IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-362-SBA-2005 (O&M)
Date of decision: September 25, 2017.

Mohinder Singh

... **Appellant**

v.

Inder Paul Singh @ Pappu

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: None for the appellant.

Shri Anmol Partap Singh Mann, Advocate for the respondent.

A.B. Chaudhari, J. (Oral):

This appeal is directed against the judgment and order dated 21.1.2003 passed by CJM, Moga by which the respondent/accused was acquitted of the charge under Sections 138/142 of the Negotiable Instruments Act in respect of cheque amount of Rs.3,05,000/-.

I have seen the record as well as the evidence and the receipt allegedly executed by the respondent and relied upon by the complainant. The trial court has inter-alia recorded reasons for acquitting the respondent-accused. Having gone through the entire gamut of the reasons, I find that the view taken by the trial court is clearly probable and no second view is possible. That apart, following are the reasons in addition which I quote hereunder:-

"*... The story does not end up here only, it was further duty of the complainant that why he took risk to pass money time and* *again to inderpal Singh accused, when he was knowing the fact that Inderpal Singh has not repaid the previous loans. Not only this, even those loans were given on the oral promise or whether those loans were given after doing some writing. It is not proved. Now why Inderpal Singh accused should issue one cheque dated 30-5-1997 on 30-10-1996 of Rs.3,50,725/- because as per this receipt which is produced by the complainant, the total amount which was calculated was Rs.3,50,000/-. The remaining is rate of interest 2%. First of all, complainant was to prove that how he is claiming interest because whether complainant is a money lender, if so, he has obtained licence, he was not money lender, then without any intimacy or without having any knowledge regarding accused, how he incurred the risk to give such a big amount to the accused. ...”*

I have gone through the receipt relied upon by the complainant himself and from the reading of the receipt, it clearly appears that the appellant-complainant was doing money lending business and was also making the payment from time to time to the accused. The receipt shows that the cheque in question was issued for recovery of the moneys advanced to him by way of cash from time to time with interest @ 2% per month. This clearly shows in the light of the above finding that the complainant was acting as a money lender without licence. The burden of proof to show that the complainant was a money lender under licence to do the business of money lending was upon the complainant but no document was produced by him to show that he was licensed money lender. Section 138 of the Act contemplates legally enforceable liability. In the wake of the above finding and reasons discussed above, the appellant could not have enforced his claim into the cheque in question which was issued in illegal money lending transaction. In that view of the matter, I hold that there was no legal liability as such. I therefore, find no merit in the appeal. This appeal against acquittal is therefore dismissed.

September 25, 2017. **[A.B. Chaudhari]**
kadyan **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No