IN THE PUNJAB AND HARYANA HIGH COURT
CHANDIGARH

CRM-A-1105-MA-2018 and
CRM-A-1183-MA-2018
Date of Decision:12.08.2024

R. DHUNNA CREDIT AND FINANCE LTD
…….APPELLANT

VERSUS

JYOTI BHATT
…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harsh Kinra, Advocate
for the appellant

Mr. Chand Atri, Advocate
for the respondent.

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SANDEEP MOUDGIL, J

1. This order shall dispose off two appeals by this common order as the similar facts and issues are involved in both these appeals. However, the facts are being taken from the appeal i.e. CRM-A-1105-MA-2018 as the lead case.

2. The facts of this case are that a complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the Act'), was filed by the Company named R.Dhunna Credit & Finance Ltd., through its Director Roshan Lal Verma, alleging that Sh.Roshan Lal Verma is one of the Directors of the complainant company and he is fully conversant with the facts of the present case and duly authorized by the Board of Directors to file the present complaint

against the respondent-accused vide resolution dated 15.06.2015. The complainant company has organized the Chit Group for its members/subscribers on their request. The respondent was one of the members/subscriber of the Group No.16 and Chit No.14 organized by the complainant for 14 members for 154 months for a face value of Rs.8,40,000/- only. The Chit group was started on 04.06.2014. The complainant had fixed the amount of chit payable to each member as per his or her preference. On 11.09.2014, the respondent/accused took the chit amount of Rs.6,24,400/- from the complainant, which was paid by the complaint through account payee cheque No.184898 dated 11.09.2014 and Rs.1,99,500/- were adjusted in the payment of some other due installments. After taking away the chit amount, the respondent/accused became defaulter and failed to pay the remaining installments and then after persistent request the respondent/accused issued a consolidated cheque for the 10th and 11th two months due installments for Rs.56,000/- and Rs.58,000/- vide cheque No.000225 dated 20.05.2015 for Rs.1,14,000/- drawn on HDFC Bank, Gren Field Colony, Faridabad. Accused also assured that the cheque will be honoured on its presentation. When the complainant presented the said cheque for clearance with his bankers, the same was returned back with the remarks 'Stopped the payment" vide return memo dated 21.07.2015. Thereafter, legal notice dated 10.078.2015 was sent to accused called upon her to make the payment but as per complainant no payment was made, and the same was dismissed which compelled him to file an appeal. Hence, the present appeal.

3. In the connected appeal being CRM-A-1183-MA of 2018, the cheque numbers are 000140 dated 18.05.2015 amounting to Rs.59,000/-; 000141 dated 18.06.2015 amounting to Rs.59,500/-; 000142 dated 18.07.2015

amounting to Rs.59,000/- all drawn on HDFC Bank, Gren Field Colony, Faridabad.

4. It is contended by the counsel for the appellant that Judicial Magistrate Ist Class, Faridabad, (for short – 'Court below') has erred in acquitting the accused because there is clear cut admission by the accused that the cheque bears her signatures on the cheque in question and the accused has failed to prove her defence, as such, her guilt stands proved on record. The accused was member of the chit fund but she became defaulter of her monthly installments and in order to pay her installments, she issued the cheque in question as such the cheque was issued in discharge of legal debt/liability.

5. On the other hand, learned counsel for the respondent has contended that the judgment passed by the learned Court below is a just and proper judgment which has been passed by taking into consideration all the possible aspects of the matter and also going in depth about the maintainability of the complaint and as to whether the business being run by the Company fulfills the requirements of the Chit Fund Act or not. The learned Court below has also examined the question "Whether the agreement to contribute made by a subscriber to an unregistered chit fund, is legally enforceable?" In reply to this question, the learned Court below has rightly answered that merely registration of the Chit Fund Company, under the Company Act, amounts to defeat the provisions of the Chit Fund Act, 1982 (for short 'Act of 1982') and registration of the Chit Fund Company under the Company Act, without obtaining license and approval as provided by the Act of 1982, can not make the Chit activities legal. Further, it has been proven on record that the Chit Fund Company was

running its business without obtaining license and approval under the Act. Hence, the present appeal is liable to be dismissed.

6. Heard both the counsel and also perused case file.

7. A perusal of the record in hand makes it amply clear that the accused-respondent did not dispute the issuance of cheque and the signatures on it. However, in rebuttal, it was argued on behalf of the accused-respondent that the legal provisions contained in Chit Fund Act, 1982, were enacted with a view to institutionalize the system of chit funds and to have a regulatory mechanism in place, to ensure investor protection and smooth conduct of chit fund and further to provide for mandatory registration of chit fund companies, in addition to sanction with respect to each chit scheme individually. As per the Chit Fund Act, 1982, a Chit Fund company, in order to run business is required to first obtain a certificate of incorporation from the Registrar of Companies thereafter the same needs to be registered with the Chit Fund department of the government after compliance with the elaborate formalities including drawing up of bye law and spot inspection by the Registrar. As such, no person shall commence or conduct any chit unless previous sanction of the Registrar, Chit Funds, has been obtained and a certificate of commencement under Section 9 of the Chit Funds Act, 1982 is obtained. As such, running of a chit as in the present case, is clearly forbidden by law.

8. However, in reply to that, the learned counsel for the appellant has gone to the extent to argue that the Chit Fund Act, 1982, has not been made applicable to the State of Haryana and that even the State of Haryana has not set up any machinery to implement the Chit Fund Act and no Registrar or other authorities have been appointed, hence the necessary license or approval, if any,

cannot be obtained. This argument of the learned counsel for the appellant has been dealt with by the learned Court below by observing that first of all the provisions of the Chit Fund Act are applicable to the State of Haryana, vide notification No. S.O.950(E) dated 23.03.2012/30.04.2012 and that non-appointing the machineries in the State of Haryana, would not make the banned business as legal. Accordingly, the learned Court below has rightly acquitted the accused-respondent considering that she cannot be convicted for the liability that arises from a banned business being run without any license.

9. Further, perusal of the notification dated 30.04.2012 issued by the Government of India, Ministry of Finance, Department of Financial Services,produced in court today by the counsel for the respondent is taken on record which reveals that in exercise of powers conferred by sub-section (3) of Section (1) of the Chit Funds Act, 1982 (40 of 1982), the Central Government has made applicable provisions of the Act to five States, including the State of Haryana, from 30th April, 2012. Other States are (1) Arunachal Pradesh (2) Gujarat (3) Kerala and (4) Nagaland. The disputed cheque in this case is dated 11.09.2014 bearing No.184898 and as such the Act of 1982 came into force much before the issuance of cheque, meaning thereby the argument raised on behalf of the appellant, holds no force.

10. Consequently, the present appeal, alongwith its connected appeal, fails for want of merits and the same is hereby ordered to be dismissed.

(SANDEEP MOUDGIL)
JUDGE

12.08.2024
Poonam Negi/anuradha

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