

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

**CRM No.A-1603-MA of 2014**  
**Date of decision: January 22, 2015**

Rajinder Singh

...Applicant

Versus

Rajbir Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Nonish Kumar, Advocate  
for the applicant.

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**INDERJIT SINGH, J.**

Applicant has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent challenging the judgment of acquittal dated 16.08.2014 passed by learned Judicial Magistrate Ist Class, Karnal, whereby the respondent has been acquitted under Section 138 of the Negotiable Instruments Act.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken in the grounds of appeal. Learned Court below has taken manifested wrong view which resulted in miscarriage of justice. It is further stated that trial Court has not applied independent and judicial mind and the conclusion of trial Court is totally perverse and unsustainable in the eye of law.

I have heard learned counsel for the applicant and have

gone through the record.

From the record, I find that Rajinder Singh complainant filed a complaint against Rajbir Singh under Section 138 of the Negotiable Instruments Act. It is mainly stated in the complaint that accused Rajbir Singh in discharge of his legally enforceable debt/liability, issued a cheque No.469774 dated 04.12.2010 for ₹2,50,000/- drawn at ICICI Bank Ltd. Karnal in favour of the complainant. The complainant presented the said cheque for encashment with his banker but the same was returned unpaid with the remarks 'Account closed' vide memo dated 06.12.2010. Then, a detailed legal notice was served. As the accused failed to make the payment, the present complaint was filed.

The complainant examined himself as CW-3, Mr.Raj Kumar Yadav, CSO, ICICI Bank as CW-1 and Mr.Pankaj Kumar, Deputy Manager, Axis Bank as CW-2. The accused has not led any evidence in defence.

Learned JMJC, Karnal while dismissing the complaint and acquitting the respondent, held that accused was not friend of the complainant. There was no reason or ground to lend amount of ₹2 lacs to the accused without getting executed any document. The complainant has not taken the cheque as security even at the time of lending the money. There is no explanation as to why no document has been got executed. The Court also found that no particulars have been mentioned in the complaint as to when this loan was given, at which place and in whose presence. The amount is stated to have

been given in cash but as per the Income Tax provisions, such a huge amount of ₹2 lacs cannot be given in cash but by way of negotiable instruments.

Furthermore, when it is in the evidence that accused is not having friendly relations with the complainant then why this huge amount has been given without getting executed any document. There is no document on record to show that this huge amount of ₹2 lacs has been withdrawn from any bank or to show the source of income. No J-form has been produced or commission agent has been examined as a witness to prove that any crop was sold and amount was given by the commission agent. Therefore, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted from the cross-examination of the witness.

Furthermore, I find that the case of the accused is that complainant is dealing in the business of committees and he has given the cheque which has been misused by the present complainant.

Therefore, from the above, I find that the judgment dated 16.08.2014 passed by learned Judicial Magistrate Ist Class, Karnal is correct and as per law and does not require any interference from this Court. Accordingly, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

**January 22, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**