(2013) 04 DEL CK 0160

In the Delhi High Court

Case No : Crl. L.P. 491 to 513/2011

Virender Singh APPELLANT

Vs

Deepak Bhatia RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) CriLJ 2593

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Judgement

G.P. Mittal, J.—Leave granted. The Leave Petitions be registered as Criminal Appeals No. 461/2013 - 483/2013.

2. These Appeals arise out of 23 separate judgments of even date whereby 23 complaint cases u/s 138 of the Negotiable Instruments Act, 1881(the Act) were dismissed by the learned Metropolitan Magistrate (MM) primarily on the ground that the Petitioner was in the business of advancing loan; he did not possess any money lending licence and thus the complaint was barred u/s 3 of the Punjab Registration of Money-lender''s Act, 1938 (the Act of 1938). The learned MM opined that although the cheques were issued in discharge of liability or debt, yet in view of the provisions of the Act of 1938, the debts were legally not recoverable. Thus, the learned M.M. dismissed the complaints and acquitted the Respondent.

3. In the 23 complaint cases, various cheques have been issued which are extracted hereunder:

4. To analyse whether the complaints u/s 138 were barred under the provisions of the Act, it will be apposite to extract the provisions of Section 3 of the Act of 1938, which reads as under:

3. Suits and applications by money-lenders barred, unless money-lender is registered and licensed. Notwithstanding anything contained in any other

enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-

(a) at the time of the institution of the suit or presentation of the application for execution; or

(b) at the time of decreeing the suit or deciding the application for execution-

(i) is registered; and

(ii) holds a valid licence, in such form and manner as may be prescribed; or

(iii) holds a certificate from a Commissioner granted u/s 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or

(iv) if he is not a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending; provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of.

5. Thus, Section 3 of the Act of 1938 starts with a non-obstinate clause and makes the filing of any Suit or any Application for recovery of loan or execution of a decree relating to a loan by a money lender to be not maintainable unless the money lender is registered under the Act and possessed a licence for the same.

6. The loan as defined in Section 2(8) of the Act of 1938 specifically excludes an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note. The instant cases relate to an advance made by the Petitioner to the Respondent on the basis of the cheque which admittedly is a negotiable instrument. Thus, the bar of Section 3 of the Act of 1938 is not attracted to a loan given on the basis of a negotiable instrument, like a cheque. I am supported in this view by a judgment of the Supreme Court in Gajnan and Others Vs. Seth Brindaban, . Thus, the learned MM fell into error in dismissing the complaints and acquitting the Respondent solely on the ground that the complaint was barred under the provisions of the Act of 1938.

7. The impugned orders, therefore, cannot be sustained; the same are accordingly set aside.

8. The cases are remanded back to the Court of MM concerned for its decision in accordance with law.

9. Parties are directed to appear before the learned MM concerned on 30.04.2013.

10. Trial Court record be returned immediately.

11. A copy of the order be transmitted to the Trial Court. Pending Applications stand disposed of.

