

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

CRM A-1405-MA of 2015 (O&M)

Decided on: 5.10.2015.

Inderjit Singh

... Appellant

Versus

Raminder Chandan

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Rajesh Narang, Advocate,
for the appellant.

JITENDRA CHAUHAN.J.

CRM No. 26439 of 2015

There is delay of 36 days in filing the appeal.

For the reasons contained in the application, the same
is allowed and the delay of 36 days in filing the appeal is condoned.

CRM A-1405-MA of 2015

This is an application under Section 378(4) Cr.P.C for
grant of leave to appeal against the judgment of acquittal dated
20.4.2015 passed by the Judicial Magistrate Ist Class, Chandigarh vide
which the respondent was acquitted in complaint case titled 'Inderjit
Singh vs. Raminder Chandan' filed under Section 138 of Negotiable
Instruments Act, 1881.

Learned counsel for the complainant-appellant
contends that the complainant had proved before the Court below the

necessary ingredients of offence under Section 138 of Negotiable

Instrument Act. He further contends that the complainant approached the accused for taking house No. 530, Phase 3-B-1, Mohali on rent. The premises were rented out from 1.11.2011 to 31.10.2014 and a rent deed was also executed between the parties. As per Clause 11 of the said deed, the complainant paid Rs.3 lacs to the accused as interest free security and the same was to be refunded at the time of termination of tenancy. The complainant vacated the premises in January, 2013, against the security amount, the accused issued a cheque No. 737235 dated 1.2.2013 of Rs. 3 lacs drawn on the State Bank of India, Chandigarh. On presentation, the cheque was dishonoured as the accused did not have sufficient funds in his account. Learned counsel further contends that the case of the complainant was proved by the testimony of CW-1 Sh. Varinder Thakur, Assistant, SBI, Chandigarh, who proved that the cheque was dishonoured on account of insufficient funds in the account of the accused. The complainant appeared as CW-2 and proved the allegations as mentioned in the complaint. He further contends that all the necessary ingredients of offence under Section 138 of Negotiable Instruments Act were fulfilled but despite that the learned Judicial Magistrate acquitted the accused-respondent.

The learned Judicial Magistrate acquitted the accused-respondent after observing that the complainant was fully aware that the accused was not the owner of the premises, which was owned by one Baldev Singh. The alleged rent-deed was not proved on the record.

The alleged witness to the rent-deed, Rajesh was neither examined nor any plausible explanation was rendered for his non-examination. Thus, there was no corroboration to the testimony of the complainant and the execution of the rent-deed was not proved. It was further observed by the learned Judicial Magistrate that mere exhibition of rent deed does not dispense with the proof. The original rent deed was not brought on record. The contents of the document are required to be proved by the production of document itself and the oral evidence alone is inadmissible in this regard. When the rent of the premises was Rs. 45,000/- per month there was no question of paying an advance of Rs. 3 lacs. The complainant himself admitted that he had filled in the body of the cheque Ex. C1 in his own handwriting. The complainant has nowhere stated that at the time of filling in the body of the cheque, the accused was present. A blank cheque cannot be enforced even if it is issued for a legal liability. The filling of contents of cheque by the complainant amounts to alteration of cheque which is not permissible in law. When there is no relationship of landlord-tenant between the parties, in that eventuality, it is highly improbable that the complainant had paid Rs. 3 lacs to the accused otherwise than the price of the furniture and fixtures. Since the cheque was issued as a security, therefore, no liability under Section 138 of the Negotiable Instruments Act can be fastened upon the accused. The presumption under Section 118(a) and 139 of the Act stands rebutted and the onus was shifted

upon the complainant to prove the existence of legally enforceable debt but the complainant failed to prove the same.

This Court is of the opinion that the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact, there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. Consequently, the leave to appeal stands declined.

Dismissed.

5.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE