

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

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**CRM-A-1386-MA-2016 (O&M).
Date of Decision: 05.09.2017.**

M/s Shubham Tractors

....Applicant.

Versus

Ashok Kumar

....Respondent.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Raghav Sharma, Advocate for the applicant.

Ramendra Jain, J.(Oral)

CRM-23188-2016

Delay condoned.

CRM-A-1386-MA-2016

Through this application under Section 378(4) of the Code of Criminal Procedure (for short, 'Cr.P.C.'), the applicant-complainant has prayed for grant of special leave to appeal against the judgment dated 17.05.2016 passed by Judicial Magistrate Ist Class, Ambala.

Briefly stated, the applicant-complainant filed a complaint under Section 138 of the Negotiable Instruments Act (for short, 'the Act') against the respondent-accused for dishonouring of a cheque bearing No.807944 dated 27.04.2014 on the ground of “insufficient funds” given by the respondent in favour of the applicant drawn on Punjab National Bank, Durga Nagar, Ambala.

The applicant in support of his case examined Suresh Kumar, its proprietor as CW1 and relied upon various documents Ex.C1 to Ex.C11.

The respondent in his statement under Section 313 Cr.P.C., claimed his false implication and pleaded his innocence.

Learned trial Court, after hearing both the sides and scanning the evidence led by the applicant, dismissed the complaint vide impugned judgment dated 17.05.2016. Being aggrieved, the applicant has come before this Court.

Learned counsel for the applicant contends that there was full proof evidence on the record against the respondent that he had purchased a tractor from the applicant against impugned cheque amounting to ₹3,46,000/-. Learned trial Court has erred in dismissing the complaint of the applicant.

Heard.

After giving thoughtful consideration to the submissions made by learned counsel for the applicant, this Court finds the instant application devoid of any merit for the reasons to follow:-

- (1) the cheque amount of ₹3,46,000/- does not tally with the sale price of the tractor i.e. ₹6,20,000/-, because, if loan amount of ₹3,85,000/- is deducted from the sale price, the balance comes to ₹2,35,000/- whereas, as discussed above, the cheque amount is ₹3,46,000/-.
- (2) the applicant has introduced a story contrary to his pleadings that the cheque in question include ₹ 1 lakh which was paid in cash to the respondent. The said fact is missing in the pleadings.
- (3) the applicant has not been able to discharge the presumption under Section 139 of the Act in his favour.

I have gone through the impugned judgment and find no illegality or perversity therein and the same is accordingly affirmed.

Dismissed.

05.09.2017

jitender sharma

(RAMENDRA JAIN)
JUDGE

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No