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

CRM-A-620-MA-2013(O&M)
Date of decision: November 21, 2017

Pawan Kumar .....Petitioner

Versus

Sat Pal .....Respondent

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

Present: Mr. P.K.Garg, Advocate for the appellant.

Mr.Aakash Singla, Advocate for the respondent.

Mr.Chetan Sharma, AAG, Haryana.

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A.B.CHAUDHARI, J(Oral)

Heard learned counsel for the rival parties.

This is an appeal against acquittal claiming leave to appeal in the matter of acquittal under Section 138 of the Negotiable Instruments Act filed by the original complainant.

Learned counsel for the appellant has pressed into service the judgment in the case of **Balvinder Singh v. M/s Basaikhi Ram Saina Ram, 2008(2) RCR(Civil) 467** and has advanced a proposition of law that a solitary or isolated transaction of money lending does not amount to business of money lending which is prohibited by law. According to him solitary transaction or isolated transaction cannot be said to be violation of any law which would partake the character of the liability that cannot be enforced legally as contemplated by Section 138 of the Negotiable

Instruments Act.

Learned counsel for the respondent-accused submitted that the appellant had made a categoric admission in the cross-examination that he had been giving loan to the farmers on interest at the rate of 1.5% p.a. without licence. The trial Court has rightly acquitted the accused.

I have heard learned counsel for the parties and also perused the reasons given by the trial Court in para 9. The trial Court has given the following reasons:-

> " .... Perusal of the testimony of Pawan Kumar Complainant shows that he has admitted in his cross-examination that accused had for the first time came to borrow money. He categorically conceded that he lends money on interest. Even, he admitted that he advances money to the farmers who are coming to him upon their need. However, he further asserted that accused Satpaul did not sell his crop through his shop and even does not know where he sells his crop. Therefore, when there is a specific admission on the part of through his firm, the disputed amount certainly was not lent to accused as an incident of commission agency. Rather, it is money lending transaction. Complainant has also admitted that he lends money on interest. Meaning thereby, complainant is a professional money lender who has not admittedly obtained a license. Had complainant been advancing money casually, he would not have advanced money to strangers like accused who had come to the complainant for the first time. Even in the complaint itself, it has been averred that accused promised the complainant to return the whole amount along with interest @ 1.5% per annum. It is well settled that to constitute moneylending business, element of continuous habit has to be there. The term business imports the notion of system, repetition and continuity. More often then not, the basis of usury is gaining income by way of interest. In the instant complaint, Pawan Kumar has himself

admitted that he is engaged in lending money on interest. He never interjected that he lends money out of charity or kindness or that he given occasional loans to relations, friends or acquaintances. Speaking generally, a man who carries on a money lending business who is ready and willing to lend to all and sundry. The complainant during his deposition never exhorted that for what reasons he advances money on interest. It is hard to digest that a common man would lend money to person who has come to borrow for the first time without knowing his previous record It can only be done by professional money lender as they are in the habit of fetching income by way of interest which is quite exorbitant than the prevalent rate of interest amongst the nationalized banks. The system of lending as is common amongst people like complainant, can only be termed as professional money lending. Here counsel for the complainant submitted that in view of the law cited as **Firm Chint Ram Sohan Lal vs Amar Singh 1985 RLR 470** but this ruling is not applicable to the facts of the present case as accused has not been lent money as an incident of business of commission agency by the complainant. Admittedly, accused is not the customer of the complainant firm and as such the abovesaid law is of no help to the complainant. Furthermore, counsel for complainant has pressed into service law adjudicated by Hon'ble Punjab and Haryana High Court in **Sant Lal vs. Nohria Mall All India Land Law Reporter 434** decided on 10.8.1977 to the effect that a casual instances of money lending do not conform to the definition as given in Sec.2(9) of the Punjab Registration of Money Lenders Act, 1938. The aforesaid judgment is also not applicable in the facts of the case and is distinguishable since in the present case, it is not the casual instances of money lending but professional money lending which has been proved from the clear cut admission of the complainant who has moreover exhibited his willingness to advance money to everyone."

I have considered the above reasons recorded by the trial Court and the submissions made by learned counsel for the appellant about the nature of transaction. In my opinion, the judgment cited by learned counsel for the appellant would have no application for reasons more than one. In the first place, in the present case there is clear cut admission made by the appellant that he had been giving loan to the farmers on interest at the rate of 1.5% p.a., that too without any licence under the Money Lenders Act. The second reason is that the present case, though is of quasi civil and quasi criminal in nature, the fact of the matter is that the principles relating to the criminal jurisprudence including the benefit of doubt are required to be applied. In the present case the trial Court has acted on the said admission and in my opinion rightly holding that the appellant had been giving loan to the farmers on interest without any licence under the Money Lenders Act. The trial Court has thus preferred to accept the said admission.

Coming to the fact that there was no legally enforceable liability as contemplated by Section 138 of the Negotiable Instruments Act and looking to the parameters in the matter of appeal against acquittal laid down by the Apex Court, I do not find any reason to interfere with the order of acquittal.

In the result, leave is refused. The appeal is dismissed summarily.

(A.B. CHAUDHARI)
JUDGE

November 21, 2017
sunita

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No