

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-A-264-MA of 2015
Date of decision : 06.04.2015**

Sanjeev Kochhar

....Petitioner

V/s

Gian Chand

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

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

RAJAN GUPTA J.

The present application has been filed under Section 378(4) of the Code of Criminal Procedure seeking special leave to appeal against the order dated 04.12.2014 vide which the respondent/accused has been acquitted of the offence under Section 138 of the Negotiable Instrument Act by Judicial Magistrate Ist Class, Chandigarh.

Learned counsel for the petitioner has assailed the order. He submits that trial court has misread the oral as well as documentary evidence on record and wrongly acquitted the accused. He, thus, prays that order passed by trial court deserves to be set-aside. He has relied upon judgment of the Apex court reported as *P.K. Manmadhan Kartha vs. Sanjeev Raj & anr.* 2002(7) SCC 150.

Heard.

A complaint was lodged by petitioner alleging that respondent took a loan of ₹1,50,000/- on 15.12.2005 with interest @ 3% per month. In order to discharge his liability, respondent issued cheque bearing no. 097112 dated 19.09.2008 for ₹1,50,000/- drawn on The Jogindra Central Co-operative Bank Ltd.,

Baddi favouring the complainant. The cheque was presented for collection but was returned vide memo dated 21.02.2008 with the remarks 'insufficient funds'. Thereafter, notice envisaged by the Act was served upon the respondent. On his failure to pay the amount in question, complaint under section 138 of the Act was instituted. After examining the complaint and preliminary evidence, the Magistrate found that complainant had not been able to prove its case against respondent beyond reasonable doubt. It, thus, acquitted the accused.

I find no infirmity with the order passed. It appears that a cheque for ₹1,50,000/- issued by the respondent was dishonoured on presentation by the petitioner before the bank. Complainant claimed that he was maintaining proper account books and computerized account statement but he had failed to produce the same before the trial court. He had also miserably failed to establish the loan transaction and that cheque was issued towards the repayment of said loan. Learned counsel has not been able to point out any glaring misappreciation of evidence. Trial court rightly held that no offence under Section 138 of the Negotiable and Instruments Act was made out. Respondent was rightly acquitted. Judgment in *P.K. Manmadhan Kartha's* case (supra) cannot help the case of the petitioner as same is not applicable to the facts of the instant case. Leave to appeal against the order passed by trial court is, thus, declined.

April 06, 2015

Ajay

(RAJAN GUPTA)
JUDGE