

(1985) 03 MAD CK 0050

In the Madras High Court

Case No : Criminal Appeal No. 404 of 1982

State by Public Prosecutor

APPELLANT

Vs

Kalyana Sundaram

RESPONDENT

Date of Decision : 25-03-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Tamil Nadu Chit Funds Act, 1961 — Section 56(2)(c)

Citation : (1985) LW(Cri) 155

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : S. Manohar Ponraj, P.P, for the Appellant; K. Chandramouli, for the Respondent

Judgement

Swamikkannu, J.—This is a criminal appeal filed by the State u/s 378 CrI.P.C., against the judgment, dt. 22nd December, 1981 in STC No. 186 of 1981 on the file of the Court of the learned Judicial First Class Magistrate, Mayuram, finding that the accused Kalyanasundaram, Respondent herein is not guilty u/s 56(2)(c) of the Tamil Nadu Chit Funds Act, 1961 (Act No. 24 of 1961) hereinafter referred to as the Act, and acquitting him u/s 255(1), CrI.P C.

2. The complainant - Chit Registrar, Mayuram, appointed u/s 51 of the Act, having jurisdiction over Mayuram Sub District filed the complaint before the lower court which reads as follows:

... The accused is Thiru R. Kalyanasundaram, Managing Director, The Mayuram Financial Corporation, Limited, Mayuram. The accused has registered a by-law No. 431979 on 13th November, 1979 with the Chit Registrar, Mayuram. He has also filed the chit agreement and has obtained the commencement certificate on 22nd January, 1980. He has also filed the auction schedule of date along with the chit agreement. As per the schedule the 11th Auction should have been conducted on 16th August, 1980, Saturday. But in the copy of the minutes for the 11th auction, it has been noted as 18th August, 1980, the date of the

auction. Thus, the foreman has deviated from the agreement, in conducting the auction. Thus the foreman has failed to comply with the requirements of the chit agreement, regarding the date at which the chit is to be drawn, punishable u/s 56(2)(c) of the Tamil Nadu Chit Funds Act.

3. On behalf of the prosecution, P.W.1 Kothandaraman, Chit Registrar was examined. Ex.P1 by-law of Mayuram Financial Corporation Limited, Ex.P2 annexure Form No. 1 Chit agreement dated 22nd January, 1980, Ex.P3 auction schedule and Ex.P4 auction minutes dated 18th August, 1980 were filed on behalf of the complainant. On behalf of the accused, D.W.1 Rajaraman was examined. Ex.D1 application given by the subscribers dated 14th August, 1980 was filed on behalf of the accused.

4. On a consideration of the evidence available on record, the lower court had found the accused not guilty of the offence with which he had been charged by the lower court. Aggrieved by the above decision of the lower court, the State has preferred this appeal, inter alia, contending that the learned Magistrate has erred in thinking that holding of the chit auction on 18th August, 1980 instead of 16th August, 1980, without observing the formalities required, such alteration would not offend the provisions of Section 9, which is punishable u/s 56(2)(c) of the Tamil Nadu Chit Fund Act.

5. Section 9 of the Act reads as follows:

9. Alteration of chit agreement: The chit agreement shall not be altered, added to or cancelled except with the consent in writing of the foreman and all the subscribers to the Chit.

6. Section 56 of the Act reads as follows:

56. Penalties:-(1) whoever contravenes or abets the contravention of any of the provisions of Ss.3, 4 and 7 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) Any foreman-

(a) who does not file the chit agreement u/s 6 or a copy of any document u/s 11, sub-S.(2) of Section 20, Sub-S.(2) of Section 21, Section 29 or Section 32 within the period specified for such filing or within the further time allowed u/s 55 for such filings; or

(b) who contravenes any of the provisions of Section 8, sub-Ss.(1) and (6) of Section 12, Section 14, Section 15, Section 16, Section 20, Section 21, Section 22, Section 23, sub-S.(4) of Section 25, Section 29, Section 35, Section 36, Section 37 and sub-S.(4) of S 51; or

(c) who fails to comply with the requirements of the chit agreement regarding the date, time and place at which the chit is to be drawn;

shall be punishable with fine which may extend to one hundred rupees.

(3) Whoever in any document required by, or for purposes of, any of the provisions of this Act wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

7. The point for consideration in this appeal is whether the complainant has proved his case against the Respondent herein beyond all reasonable doubt.

8. P.W.1 has stated in his evidence that the accused is the Director of Mayuram Financial Corporation, that on 18th November, 1979 as per by-law (Ex.P1) and chit agreement (Ex.P2) as well as under Ex.P3 schedule regarding the date of auction, the 16th auction ought to have been conducted on 16th August, 1980 in the branch office at Kumbakonam. Ex.P4 is the minutes of the 16th auction, as per which, the auction had taken place on 18th August, 1980. For conducting the auction, no permission was obtained. Hence the Respondent has committed an offence punishable u/s 56(2)(c) of the Act. The complainant closed his side with his evidence. When the accused was questioned by the lower court, regarding the evidence tendered through P.W.1, the Respondent had stated that he had acted in accordance with law only.

9. D.W.1 has stated in his evidence that he is working as a Superintendent under the Respondent herein, and as the subscribers have requested that the auction could be conducted on 18th August, 1980, as per Ex.D.1, the auction had been conducted.

10. It is relevant to note that both sides agreed with respect to the contents of Exs.P1. to P4. It is contended on behalf of the complainant that Ex. D1 had been created for the purpose of the case. The alteration in the date regarding the conduct of auction was not informed to the complainant. The date of auction was altered as per the request of the subscribers and in accordance with Ex. D1. On behalf of the accused, the provision of Section 9 of the Act, in this regard is referred to. The said provision of the Act states that the chit agreement shall not be altered, added to or cancelled except with the consent in writing of the foreman and all the subscribers to the chit. It is not provided in Section 9 that the Chit Registrar has also to be informed in this regard.

11. Chapter II of Ex.P1 (by-law) deals with place where the chit is proposed to be conducted and the Registrar within whose jurisdiction it is situated. It reads as follows:

... The chits are proposed to be conducted under the over all supervision of the foreman at 13 G, Cut-chery Road, Mayavaram, which is situated within the Jurisdiction of the Registrar of Chits, Mayavaram.

12. R.6 reads as follows:

... Time and place of (a) drawal, auction or receipt of tender and (b) the maximum and minimum amount of dividend, if any, fixed in respect of each instalment:

(a) (i). Auctions or drawals, of Chits shall be conducted at the date and time specified in the agreement at No. 13-G, Cutchery Road, Mayavaram.

A perusal of the evidence on record shows that the auction had been conducted only in accordance with the by-law.

13. The case against the accused had been filed by the complainant on 11th March, 1981. On 18th August, 1980 the auction had been conducted. The contravention of Section 56(2)(c) of the Act is punishable only by imposing fine on the accused who is found guilty. It is relevant to note that after about six months subsequent to the alleged offence, the complaint had been filed. It was put to D.W.1 that Ex. Dt(sic) had been created only for the purpose of this case. D.W.1 has stoutly denied that suggestion. P.W.1 had denied knowledge whether the date of auction had been altered as per the request of the subscribers. In Ex.D1, dated 14th August, 1980 it is seen that 20 subscribers have put their signatures. This is a typed application and the subscribers have signed the same in it. The said document (Ex.D1,) had been filed along with the documents kept in the ordinary course of business of the establishment. Therefore, there is no ground for suspecting the same as one created for the occasion subsequently. The complainant himself has not stated in his evidence that Ex.D1 is a false document. Therefore, the suggestion put to D.W.1, regarding this aspect on behalf of the complainant is without basis. Under the circumstances we find that Ex.D.1 is a genuine document. A careful scrutiny of the entire evidence available on record clearly shows that the complainant had not established his case against the accused/Respondent herein u/s 56(2)(c) of the Act. The acquittal of the Respondent herein u/s 255(1), Crl. P.C., is correct.

14. There is no merit in the appeal, Hence the criminal appeal is dismissed.