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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1246/2019 & CRL.M.(BAIL) 2090/2019**

GUDDO DEVI @ GUDDI Petitioner

Through: Mr Jatin Rajput and Mr R.
Satish Kumar, Advocates.

versus

BHUPENDER KUMAR Respondent

Through: Mr Divya Attri, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.02.2020

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning the judgment dated 30.11.2018, whereby the petitioner's appeal against a judgment dated 20.02.2018 convicting the petitioner for an offence punishable under Section 138 of the Negotiable Instruments, 1881 (NI Act) was rejected.
2. The respondent had filed a complaint (CC No. 9993/2016) before the learned MM as the cheque in the sum of ₹5,50,000/- (cheque bearing no. 784391), issued by the respondent, was dishonoured on presentation.
3. The said cheque was presented for encashment but the same had been returned unpaid on 23.05.2014, with the remarks, "04-refer to drawer".

4. The respondent issued a notice under Section 138 of the NI Act, which was sent by registered post.
5. The respondent led the pre-summoning evidence and thereafter, summons were issued and subsequently a notice under Section 251 of the Cr.P.C. was served on the petitioner.
6. The petitioner stated that she had obtained a loan of ₹5,00,000/- from the complainant (respondent) with interest at the rate of 5% per annum and had issued the said cheque in question. She further stated that thereafter, she made part payment aggregating approximately ₹1,20,000/- in ten-twelve instalments but the respondent had not issued any receipts for the same.
7. The Trial Court considered the facts obtaining in the said case and by the judgment dated 20.02.2018, convicted the petitioner for committing an offence under Section 138 of the NI Act. Subsequently, by an order on sentence dated 16.03.2018, the petitioner was sentenced to serve rigorous imprisonment for a period of six months. She was also directed to pay a sum of ₹7,00,000/- to the respondent within thirty days of the said order and in default of payment of such compensation, to undergo four months of simple imprisonment.
8. Aggrieved by the judgment dated 20.02.2018 and the order on sentence dated 16.03.2018, the petitioner preferred an appeal (Criminal Appeal No. 101/2018) which was dismissed by an order dated 30.11.2018 (the order impugned herein).

9. The learned counsel appearing for the petitioner submits that it was admitted by the respondent that the alleged loan was paid in cash and that the respondent had also lent money to three-four persons other than the petitioner. He drew the attention of this Court to the cross-examination of the complainant (respondent herein) conducted on 04.05.2017 and submitted that the same clearly established that the respondent was a money lender; therefore, the said transactions fell foul of the Punjab Registration of Money Lenders Act, 1938, which mandates that all money-lenders are required to be registered under the said Act. He submitted that since the said loan was illegal, the same was not an enforceable debt and, therefore, Section 138 of the NI Act was wholly inapplicable.

10. Next, he submitted that the payment of more than ₹20,000/- in cash violates the provisions of Section 269 SS of the Income Tax Act, 1961 which prohibits grant of any loan or advance over a sum of ₹20,000/- in cash. He submitted that since the said loan was in violation to the provisions of the Income Tax Act, 1961 the same was not an enforceable debt. He relied upon by the decision of the Bombay High Court in *Sanjay Mishra v. Kanishka Kapoor @ Nikkin and Anr.: 2009 (4) Mah.L.J.155* in support of his contention.

11. The contention that the debt claimed by the respondent is not enforceable by virtue of the provisions of the Punjab Registration of Money Lenders Act, 1938, is unmerited. The term 'Money-lender' is defined under Section 2(9) of the said Act as under:-

“2. Definitions — In this Act, unless there is anything repugnant in the subject or context—

(9) “Money-lender” means a person, or a firm carrying on the business of advancing loans as defined in this Act, and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm; provided that nothing in this definition shall apply to.

(a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender together with all his rights and liabilities; provided that such person only—

(i) winds up the estate of such money-lender;

(ii) realises outstanding loans;

(iii) does not renew any existing loan, nor advance any fresh loan;

(b) a *bona fide* assignment by a money-lender of a single loan to anyone other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grandfather of the assignor.”

12. In the present case, there is no material to conclude that the respondent was carrying on the business of advancing loans. Merely because the respondent had lent money to three or four persons, did not lead to the inference that the respondent had been carrying out the activity of money lending as a business. The respondent had also expressly denied that he had given any loan on interest to public persons.

13. The contention that the debt owed by the petitioner was rendered unenforceable by virtue of the provisions of the Income Tax Act, 1961 is also unmerited.

14. Section 269SS of the Income Tax Act, 1961 prohibits making of any payment in cash above a sum of ₹20,000/-. Thus, any person violating the same would attract imposition of penalties under the said Act. However, the same does not render the said debt un-enforceable or precludes the lender from recovering the same.

15. The decision of the Bombay High Court in *Sanjay Mishra* (*supra*) is also inapplicable in the facts of this case. In that case, the Court had proceeded to observe the fact that a loan has not been reflected in the Income Tax returns or books, would be sufficient to rebut the presumption under Section 139 of the NI Act.

16. In the present case, the petitioner had clearly admitted to receiving the loan and, therefore, it could not be held that the petitioner had rebutted the presumption that the cheque had been issued in discharge of an enforceable debt.

17. The decision in the case of *Sanjay Mishra* (*supra*) is not an authority for the proposition that notwithstanding the fact that the issuer of the cheque has admitted a liability, the same would be unenforceable, if the loan had been extended in cash.

18. In view of the above, the present petition is unmerited and is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 11, 2020
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