

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

CRM-A No. 121-MA of 2012 (O&M)

Date of Decision: 07.03.2017

Sanjay Kumar

.....Appellant

Vs

Gurmukh Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.S. Jammu, Advocate
for the appellant.

None for the respondent.

RAJ MOHAN SINGH, J. (oral)

Appellant seeks reversal of judgment of acquittal dated 27.01.2011 passed by Judicial Magistrate Ist Class, Ellanabad vide which respondent was acquitted for the offence under Section 138 of the Negotiable Instruments Act, 1881.

The broad feature on which the acquittal was recorded was in the context of non-mentioning of any date of advancing the loan to the accused for which the cheque in question was issued by the accused in favour of the complainant. The complainant himself while appearing as PW-3 admitted in his cross-examination that the cheque was given by the accused Gurmukh Singh as a surety.

The trial Court drew reasonable inference to hold that there was no existing debt or liability and therefore, the alleged debt in question was not legally enforceable debt for which alleged cheque was issued by the accused.

The ingredients of offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 were not proved and the alleged debt was not held to be legally enforceable debt nor the cheque was drawn from the account in order to discharge other liability which presupposes a legally enforceable debt against the accused.

In terms of Section 139 of the Negotiable Instruments Act, 1881, the trial Court also held that the accused was only to satisfy preponderance of evidence as against the onus of proving guilt of the accused beyond reasonable doubt by the complainant.

In view of above, I do not find any illegality in the judgment of acquittal recorded by Judicial Magistrate Ist Class, Ellanabad. No ground to grant leave to appeal against the judgment of acquittal is made out.

Accordingly, the application for grant of leave to appeal as well as appeal stand dismissed.

CRM-9281-2012

Since the appeal is being decided on merits,

therefore the application for condonation of delay in filing the appeal has become inconsequential, therefore, no order is required to be passed in the application.

(RAJ MOHAN SINGH)
JUDGE

07.03.2017
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Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No