

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-855-MA-2012 (O&M)

Date of decision : 04.09.2015

M/s Arpit Finance

...Petitioner

Versus

Bir Davinder Singh and another

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. G. C. Shahpuri, Advocate for the appellant.

Mr. Arun Luthra, AAG, Haryana

Mr. Ravindra Jain, Advocate for respondent No.1

JITENDRA CHAUHAN, J. (Oral)

This appeal is directed against the impugned judgments one dated 05.09.2012 passed by the learned Additional Sessions Judge, Jagadhri whereby the appeal of the appellant was dismissed on the ground of maintainability and order dated 01.10.2010, passed by the learned Judicial Magistrate Ist Class, Jagadhri, whereby the accused-respondent No.1 was acquitted from the charges framed against him under Section 138 of Negotiable Instrument Act.

Brief facts of the case in hand, as recorded in the opening para of the impugned judgment dated 01.10.2010, are reproduced as under:-

“1. This complaint has been filed by complainant M/s Arpit Finance through its proprietor Madhu Suman Gupta, under Section 138 of the Negotiable Instrument Act, 1881 (as amended upto date)

against the accused Birdavinder.

2. *As per allegations contained in the complaint, in discharge of existing liability accused issued a cheque bearing No.609684 dated 14.06.2007, for a sum, of Rs.2,84,875/- drawn on Bank of Baroda, Yamun Nagar in favour of complainant and assured the complainant that the said cheque will be honoured on its presentation.*

3. *The complainant accepted the cheque and presented the same for encashment through his banker i.e. Bank of Baroda, Yamuna Nagar, but the said cheque was dishonoured by the bank of accused on account of "Funds Insufficient" vide its memo dated 15.06.2007 and banker of complainant intimated the complainant vide memo dated 16.06.2007. Thereafter, accused was served with registered AD legal notice dated 20.06.2007 and same was received to the accused, but the accused did not make the payment despite notice. Hence, he is liable under Section 138 of the Negotiable Instruments Act.*

4. *On finding prima facie case against the accused, the accused was ordered to be summoned for the commission of offence under Section 138 of the Negotiable Instruments Act (hereinafter be called as the act) vide order dated 16.07.2007 passed by the then learned Chief Judicial Magistrate, Jagadhri.*

5. *In compliance of notice accused appeared, then notice of accusation was given to him vide order dated 24.04.2008, the accused pleaded not guilty and claimed trial.*

6. *In order to bring home the guilt of the accused, the complainant has examined Sudhir*

Bhardwaj, Special Assistant Bank of Baroda, Yamuna Nagar as CW1, complainant Madhu Suman himself stepped into the witness box as CW2 and has also placed on record following documents.

- 1. Ex.C1 Cheque dated 14.06.2007*
- 2. Ex.C2 Memo dated 15.06.2007*
- 3. Ex.C3 Memo dated 16.06.2007*
- 4. Ex.C4 Registered AD Legal notice dated 20.06.2007*
- 5. Ex.C5 Acknowledgment*
- 6. Ex.C6 Postal receipt*
- 7. Ex.C7 UPS*

7. The accused has categorically and specifically denied all the allegations leveled against him when his statement under Section 313 Cr.P.C. was recorded. In defence the accused has not examined any witness and has tendered copy of receipt dated 21.04.2005 Ex.D1”

After appraisal of the documents, prosecution evidence and the defence evidence, the learned Judicial Magistrate Ist Class, Jagadhri acquitted the respondent No.1 from the charges under Section 138 of Negotiable Instruments Act.

Feeling aggrieved against the same, the appellant has filed the appeal which was dismissed by the learned Additional Sessions Judge, Jagadhri vide judgment dated 05.09.2012 on the ground of maintainability.

Hence, the present appeal.

The learned counsel for the appellant contends that the

impugned judgment dated 01.10.2010 was passed on the ground that the appellant was not having any license to carry out chit fund business and since the same is not applicable in State of Haryana, so any debt or liability in this business cannot be termed as a legally recoverable debt. He further submits that if it is an admitted fact that the cheque in question was signed by respondent No.1 in such an eventuality the debt or liability incurred on the part of respondent No.1 could be termed as legally recoverable debt.

He further cites some judgments, **Rangappa VS. Mohan**, 2010 (91) AIC 65, **Rakesh Kumar VS. Ravinder Kumar and another**, 2012(3) RCR (Civil) 566, **Kajal VS. Marwah**, 2014(3) RCR (Civil) 801.

The learned counsel for the respondent No.1 submits that the father of respondent No.1 made some investment in the committees operated by the appellant's firm and the cheque in question was given by his father in the form of security to the appellant's firm. The appellant misused this cheque as the entire amount of the committee had been paid and there is no amount due against the father of respondent No.1.

The learned State counsel states that the appellant was not having any license to carry out chit fund business and the chit fund business cannot be legally carried on in Haryana.

I have heard the submissions of the learned counsel for the parties and have carefully gone through the record with their able assistance.

In this case, the appellant, in her statement has deposed that she is not aware of the fact that chit fund business has been banned in Haryana

and admits that she has been running the chit fund business without any license. The liability or debt in this case does not come under the ambit of Section 138 of the Negotiable Instruments Act as it specifically provides that debt or liability has to be qualified with word legally recoverable debt and in the present case liability or debt arises from a banned business which is being running without any license.

Keeping in view the above, the judgment dated 01.10.2010 passed by the learned Judicial Magistrate Ist Class, Jagadhri and judgment dated 05.09.2012, passed by the learned Additional Sessions Judge, Jagadhri are upheld and the present leave to appeal is dismissed.

04.09.2015

ashok

(JITENDRA CHAUHAN)
JUDGE