

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1151-MA of 2013 (O&M)

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Date of decision:12.1.2017

Raj Kumar Mankar

...Applicant

v.

Deepak Sharma

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Mamli, Advocate for the applicant.

Mr. Rohit Rana, advocate for Mr. Kunal Dawar, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Deepak Sharma for grant of leave to appeal against the judgment dated 23.11.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

It has been mainly stated in the application that the learned Judicial Magistrate Ist Class, Gurgaon, vide judgment dated 23.11.2013 acquitting the respondent of charge under Section 138 of the Act is illegal, unlawful, erroneous and same is liable to be set aside. The learned trial Court has not appreciated the evidence on record and the law laid down by

the Hon'ble High Court as well as Supreme Court. It has, therefore, been prayed that leave to appeal may be granted.

Notice of motion has been issued in this case.

Mr. Rohit Rana, Advocate for Mr. Kunal Dawar, Advocate has put in appearance on behalf of the respondent and contested this application.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Raj Kumar Mankar filed complaint under Section 138 of the NI Act. It has been stated in the complaint that the accused had borrowed a sum of ₹3 lakhs from the complainant in the month of November 2010 for two years for construction of his house. In discharge of this legal liability towards the complainant, the accused had issued cheque bearing No.328906 dated 25.12.2012 for ₹3 lakhs. The said cheque on presentation was returned back with the endorsement "cheque stopped" vide memo dated 3.1.2013. It was stated by the complainant that this memo was received by him on 31.1.2013 from the bank branch. Legal notice dated 6.2.2013 was sent/issued on 7.2.2013.

The learned Judicial Magistrate Ist Class, Gurgaon, after appreciating the evidence found that the complainant has not produced any cogent evidence that the cheque, was dishonoured on 3.1.2013 but he received the intimation on 31.1.2013. No evidence had been led by the complainant to prove this fact. The witness examined at pre-summoning stage cannot be read into evidence. The Court below after relying upon the judgment of the Hon'ble Supreme Court held that it amounts to non-

compliance as the legal notice was not issued within the prescribed period. The findings given by the learned lower Court are correct as per evidence and law and do not require any interference from this Court. One of the necessary ingredients is missing. Therefore, the accused has been rightly acquitted by the learned Judicial Magistrate Ist Class, Gurgaon.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit in the criminal miscellaneous application seeking leave to appeal, the same is dismissed.

January 12, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No