufficient'' and subsequently, a statutory notice has been issued to the accused and she evaded its service. Under the said circumstances, the present complaint has been filed for getting the relief sought therein.

(a) The material averments made in the complaint filed in Calendar Case No. 746 of 2005 can be stated like thus:

The complainant is a Private Limited Finance Company. The accused is one of its subscribers in Chit Group G2E 07 vide ticket No. 10 and 15. The value of the Chit is Rs. 1,00,000/- (Rupees One lakh only) and its monthly subscription is Rs. 5000/- (Rupees Five thousand only). The accused has become successful bidder. But she has not paid the entire amount and therefore, she is bound to pay Rs. 35,000/- (Rupees Thirty five thousand only) to the complainant. In order to discharge her liability, she has given the cheque, in question and the same has been put into the concerned Bank and the Bank has returned the same stating ''funds insufficient'' and subsequently, a statutory notice has been issued and even on receipt of the notice, the accused has not discharged her liability. Under the said circumstances, the present complaint is filed for getting the relief sought therein.

(b) The material averments made in the complaint filed in C.C. No. 981 of 2005 can be stated like thus:

The complainant is a Private Limited Finance Company. The accused is one of its subscribers. The value of the chit is Rs. 1,00,000/- with 20 months'' duration. The accused has become successful bidder. But she is not regular in paying instalments. Under the said circumstances, she is bound to pay Rs. 35,000/- and in order to discharge her liability, she has given the cheque, in question and the same has been put into the concerned Bank and the Bank has returned the same stating ''funds insufficient'' and subsequently, a statutory notice has been issued and even after receipt of the same, she has not discharged her liability. Under the said circumstances, the present complaint has been filed for getting the relief sought therein.

4. The Trial Court after considering the available evidence in each case has dismissed all cases. Against the orders of dismissal, these criminal appeals have been filed at the instance of the complainant, as appellant.

5. Since common questions of law and facts are involved, common order is passed.

6. The consistent case put forth on the side of the complainant is that the respondent/accused is one of the subscribers and she has become successful bidder of chits mentioned in the complaints and in order to discharge her liability she has given the cheques, in question and the same have been put into concerned Bank. But the concerned Bank has returned the same stating ''funds insufficient'' and subsequently, statutory notices have been issued and even after

receipt of the same, she has not discharged her liability and thereby committed offences punishable under Section 138 of the NI Act.

7. The learned counsel appearing for the appellant/complainant has repeatedly contended that in all the complaints it has been specifically mentioned about the amounts due from the accused and only to discharge the same, the cheques, in question have been issued in favour of the complainant and the same have been put into concerned Bank. But the concerned Bank has returned the same stating ''funds insufficient'' and subsequently, statutory notices have been issued to the accused and even after receipt of the same, she has not discharged her liability and even though sufficient evidence have been let in on the side of the complainant, the Trial Court has simply accepted the documents filed on the side of the respondent/accused and erroneously dismissed all the complaints and therefore, the dismissal orders passed by the Trial Court are liable to be interfered with.

8. In order to sustain the dismissal orders passed by the Trial Court, the learned counsel appearing for the respondent/accused has advanced his arguments on two folds.

(a) The complaints in question have not been properly filed; and

(b) The cheques in question have been issued by the accused at the time of receipt of money and subsequently, discharged entire amounts and by way of misusing the same, these proceedings have been initiated and further, no documents have been filed for the purpose of showing existing debts.

9. The Trial Court after considering the divergent contentions raised on either side has given a specific finding to the effect that each cheque, in question has not been issued in connection with an enforceable debt and ultimately, dismissed all petitions.

10. The first point urged on the side of the respondent/accused is that the present complaints have not been properly filed.

11. It is an admitted fact that all complaints have been filed by the complainant represented by its Managing Director and Foreman, represented by its Power of Attorney viz., Harikrishnan.

12. It is also equally an admitted fact that the Managing Director and Foreman is the legal representative of the complainant. The only legal point raised on the side of the respondent/accused is that since the Managing Director and Foreman is representative of the complainant, he cannot further delegate his power to his Power Agent, viz., Harikrishnan.

13. In support of the contention raised on the side of the respondent/accused, the following decisions are relied upon.

(i) In M. Lakshmi Vs. M/s. Shanmuga Priya Textiles (P) Ltd., Thungavi, Udumalpet, , this Court has held that Managing Director of Private Company executed Power of Attorney in favour of another who filed complaint and the Managing Director has no locus standi to execute such kind of Power of Attorney.

(ii) In P.M. Vijayakumar Vs. Monara Chits (P) Ltd., this Court has held that complaint filed by Private Company represented by the Managing Director, no document has been filed to show that the partner, who represented complaint is either Managing Director or Manager of Firm, the complaint is not maintainable.

14. The learned counsel appearing for the appellant/complainant has relied upon the following decisions:

(a) In A.C. Narayanan Vs. State of Maharashtra and Another, it is observed as follows:

When attorney holder of complainant in charge of business of complainant is alone personally aware of transactions, attorney holder can depose as a witness.

(b) In M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, it is held that complaint filed in the name and on behalf of company by its employee without necessary authorisation can be rectified even at a subsequent stage.

15. In the instant case, it has already been pointed out that all the complaints are filed by the complainant represented by its Managing Director and Foreman, represented by its Power of Attorney viz., Harikrishnan. Therefore, it is easily discernible that Managing Director and Foreman is the real representative of the complainant. But he has not individually filed all the complaints. All the complaints have been filed by the Power of Attorney holder of the said Managing Director of the complaint. Therefore, it is quite clear that all complaints are not legally maintainable. It is an acknowledged principle of law that a delegate cannot make further delegation. Therefore, the first point urged on the side of the respondent/accused is really having subsisting force.

16. Now, the Court has to look into the second point urged on the side of the respondent/accused. The specific contention put forth on the side of the appellant/complainant is that all cheques have been issued in connection with enforceable debts. But to prove the same, no documents have been filed on the side of the complainant, except the cheques, in question.

17. The main defence put forth on the side of the respondent/appellant is at the the time of taking chits, the complainant has obtained blank cheques from the accused. In fact, the accused has discharged all amounts and by utilising blank cheques, the present proceedings have been initiated.

18. In fact, this Court has perused the judgments passed by the Trial Court wherein it is specifically stated that a similar complaint has been filed by the present complainant and the same has also been dismissed mainly on the ground that the cheque in question has not been issued in connection with an enforceable debt. In the instant case, some contra evidence have been let in on

the side of the accused for the purpose of showing discharge. Since on the side of the accused, some contra-evidence have been let in for the purpose of showing discharge, the Court can easily come to a conclusion that the complainant has not established the alleged fact that all the cheques have been issued in connection with enforceable debts. If really, such debts are in existence, definitely some documents would be available. But the complainant has not filed any document for the purpose of showing existing liability of the accused. Therefore, even assuming without conceding that all complaints have been properly filed, since on the side of the complaint it has not been positively established that the cheques, in question have been issued in connection with the enforceable debts, it is needless to say that the accused cannot be mulcted with liability under Section 138 of the NI Act.

19. The Trial Court after considering the overall evidence available on record has rightly dismissed all the complaints. In view of the foregoing narration of both factual and legal aspects, this Court has not found any error or illegality in the orders passed by the Trial Court and therefore, all these criminal appeals deserves to be dismissed.

In fine, these criminal appeals are dismissed. The orders passed by the Judicial Magistrate No. II, Coimbatore in C.C. Nos. 192 of 2006, 746 and 981 of 2005 dated 20-09-2006 are confirmed.