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

CRM-A-1469-MA of 2014

Date of decision: January 29, 2015

Rakesh Kumar

.....Applicant

Versus

R.K. Khanna

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Bhriugu Dutt Sharma, Advocate
for the applicant.

SABINA, J

Respondent had faced trial in a complaint filed by the applicant under Sections 138 of Negotiable Instruments Act, 1881 qua dishonour of cheque. Trial Court vide order dated 17.04.2014 ordered the acquittal of the respondent. Hence, the present application by the complainant-applicant under Section 378(4) of Code of Criminal Procedure, 1973 for grant of leave to appeal.

I have heard learned counsel for the applicant and have gone through the record available on file carefully.

Case of the complainant in brief was that he alongwith Rakesh Kumar had entered into an agreement to sell with Anuj Khanna and Amit Khanna sons of the respondent qua property measuring 18 marlas 142 sq. ft. at the rate of ₹2,20,000/- per marla. Complainant gave ₹4,00,000/- to accused Anuj Khanna and Amit Khanna at the

time of execution of the agreement to sell. Another sum of ₹4,00,000/- were given to the said vendors at a later stage. Thereafter, respondent received ₹8,00,000/- from the complainant in the presence of other vendee on 21.12.2008. A receipt was issued by the respondent in this regard. However, sale deed was not executed in favour of the complainant. Respondent entered into an agreement with the attorney of the complainant that he would return ₹8,00,000/- taken by him from the complainant. In this regard, complainant issued cheques in question on behalf of his sons. When the cheques were presented for encashment, the same were dishonoured by the Bank with the remarks "Funds Insufficient" and "Opening day balance insufficient" respectively. Hence, the complaint in question was filed.

Trial Court summoned only the respondent to face the trial, whereas the other accused Anuj Khanna and Amit Khanna were not ordered to be summoned to face the trial.

Complainant as well as respondent led their evidence in support of their respective pleas. Trial Court while ordering the acquittal of the respondent, held that admittedly, the possession of the property in question was with the complainant. Plea put-forth by the respondent that the cheques in question had been got issued from him under fear and pressure, was believable. Attorney of the complainant had admitted in his cross-examination that complainant had

compromise was effected between the complainant and the respondent and in lieu of the said compromise, cheques in question had been issued by the respondent. Compromise relied upon by the complainant was not duly proved on record. Complainant has only paid part of the consideration of the house agreed to be purchased by him from the sons of the respondent and complainant is in possession of the house. Sale-deed has not been executed in favour of the complainant. Case of the complainant further was that he was ready and willing to get the sale-deed executed in his favour, but complainant has not filed any suit for specific performance on the basis of agreement to sell in question, but has only filed suit for permanent injunction for protection of his possession.

In the facts and circumstances of the present case, the learned trial court rightly came to the conclusion that the cheques in question had not been issued for any existing liability. The reasons given by the trial court while ordering the acquittal of the respondent are sound reasons and call for no interference.

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

January 29, 2015
m.singh