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

**CRR No.3939 of 2015 (O&M)
Date of decision: November 16, 2015**

Vijay Arora

.....Petitioner

Versus

Pardeep Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Rana, Advocate
for the petitioner.

SABINA, J

Petitioner had faced trial in a complaint case No.476 filed under Section 138 of Negotiable Instruments Act, 1881 ('Act' for short) at the instance of respondent No.1.

Trial Court vide judgment/order dated 01.02.2014 ordered the conviction and sentence of the petitioner qua commission of offence punishable under Section 138 of the Act. The conviction and sentence of the petitioner as ordered by the trial Court, were upheld by the Appellate Court vide order dated 09.07.2015. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that the petitioner has been falsely involved in this case. In fact, cheque in question had been issued by way of security.

Respondent No.1 had filed a complaint against the petitioner under Section 138 of the Act with regard to dishonor of cheque dated 03.09.2012 in the sum of ₹3,00,000/-. The case of respondent No.1 was that the petitioner had taken a loan to the tune of ₹3,00,000/- from respondent No.1 and had agreed to return the same along with interest at the rate of 18% per annum. With a view to discharge the said liability, petitioner had issued the cheque in question in favour of respondent No.1. However, when the cheque in question was presented for encashment, the same was dishonored by the Bank with the remarks "Insufficient Funds". Despite service of notice, petitioner had failed to pay the amount in question to respondent No.1. Hence, the complaint in question was filed.

In order to prove his case, respondent No.1 appeared in the witness-box and proved on record the cheque in question as well as the memo issued by the Bank, whereby, the cheque in question was dishonored with the remarks "Insufficient Funds". Respondent No.1 further proved on record legal notice served by him on the petitioner and the postal receipt in this regard. Thus, the respondent No.1 had been successful in establishing that the cheque in question issued by the petitioner in favour of the respondent No.1 with regard to discharge of debt/liability, had been dishonored.

Petitioner when examined under Section 313 of Code of Criminal Procedure, 1973 took up the plea that the

cheque in question had been issued by way of security. However, petitioner had failed to lead any evidence in this regard to support his plea that the cheque in question had been issued by him in favour of respondent No.1 by way of security.

In the facts and circumstances of the present case, the Courts below had rightly ordered the conviction and sentence of the petitioner under Section 138 of the Act.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

November 16, 2015
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